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AMERICA'S INVISIBLE EPIDEMIC: PREVENTING ELDER FINANCIAL ABUSE

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CONTENTS

AMERICA'S INVISIBLE EPIDEMIC: PREVENTING ELDER FINANCIAL ABUSE

THURSDAY, NOVEMBER 15, 2012

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The Committee met, pursuant to notice, at 2:00 p.m. in Room SD–562, Dirksen Senate Office Building, Hon. Herb Kohl, Chairman of the Committee, presiding.

Present: Senators Kohl [presiding], Wyden, Nelson, Casey, Whitehouse, Blumenthal, and Corker.

OPENING STATEMENT OF SENATOR HERB KOHL, CHAIRMAN

The CHAIRMAN. Good afternoon. We appreciate very much your presence at this hearing.

Today we will be talking about ways to prevent a growing national crisis, elder financial abuse. From the opportunistic thief working as a home care aide, to the shady telemarketer who befriends a lonely senior on the phone to take advantage of him through a sweepstakes scam, the stories this Committee has heard are alarming.

Seniors are being victimized every day, and the problem is getting worse. According to the Investor Protection Trust, one out of every five older Americans has already been duped by a financial scam. And while the costs associated with elder financial abuse are estimated to be $2.9 billion every year, financial abuse often does go unrecognized because victims are too afraid or embarrassed to report the crime to authorities.

The reality is, many of us may know an older adult who is at risk, or who has been a victim of elder financial abuse. It might be a family member, a neighbor, or a friend. In fact, someday it might indeed be each and every one of us. But there is hope. Today we will highlight new elder financial abuse prevention programs being implemented across the Federal, state, and private sectors. In addition, we will address ways that older Americans can take steps to protect themselves, as well as their assets.

We will start today's hearing with Mr. Frank Abagnale, who earned a Hollywood-worthy reputation for conning unsuspecting victims. He has come here to share tips for preventing identity theft and protecting against financial fraud.

We will then review the findings of a Government Accountability Office report which describes what the Federal Government can do to help states combat financial exploitation.

We will also hear testimony from the Consumer Financial Protection Bureau, a member of the new Elder Justice Coordinating Council.

Finally, our panelists from the Financial Services Roundtable and the San Diego County District Attorney's Office will share their knowledge of prevention activities taking place in private banking institutions and at the state level.

Over the years, I've seen our nation take great strides to combat elder financial abuse, from the passage of the Elder Justice Act to the creation of a background check system for nursing home employees. It is time to build on our efforts to remedy this invisible epidemic and break the cycle of stigma attached to this terrible crime.

We thank you all for being here, and I'd like to hear now from Senator Corker.

STATEMENT OF SENATOR BOB CORKER

Senator CORKER. Thank you, Mr. Chairman, for bringing this hearing today and for all of these witnesses for showing up. I do look forward to your testimony, and I appreciate you highlighting this issue that affects so many people.

And I've been told not to make any big deal about the fact that this is your last hearing, so I won't do that, but thank you so much——

[Laughter.]

Thank you so much for your tremendous leadership and for being such a pleasure for me and our staff to work with.

The CHAIRMAN. Thank you, Senator Corker.

Senator Nelson.

STATEMENT OF SENATOR BILL NELSON

Senator NELSON. Mr. Chairman, I will make a big deal.

We obviously are going to miss you, and you have brought great distinguished service to the United States Senate. No one ever had to question your integrity or your word, and you have offered that kind of public service not only in leadership roles in the Appropriations Committee, but here as well.

Even going back to the Good Book in ancient scriptures, it teaches us that two parts of society that we particularly want to take care of are the young and the old. And so as our government has developed over the years, that's one of the great responsibilities of our American Government, is to make sure that the young and the old are protected, and what better subject than the subject of this hearing to underscore that.

And then, if that were not enough, under the Chairman's leadership, he has already passed the Elder Justice Act, which was put in as a part of the Affordable Care Act, coordinating the efforts of the Federal Government with the states' senior centers, law enforcement organizations, community groups and social services to prevent the physical, emotional, and financial abuse of senators—of seniors.

I keep replacing "senator" with "senior" so that when I am introduced as the senior senator of Florida, they often get it mixed up——

[Laughter.]

And they say “we’re welcoming the senior citizen of Florida.”

[Laughter.]

And the End Abuse in Later Life Act, which enhances direct services for victims of domestic violence and sexual assault, which are 50 years of age or older, and that was included in the Senate-passed reauthorization of the Violence Against Women Act, another one of your initiatives, Mr. Chairman.

And the Elder Abuse Victims Act, which has been introduced to ensure Federal, state and local law enforcement agencies are working together with adult protective services to combat elder abuse.

So, Mr. Chairman, your legacy is indelibly etched into not only this committee but the law of this country, and for that we are exceptionally grateful.

The CHAIRMAN. We thank you so much.

Senator NELSON. And if, in a few minutes, I may be excused, we have the acting director of the CIA coming on a number of topics that happen to be of currency, and with your permission, at that appropriate time, I will slip out.

The CHAIRMAN. Thank you so much, Senator Nelson, for being here.

And now we’ll introduce our witnesses. Our first witness today will be Frank Abagnale. Mr. Abagnale was made famous by the real-life depiction of his years as a con artist in the best-selling book “Catch Me If You Can,” which was also made into a film directed by Steven Spielberg.

Next we’ll be hearing from Kay Brown, the Director of the Education Workforce and Income Security Team at the U.S. Government Accountability Office, where she focuses on improving government performance in delivering benefits and services to lower-income and vulnerable populations.

Third, we’ll be hearing from Hubert “Skip” Humphrey, III, the Assistant Director of the Office of Older Americans at the Consumer Financial Protection Bureau. Mr. Humphrey has spent much of his professional life working to protect consumers.

And then we’ll hear from Paul Smocer, who is the President of BITS, the Technology Policy Division of the Financial Services Roundtable. Previously, Mr. Smocer led BITS work in promoting safety and soundness of financial institutions through best practices and successful strategies.

Finally, the committee will hear from Paul Greenwood, Deputy District Attorney for San Diego County. Mr. Greenwood is head of the Elder Abuse Prosecution Unit and has been involved in the prosecution of over 200 felony elder abuse cases.

We thank you all for being here and, Frank, we’ll start with you.

STATEMENT OF FRANK ABAGNALE, AUTHOR AND CONSULTANT, ABAGNALE & ASSOCIATES, WASHINGTON, DC

Mr. ABAGNALE. Chairman Kohl and Ranking Member Corker, members of the Committee, I am honored to be invited to testify before you today on the seriousness of identity theft and financial fraud against the elderly, and the need for education.

I am Frank Abagnale, subject of the book, movie and Broadway musical “Catch Me If You Can.” I have a unique perspective, having committed fraud as a teenager some 40 years ago and having spent the last 36 years of my life teaching at the FBI Academy and field offices of the Federal Bureau of Investigation. In my 36-year career, I have conducted over 3,000 lectures and written four books on these subjects. For the past 36 years, I have worked to try to prevent fraud, forgery, embezzlement, identity theft and other white collar crimes.

One serious issue we face is financial fraud against the elderly. This can be perpetrated by family members, financial advisers, home healthcare providers, friends, scam artists, and others. As I'm sure you are all aware, in 2010 the Consumer Financial Protection Board estimated $2.9 billion was stolen from financially exploited elders, and the instances of financial theft from seniors grew 12 percent from 2008 to 2010.

This is probably a low estimate because many times the elderly are too embarrassed to admit that they have been defrauded, and therefore it goes unreported. Their families may not even be told.

Last year, white collar crime in America reached $900 billion. Medicare fraud alone was estimated conservatively at $179 billion. The IRS paid out over $5 billion in fraudulent tax refunds filed by individuals using stolen Social Security numbers.

I make my home in Charleston, South Carolina. Last month, 3.5 million Social Security numbers and over 300,000 credit and debit card numbers were stolen from the South Carolina Department of Tax Revenue by criminals who hacked into the state's computer system. It is believed that they not only stole Social Security numbers and credit card information, but also the entire return of each person who filed a South Carolina tax return. This means the criminals have the Social Security number of the dependents, the home address, bank account numbers, and copies of the W–2.

What is truly amazing to an individual like me is that what I did 40 years ago as a teenager is 4,000 times easier to do today due to technology. Unfortunately, technology breeds crime, always has and always will. There will always be individuals who will use technology in a negative, self-serving way.

I have always believed that the government should take the lead in education to combat this horrendous crime. However, sometimes it seems the government makes it easier for individuals to commit these crimes. For example, the Centers for Medicare and Medicaid Services uses Social Security numbers as part of the Medicare number. This means that anyone who sees the Medicare number can determine the Social Security number.

In a hospital or medical setting, a worker would have complete access to a senior's Social Security number, home address, date of birth, possibly credit card numbers, bank account, and other information. This threat of identity theft of seniors will not be alleviated until the Social Security number is removed from the Medicare card.

The elderly are hungry for information but do not know about legitimate resources where they can turn for help. Numerous companies on television and radio, as well as talk show hosts, promote and market solutions which may or may not actually work. This is an example of the victim going for help but being victimized again by those companies that are claiming to help them.

Throughout my career, I have always believed that education is the best prevention. If you educate and explain to people their risks, in most cases they are smart enough to take that information and reduce their risks. I believe education is the only approach to help eliminate elder fraud. Education is not only important for our seniors, but it also helps bring awareness to all citizens so they can recognize the signs of fraud and know how to protect themselves.

I believe that one of the most powerful tools at the government's disposal is creative public service announcements that point out the most common scams and explain how to avoid becoming a victim. I recommend the government sponsor public service announcements, mailing stuffers and educational materials so that individuals can learn to protect themselves and their loved ones.

Protecting one's identity is an individual's responsibility. If a person ages to the point that they cannot take care of their personal issues, then their family and friends should help take responsibility. Everyone has to be educated. Government regulation is not the answer.

I recommend the following to seniors to protect their identity: review your credit report semi-annually; reconcile your bank accounts in a timely manner; be suspicious of calls, e-mails or letters asking for personal information; don't give out your Social Security number—just because a form contains a space for your Social Security number doesn't mean you have to provide it; invest in a micro-cut shredder.

Finally, I believe that punishment for fraud and identity theft and recovery of stolen funds are so rare, prevention is the only viable course of action. Thank you.

The CHAIRMAN. Thank you, Mr. Abagnale.

Mr. ABAGNALE. Thank you, sir.

[The prepared statement of Frank Abagnale appears in the Appendix on page 28.]

The CHAIRMAN. Ms. Brown.

STATEMENT OF KAY BROWN, DIRECTOR, EDUCATION, WORKFORCE AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Ms. BROWN. Chairman Kohl, Ranking Member Corker, and Members of the Committee, thank you for inviting me here today to talk about our work on elder financial exploitation. My remarks are based on a year-long GAO study that was released today.

As we all know, financial exploitation can undermine the dignity, health and independence of older adults. Of course, states are primarily responsible for protecting their older residents, and in our work we found states and local jurisdictions that were actively striving to do so. But the problem is large and likely growing, and states need help. Both the Older Americans Act and the Elder Justice Act have established a rule for the Federal Government in combating this problem, and for this report we looked at the efforts of seven Federal agencies in four states.

Today I will cover three key areas where we identified a need for additional Federal attention: first, improving safeguards; second, promoting collaboration across systems; and third, increasing public awareness.

First on safeguards. Additional safeguards are needed to protect older adults from exploitation by those they trust, such as in-home caregivers and financial advisors. For example, financial advisors can recommend unsuitable or fraudulent investments, or they can use questionable tactics to market financial products to older adults.

The Securities and Exchange Commission has published educational materials on this, and the Consumer Financial Protection Bureau is studying ways to improve financial literacy in this population. However, much more remains to be done.

Also, we have previously identified the need to improve the process for background checks and oversight of court-appointed guardians.

Next is collaboration across systems. Elder financial exploitation is a multi-faceted problem. It cuts across the social services, criminal justice, and consumer protection systems. Collaboration between social services and criminal justice agencies can improve outcomes, but it can also be very difficult to achieve and sustain because the two systems have very different cultures and missions.

The Administration on Aging and the Department of Justice offer grants that require or encourage collaboration, but more information is needed on how to build these multidisciplinary teams.

Interstate and international mass-marketing schemes also pose a challenge. They often target older adults and are particularly difficult for state and local law enforcement authorities to investigate and prosecute. Local officials would like more complete information on the best contacts within the Department of Justice to ask for assistance or to refer cases.

Banks can be important partners with local social services and law enforcement agencies. They are well positioned to recognize, report and provide evidence on elder financial exploitation. However, local officials told us that banks generally under-report potential cases, in part because the staff may not be aware of telltale signs, or some may misunderstand or be concerned about Federal privacy laws.

Some states require training for bank employees on how to recognize these crimes, and the Administration on Aging is considering collaborating with a large national bank to develop a training curriculum.

Lastly, on public awareness, the best way to fight this problem is through prevention. Older adults and the public in general need more information about what constitutes financial exploitation and how to avoid it. However, local officials told us it's difficult for them to conduct public awareness campaigns given their scarce resources.

Each of the Federal agencies we reviewed independently produces educational materials consistent with its own mission. However, these efforts could be more effective if they were part of a broader coordinated approach. The Federal Government is well positioned to develop such a coordinated, multi-faceted campaign.

In conclusion, elder financial exploitation is a complex, nationwide problem. Combating it effectively requires a concerted, ongoing effort on the part of states and localities, as well as the support and leadership at the Federal level. The Federal agencies we reviewed are each taking steps to address this problem, but a more cohesive and clearly articulated national strategy is needed, and the recently formed Elder Justice Coordinating Council can be the vehicle for defining and implementing this strategy.

This concludes my prepared statement. I'm happy to answer any questions you may have.

[The prepared statement of Kay Brown appears in the Appendix on page 34.]

The CHAIRMAN. Thank you, Ms. Brown.

Mr. Humphrey.

STATEMENT OF HUBERT "SKIP" HUMPHREY III, ASSISTANT DIRECTOR, OFFICE FOR OLDER AMERICANS, CONSUMER FINANCIAL PROTECTION BUREAU, WASHINGTON, DC

Mr. HUMPHREY. Thank you very much, Chairman Kohl and Ranking Member Corker, to the other members of the Committee. Thank you for the opportunity to testify today on the Office for Older Americans at the Consumer Financial Protection Bureau and its work to address the devastating problem of elder financial exploitation.

Mr. Chairman, I also want to thank you for your longstanding dedication and the important role that you've played in enhancing the well-being of our older citizens.

For the past year, I have been privileged to lead the Office for Older Americans. Our statutory mandate covers two broad areas: first, protecting consumers age 62 and over in the financial marketplace; and secondly, in enhancing their later-life economic security.

In our first year, we've made preventing and detecting and redressing elder financial exploitation job number 1. In doing so, we have recognized that collaboration is critical on the local, state and national levels, and between public and private sectors.

To jumpstart and foster these collaborative efforts, we have traveled throughout the country to meet state, local and tribal officials, including Attorneys General, financial regulators, Adult Protective Services administrators, commissioners on aging, chief justices, court administrators, and tribal elders. We have also engaged with non-profits, community organizations and industry groups to explore ways to help and to partner with them. For example, we participate in a working group with the Financial Services Roundtable to enhance the capacity of financial institutions to report suspected elder financial abuse.

In addition, we have been actively engaged with our Federal partners. Last month, as was mentioned, was the inaugural meeting of the Elder Justice Coordinating Council, an 11-agency body convened to shine a light on the disastrous impact of financial exploitation and to catalyze the development of a prevention strategy.

At the meeting, we heard some important themes from national experts. We heard that older Americans are victimized by a broad range of perpetrators; collaboration is critical; diminished capacity is truly the 800-pound gorilla in the room. We need more and better quality data, and we need a broad-scale public education campaign to raise the awareness of elder financial abuse and what to do about it.

The CFPB already has initiatives underway that address issues flagged at the Council meeting. We are developing "how-to" guides for agents under powers of attorney, guardians, trustees, Social Security representative payees, and VA fiduciaries. We are producing a guide to help senior housing, assisted living and skilled nursing facilities to identify and intervene in exploitation cases. Our Money Smart for Older Adults education program, in collaboration with the FDIC, will focus on preventing, recognizing and reporting elder financial exploitation.

We are working with several states to create and sustain coalitions for community education, public awareness, enhanced response, and increased prosecution; and we're developing strategies for communicating to financial institutions that the Gramm-Leach-Bliley Act generally does not prohibit them from reporting suspected abuse to law enforcement and APS agencies.

Congressional leadership and support is critical to implementing a multi-faceted solution to the serious problem of elder financial exploitation. We look forward to continued information sharing with members of Congress on this important topic and the CFPB's contributions.

Thank you, Mr. Chairman and members of this Committee, for the opportunity to visit with you on this.

[The prepared statement of Hubert "Skip" Humphrey III appears in the Appendix on page 42.]

The CHAIRMAN. Thank you very much, Mr. Humphrey.

Mr. Smocer.

STATEMENT OF PAUL SMOCER, PRESIDENT, BITS, FINANCIAL SERVICES ROUNDTABLE, WASHINGTON, DC

Mr. SMOCER. Thank you, Chairman Kohl, Ranking Member Corker, and members of the Committee, for providing this opportunity for us to speak on the subject of financial exploitation of older Americans.

My name is Paul Smocer, and I am the President of BITS, the Technology Policy Division of the Financial Services Roundtable.

By 2030, the number of Americans aged 65 and older is projected to double to 71 million, roughly 20 percent of the U.S. population. With this increase in the number of older Americans, the threat of financial exploitation is only increasing.

The Roundtable and its member companies are committed to encouraging their employees comply with high standards of conduct when providing financial advice to all customers, including older Americans and their families. Helping ensure a secure financial system and retirement for millions of Americans is central to the mission of the financial services industry.

Since many older customers still prefer to conduct transactions in person, financial services employees can often detect changes in an older customer's behavior and have the opportunity to react appropriately in the event of potential exploitation. In identifying and reacting to cases of suspected abuse, it is essential for the institutions to work with Adult Protective Services and local law enforcement.

To accomplish this, many institutions participate in both local and regional task forces composed of all of these groups. During these meetings, institutions will share trends, suspect information, and best practices. Through this active engagement and partnership, cases are able to be resolved more quickly.

Institutions also file Suspicious Activity Reports to the Financial Crimes Enforcement Network.

For decades, financial institutions have been at the forefront of fraud detection, utilizing sophisticated technology, modeling, training and education. These resources and techniques are employed in protecting older Americans. Using a variety of safeguards, financial institutions make every attempt to ensure the reliability and security of financial transactions, as well as to protect financial privacy.

Education of all stakeholders is critical for preventing financial abuse. Many financial institutions have extensive programs to educate both employees and customers on detecting abuse against older Americans, and steps to secure accounts from the lure of fraudsters.

Working closely with community organizations, financial institutions host panel discussions and community events to educate seniors and their caregivers about the risk of elder financial abuse. These efforts provide older Americans and their advocates educational resources to not only recognize financial elder abuse, but also to take proactive steps to protect oneself and one's assets.

Working with our member institutions, the Roundtable's BITS organization released a white paper to help financial institutions and their customers identify and combat elder abuse. In addition, the Roundtable participated in its Seventh Annual World Elder Abuse Awareness Day this past June, providing speakers on the topic of elder financial abuse.

Currently, the Roundtable and its members have committed resources to a working group focused on developing a structure for training financial institution staff on elder fraud trends and internal procedures for reacting to suspected elder financial abuse. The group will also work with financial institutions and, as Skip mentioned, in collaboration with groups like CFPB to develop broader, sector-wide, consumer-facing awareness and education programs.

In discussing this issue more generally, the group has identified a number of areas where impediments exist to improved prevention which require the assistance of Federal agencies to help resolve. We recently presented these impediments and recommendations for improvement to the Elder Justice Coordinating Council during its inaugural meeting.

My written comments provide additional detail on these recommendations, but they cover a variety of areas including clarifying existing law related to fraud monitoring capabilities and responding to transaction requests involving suspected fraud; uniform reporting processes and protection for reporting parties; clarification and standardization of reporting requirements across various jurisdictions; and licensing of financial professionals serving the elder community.

In closing, please accept my thanks for the opportunity to offer our thoughts to you today. We recognize the importance of this issue and look forward to continuing to work together with the Committee and the member agencies of the Elder Justice Coordinating Council on this important issue. Thank you.

[The prepared statement of Paul Smocer appears in the Appendix on page 46.]

The CHAIRMAN. Thank you, Mr. Smocer.

Mr. Greenwood.

STATEMENT OF PAUL GREENWOOD, DEPUTY DISTRICT ATTORNEY, HEAD OF ELDER ABUSE UNIT, FAMILY PROTECTION SERVICE, SAN DIEGO, CA

Mr. GREENWOOD. Thank you, Chairman Kohl. Good afternoon to you. If I may be permitted to deviate from my written remarks, I feel like I'm sort of the closing argument prosecuting in front of the jury this afternoon. What has come across is very clear. The speakers have been talking about education and collaboration and making safeguards, and one thing that Skip Humphrey mentioned was increased prosecution.

I am privileged to be able to be head of an elder abuse prosecution unit in our office in San Diego for the last 17 years. It's been the most rewarding, challenging, and equally frustrating part of my 34-year career as a lawyer.

But I'm also fortunate that, working in California, we have seen evidence of this collaboration in increased awareness over the last several years. For example—and I owe a great deal of thanks to Adult Protective Services, who really have taken the lead in California in so many initiatives. We developed what are called FAST teams, Financial Abuse Support Teams, that bring in several times a year members from the community—professionals, bankers, lawyers, law enforcement, Adult Protective Services—to talk over these issues and to study trends and to learn from one another in how we can improve our collective response to these cases of financial elder abuse.

We've seen popping up over the last five years forensic centers for elder abuse in California, and I have to pay tribute particularly to the one in Orange County led by the premier expert in this country, Dr. Laura Mosqueda, and it is a tremendous resource to be able to call up that center and ask for advice from a medical expert regarding a victim with dementia or Alzheimer's.

And then thirdly, in 2007, California passed a law that required all bank tellers and credit union tellers to be mandated reporters of suspected financial exploitation. Because of that, we've seen a huge increase in the number of reports being cross-reported to law enforcement and Adult Protective Services.

And then finally, Operation Guardian was a program initiated by the California Attorney General's Office which makes surprise visits, sometimes at dawn, to various nursing homes around California, and because of those surprise visits, many cases of financial exploitation have been discovered in these facilities where residents have been taken advantage of.

But I also want to comment upon increased prosecution, because whilst these other initiatives are excellent, I believe the best form of prevention is to tell these crooks out there that if you do mess with elders and try to rip off an elder, a prosecutor somewhere is going to come after you and prosecute you to the fullest.

It starts with the elected district attorney, and I'm so glad that I have a boss, Bonnie Dumanis, who has not only allowed me to come today, but it shows the importance that we place in our office on this crime of financial exploitation. But gradually we're seeing across the country more and more prosecutors understanding that not only are these crimes provable, but the juries get it, and there are many misconceptions out there about working with elderly victims. The biggest one I always hear is, well, they have failing memories. But that's not the case so often. So often now, victims are articulate, they are good historians.

But in those cases where we have victims on the stand who demonstrate a lack of memory, that actually enhances the case for the jury because the jury gets to see exactly why the defendant targeted this elder for their diminished capacity or their forgetfulness.

So what we are looking for is, across the whole of the states, more and more prosecutors to become emboldened to take on these cases. We want police departments throughout the country to develop specialized units. San Diego, fortunately, developed several years ago a police department where we have six detectives working nothing but elder abuse cases. Can you imagine the quality of these cases that come to my desk after several years? The detectives absolutely believe in the work they do. They bring me good cases, and we present these cases to judges and juries all the time, and in most cases we get convictions.

So the message I have is let's collaborate. We need to talk more as prosecutors to Adult Protective Services. We need to give them more resources. We need to have police officers talk with Adult Protective Services and with prosecutors, get more education out there for elders, get more training for bank tellers and credit unions. But together, I think we can make a difference, particularly in the courtroom, and get more and more convictions, and get these predators behind bars. Thank you.

[The prepared statement of Paul Greenwood appears in the Appendix on page 57.]

The CHAIRMAN. Thank you.

For each of you, we believe and heard that only a fraction of cases of elder financial fraud actually get reported. What can government do to encourage people to report cases of elder financial fraud?

Mr. Abagnale.

Mr. ABAGNALE. Well, sir, I have to first believe that I think that someone is going to take action, as you just heard the district attorney say that about prosecution. You know, crime has become, especially in the realm of fraud, overwhelming. Federal law enforcement agents are usually restricted from investigating crimes under $100,000 in face value. Most U.S. Attorneys won't prosecute cases under a quarter of a million dollars in face value. Consequently, criminals know that if they stay under these thresholds, they are most likely going to get away with it.

And so it's very frustrating not only for the law enforcement side of it, but for individuals when they know who did it, they have all the evidence that they did it, but can't get anyone to act on it or do anything to bring these people to justice.

So I think we have to do a better job of educating people how to protect themselves so that they don't become victims. Once you're a victim, you usually are never going to get your money back. So it would be much wiser not to become a victim to begin with. So this is why I'm a big believer in education.

I do believe the government needs to fix some of the things like the Medicare card. As you know, there's a bill, S. 1551, which would turn the Medicare card into a smart card, which the military currently uses. We have 20 million of those cards currently in use. Not one has been counterfeited. So I would like to see the government at least do a pilot program to bring the Social Security number off the Medicare card, which will eliminate it finally from all of the identification documents the government has, and come to a smart card that will help protect as well.

So it's a little bit of that, more enforcement and, of course, a great deal of education.

The CHAIRMAN. You say that less than $250,000 will not be prosecuted?

Mr. ABAGNALE. Most U.S. Attorneys, because of the volume of fraud and crime, they take the highest dollar priority crimes, the person who has stolen $7 million, $8 million, $20 million, and go after those individuals and prosecute those cases. They're understaffed, under-manpowered. They don't have the ability to prosecute a lot of those cases. Certainly, local law enforcement and district attorney's offices in counties and cities probably do a much better job and have set aside teams of people and attorneys to work on those cases.

But again, it's very frustrating when you're a law enforcement person or you are the victim and you know what happened, you know who did it, you have all the evidence that there is, but you can't get anyone to act on that evidence.

The CHAIRMAN. Thank you.

Ms. Brown.

Ms. BROWN. I think I'd like to pick up on the public awareness theme. I think it's important both to help victims understand and try to avoid what may be happening to them, but also to help people around them better be able to identify what may be happening and feel the confidence to report it. So it's both seeing what's happening and then being able and willing to report it and knowing where to go.

The CHAIRMAN. All right.

Mr. Humphrey.

Mr. HUMPHREY. Thank you, Mr. Chairman. You know, time and again I've had the opportunity to visit with senior groups, and I usually ask the question: How many of you have had something like elder financial exploitation, a scam, happen to you? All the hands go up, or they know somebody that has had that happen.

And I say how many of you know of someone that's in your family? And some hands go up.

Part of the challenge here is to get people to speak up and speak out and to encourage them to report it. What we have heard from the District Attorney is terribly important, that we encourage law enforcement to really begin working in this area.

The educational part of this and the prevention part are terribly important. That's why we've partnered with the FDIC, with their Money Smart program. It's a well-known program that reaches out to a very broad range of the population and now will also focus on older Americans.

The CHAIRMAN. Very good.

Mr. Smocer.

Mr. SMOCER. By the time you're the fourth witness, you kind of have much of the same thing to say. But I think education is probably key. Obviously, we're trying to do improved education within the financial services community itself. So the tellers and kind of the folks at the front line that elders come in and speak to are more aware of not only the kinds of scams but how to react when they suspect that there is some scam or fraud situation going on.

As Skip mentioned earlier, we've been working with CFPB and more broadly with the Elder Justice Coordinating Council around the issue of clarifying current law with regard to privacy, because that is a bit of a conundrum in some cases where bank employees are afraid they're going to violate the customer's privacy rights by somehow reporting a situation to someone else. So I think it is important that we clarify that.

I think the consumer education is key, but I think Kay made a key point. As we think about this, I think one of the concerns we have is that in many cases the elder him or herself may not be at a level of capacity that they can actually understand the education. So education to caregivers, education to adult children of elderly parents I think is also critical.

And then I think in terms of law enforcement, improved reporting around these cases and consolidation of some of the many databases that tend to exist today, this was an item that we brought up in front of EJCC, that a lot of the agencies individually are doing a relatively good job at capturing information, but having a consolidated kind of reporting mechanism so that, for example, as Frank mentioned, a prosecutor can see that he or she can actually make a case because when he looks at the fact that this fraudster is committing crimes against multiple individuals as opposed to looking at each case one off, I think would help build the interest of prosecutors and law enforcement.

So I'll stop there and let Paul speak.

The CHAIRMAN. Mr. Greenwood.

Mr. GREENWOOD. Thank you. One of the most successful initiatives we were part of with Adult Protective Services was called Silence Isn't Golden. So we launched this campaign with posters and public service announcements, telling the public that the best thing we can do is not stay silent about this hidden crime. If you suspect that somebody in our family or in your street, in your neighborhood, in your church is a victim, you need to call this number, and we encourage people to do it because it's anonymous. They don't have to say who they are.

Secondly, we had a very successful campaign called Protect Yourself and Your Wallet. We went around to various libraries, and we got a female 70-year-old black belt to do a 20-minute course on protecting the seniors when they're out in the streets and the shopping malls, and then I came along and did a 15-minute Top Ten Tips on Financial Security, and that really seemed to help a lot.

But thirdly, one thing I always try to convince seniors of is, look, we understand why you don't report, or your families don't report, because you're embarrassed. But there's also a fear involved, that seniors fear that if they report they're a victim, that somehow somebody is going to come and take control of their life and their finances. So we try to allay that fear and convince them, no, we're not concerned with your independence; we only want to go after the independence of the crook who is stealing from you. I think when that message gets across, and when there's a consumer confidence that if they do report, something will happen, then there's a difference.

I agree with what Frank is saying. If the citizens out there think "what's the point?" because law enforcement and the prosecutors aren't going to do anything about it, we're going to fail.

The CHAIRMAN. Very good.

Senator Corker is next, but I would like just a couple of minutes because Senator Wyden has said he needs to leave. Would you like to ask a question?

Senator WYDEN. If that would be all right with Senator Corker. Mr. Chairman, Senator Corker has been here a long time. If he has just a couple of minutes worth, I'd certainly—because he's been waiting a long time—let him ask.

Senator CORKER. It's okay.

The CHAIRMAN. Go ahead, Senator.

Senator WYDEN. All right. Thank you. Thank you both. I also want to note that I guess there's been some kind of informal agreement, almost a gag order, that we're not allowed to go into Chairman Kohl's accomplishments.

The CHAIRMAN. Correct.

[Laughter.]

Senator WYDEN. But everybody knows that I never go along with these gag orders.

[Laughter.]

I only want to say that it's my intent to give a speech on the floor of the United States Senate when we get back to outline the accomplishments of Senator Kohl, this thoughtful, modest man, over the last years through this Committee, because it is an extraordinary record. I'm going to semi-respect the gag request for purposes of this afternoon, but I hope folks will stay tuned because we're going to talk on the floor of the United States Senate about the extraordinary record of Chairman Kohl, and I know Senator Corker very much agrees with this as well.

I just wanted to ask a couple of quick questions.

First, I think we all know, and it's something I've felt strongly about since the days when I was co-director of the Gray Panthers, that this history of stealing and ripping off seniors is a long one, and the bad guys, they're pretty savvy, and every generation seems to be savvier than the previous one.

So what we're up against is constantly trying to stay out in front of them as they turn to new techniques, and I wanted to ask just a couple of questions because my colleagues are being so patient.

The first I think I want to direct to Skip Humphrey, who has been doing wonderful work for seniors for lots of years, and we've worked together on a number of issues. My sense is a lot of the bad guys, a lot of the worst actors are now shifting to online exploitation of seniors. It's almost like they rattled those old windows, you all closed some of them, so they went to new ones.

If you could, General Humphrey, give us a sense of what we're doing to beef up our efforts to deal with online exploitation of seniors, if you would.

Mr. HUMPHREY. Thank you very much, Senator. First of all, of course, we're working as closely as we can with our colleagues at other Federal agencies, and with state and local efforts in this area. But one of the things that is happening as the baby boomers shift and as another generation comes forward is that more and more people are comfortable using the Internet. Therefore they become more vulnerable, in a sense, to that kind of exploitation.

One of the things is to just help citizens understand what the protections are. The first thing to understand, the most basic, is if it sounds too good to be true, it probably is. No matter whether it's on the Internet or whether it's coming through the door or in the mail or any other thing. It's just to understand that if something really sounds like something positive, you yourself are probably the best defense.

Secondly, of course, as was indicated, this whole issue of personal I.D. is very, very important. Our efforts will be looking towards that as it relates to financial transactions, and certainly there's a broader range as was indicated by the testimony here.

The third area that I would suggest is that we are going to be going online with these how-to guides for fiduciaries. Many times people are identified in power of attorney documents as agents, and they don't know the first thing about what they're supposed to do, or what the risks are with regard to the resources that they are supposed to manage for another person. So having those guides available to educate people can be very important, particularly as it relates to the congregate care facilities and those who manage the congregate care facilities.

So those are just some of the things that we're working on within the framework of the new Internet age.

Senator WYDEN. Good.

A question for you, Mr. Abagnale, and I want to give credit where credit is due. The Medicare card legislation, which I am the Democratic sponsor of, is really the work of Senator Kirk, Senator Kirk of Illinois. He could not be here today, but I think he's come up with a logical bipartisan approach, and we're going to do everything we can to advance his bill.

My question to you on that legislation is what are the consequences of not doing it? What are the consequences of not having, for every Medicare beneficiary in the country, a way to make sure that their name and their full Social Security number is there to see and it is, in effect, something that can't be ripped off and stolen the way it is?

Mr. ABAGNALE. Well, as I mentioned earlier, I think that the Medicare card with the Social Security number followed by a letter is just an open invitation for criminals. They know that if they see the card——

Senator WYDEN. It's the status quo.

Mr. ABAGNALE. Right, as it is today. When you present the card at a doctor's office, unfortunately I think that many people believe that doctors' offices close up their files at night. Most doctors' offices just have straight file cabinets that do not lock down at night. Consequently, there are people who tell the janitorial service, "if you take a Post 'Em and write down the person's name, address, date of birth off the copy of their Medicare card that the doctor made, and their Social Security number, I'll give you $100. So if you give me one Post 'Em, $100. You give me five Post 'Ems, $500." Obviously, it's very enticing to people.

So as it is now, what I'd like to see, as we have done in many states, we've taken the Social Security number off the driver's license. We have started to remove it from college campuses, from identification cards. I would like it if we removed it from our military cards for identification. The one final place that we have left that we have not removed it is on the Medicare card.

So I think it would be extremely wise for the government to close that final loophole, and that will go a great long distance to protecting people from having their identity stolen.

Senator WYDEN. Thank you. I'm going to submit two questions for the record because Senator Corker has been so kind in terms of giving me this time. One will be a question for you, Mr. Abagnale, on the question of opening up the Medicare database. I think you know Senator Grassley and I believe that if you're ever going to really get a better handle on this relatively small number of physicians in particular who are exploiting the program, you've got to get access to that database. I'll submit it for the record.

And for you, General Humphrey, I'm going to ask you a question about the question of living facilities and looking at ways to better control those who somehow find a way to exploit the residence. This also touches on an issue Chairman Kohl and Senator Corker know about, and that's the question of these pension poachers for veterans.

So I will, just in the interest of time, submit that to you, General Humphrey; one for you, Mr. Abagnale.

Senator WYDEN. And to my friend Bob Corker, thank you for giving me the time.

Everybody stay tuned when on the floor we can list the gag order and we can talk about Chairman Kohl and go through his record the way I think it ought to be appropriately discussed. Thank you.

The CHAIRMAN. Thank you, Senator Wyden.

Senator Corker.

Senator CORKER. Thank you, Mr. Chairman, and thank each of you for your testimony. This is a great way to round out this year and start next year hopefully with a focus on this.

But, Mr. Abagnale, I was interested in you talking about technology and that it's 4,000 times easier to do something today than it was 40 years ago, or whatever the number was. In that same light, I would suppose there are, through technology, all kinds of ways today to also detect that, and I wonder if you might—in other words, it's easier with technology to commit fraud, but I assume there are also ways of detecting that.

I wonder if you might talk about some of the breakthroughs that exist there from the standpoint of using technology to keep this from happening in the first place.

Mr. ABAGNALE. Yes, sir. Let me clarify what I mean by that. Forty years ago, for me to forge a check, I needed a Heidelberg printing press. The press cost a million dollars 40 years ago. It was 90 feet long, 18 feet high. It required three journeyman printers to operate it. So as they showed in the movie, I built scaffolding on the side of the press to eliminate the two other printers. I had to learn to do color separations, negative plates typesetting. I used chemicals.

Today, one simply opens a laptop, picks a victim out of corporate America, Delta Airlines, catches their logo, puts it on a diagram of a check in full color, and in 15 minutes has created a beautiful Delta Airlines check.

Forty years ago, I wouldn't know where Delta Airlines banked. I wouldn't know who the authorized signer of Delta Airlines checks was, and I certainly wouldn't know their bank account number. But because we live in a too-much information world today, all I have to do is call Delta Airlines corporate office and ask to speak to someone in their accounts receivables and say that I would like to pay a statement, but I would prefer to wire them the funds, and they would give me wiring instructions, which means that they would tell me where they bank, on what street, what city, routing number, account number, and all the information I need. I would hang up and call back and ask for corporate communications today and ask for a copy of the company's annual report, and they would send it out to me, but on page 3 would be the signature of the Chairman of the Board, the CEO, the CFO, the Treasurer, the Comptroller, and with white glossy paper with camera-ready ink, I'd just scan it and put it on a check.

So the technology has made it a lot easier, and social engineering has just changed. It's gone from a telephone now to a computer. It's the same thing, seeking information from individuals.

So I think we have technology just like the Smart Card, and technology that the government has come up with for our new currency since 1996 to make it much more secure. We've seen a great decrease in the replication of our currency. We have the technology to be able to prevent some of these things. Of course, these things cost money. They take time and research. But you only fight technology with technology. So you always have to be one step ahead. So you look at the problem and you come up with a solution. You can't sit on the solution. You have to then be working on the next solution forward.

But certainly American know-how and American technology can prevent a great deal of these things from occurring. We just have to continue to work on it.

Senator CORKER. And does it appear that the enforcement agencies that care about these things or are doing those things to stay one step ahead?

Mr. ABAGNALE. I'm certain that they are. What concerns me is you rob a bank today and you get $7,500 or the most the teller might have in their teller window, $4,500, and you might go to jail for 20 years when they catch you. You rob a car, you take it across the state line. Both the car and the bank were insured. They got their money back, if they didn't get their money back from the thief.

But when you go out and you steal someone's life savings, you take their pension, you take their entire retirement, their entire future, they have to go live in poverty because of that crime. It is ridiculous that that person walks away with a slap on their hand or ends up with 18 months in a prison. That's just absurd.

I think we have to see it for what it is. It is a very serious and devastating crime and should be looked upon that way by law enforcement and the prosecutors who prosecute the crime, and the judges who render those sentences to those criminals. They are much more devastating than the guy who might rob the bank or steal the car.

Senator CORKER. And to whoever wants to answer this, what is the order of magnitude of crimes against elderly citizens that are committed by those that are familiar to them, that are relatives or friends, and that that is perpetrated by people totally unknown to them and from the outside? What would be the percentages of each?

Mr. HUMPHREY. Senator, my best understanding is that over 5% of adults aged 60 and over are victims of financial mistreatment by a family member. It's a very significant number, and it's——

Senator CORKER. Five percent is by people who are familiar with the——

Mr. HUMPHREY. That are familiar, absolutely. I will give you an example from a conversation that I had in your state, Senator, with a group of elderly folks who were helping one another deal with some of these problems. I asked, well, how are we going to get people to report them? That is a challenge because it's an individual that they know, and probably a member of their family. They don't want to report them to law enforcement, and personally the person reporting is embarrassed that it's happening. I said, well, how would you see this happening in your family?

This woman said—she nailed it right on the head. She said, Skip, I've got seven kids. I love every one of them, but I only trust three.

[Laughter.]

Mr. HUMPHREY. In a sense, she was making a judgment on who was to be the person that she might look to.

Part of the effort here needs to be that education of helping people understand that they need to make wise choices with regard to those who are going to be their caregivers, formal or informal. The other part is just as we have heard, to have the government structure to be able and ready to take on that responsibility once a report is made. Part of the challenge here is to find out where and how best to get that reporting.

Another example, if I could just take a moment, Senator, was an opportunity when I was visiting with tribal elders. One of the ways they come to grips with this within the framework of a family is the Navajo Nation has developed the concept of a peace council. It brings together individuals within the tribal community, and law enforcement to work together to develop the resolution of the problem, to stop the theft, and at the same time to work through a way in which to deal with the abuse that is taking place.

So we're looking at a wide variety of approaches of how to come to grips with this, including making sure that there is the opportunity to report directly to law enforcement.

Mr. GREENWOOD. Senator, if I could just also add, part of the problem is that we don't really know the answer to your question because so many cases are unreported, and therefore undetected. And the cases that we know of that come to my office, I would say the majority of physical abuse cases are committed by someone who is close to them. The majority of financial abuse cases are committed not by a family member, although some are, but by someone who has got into their life, a caregiver, an unlicensed contractor, a professional advisor, somebody who has built up this relationship of trust with the victim.

But then there's this whole myriad of unknown predators out there online who serve behind anonymity, overseas, who are conning their victims. The victims are wiring the money, but they never tell us because they're too embarrassed. So we really don't have a good handle on this.

Senator CORKER. Mr. Smocer, I'm not much of a buyer, but I sometimes end up with a credit card, and I hadn't been in for a while, and it's frustrating as heck to be standing there at the teller and the person with an American Express gets on the phone. I mean, it's a major pain. I'm sure most people have witnessed that before.

And I guess, as you look at some of these transactions that would occur in financial institutions where maybe something large is happening that's unusual in a senior's account, you would think that there'd be some hurdle that people would have to go through for money just to, all of a sudden, $100,000 or whatever the number is, to go out of someone's pension.

I'm just wondering why there aren't mechanisms like that that are employed in many other areas to keep that kind of thing from occurring.

Mr. SMOCER. Well, first, there are mechanisms, and the example you gave of the credit card situation is an example of a mechanism. You're in a strange town, you've never used a card there before, that's why the clerk ends up asking you to get on the phone to identify yourself. So there are the same kinds of monitoring systems and, to answer your other question, the use of technology to try to prevent fraud have been getting more and more sophisticated as time goes on.

Now, one of the things that we talked to the Elder Justice Coordinating Council about is really two concerns that I think apply in this situation. Number one, there is a concern, and we asked for clarity around the question of—because some institutions have the question can we really divide out the elder population from the rest of our consumer population and treat it in a slightly different way.

Some are concerned of how that deals with age discrimination laws, because in theory you're not to discriminate in any way against the elderly, but in a way that you want to positively carve them out, is that okay to do, because there we could add some additional monitoring. It might be lower dollar threshold limits on transactions involving the accounts of the elderly. It might be more follow-up when, for example, there's a change of address associated with an elder's account, that suddenly you want to verify with the elder that, in fact, they're the one who caused the change, it's not some fraudulent situation that's occurring.

The other thing they talk about which is a bit of a conundrum is that ultimately and legally, the account is the elder's account. So in many cases, even when a suspicion of fraud is there, the question of can you legally stop this person from doing with their legally own money what they choose to do. One of the recommendations that we came up with and talked to the Council about was the ability to actually put temporary holds on a transaction. I'm sure Paul would particularly mention that in some of these situations where elders want to come in and wire money overseas because there's a scam involving—one of them being the purchase of a bride, as an example. Once that money is wired, it's virtually impossible to get it back, but it is the customer's money.

Ultimately, no matter how much you want to try and convince them that maybe this is something they shouldn't do, you contact APS, by the time the customer wants the transaction executed, it may be too late. So having a way in a suspicious situation to be able to say, "Yes, Mr. Smith, we'll go ahead and do that", but hold on the transaction for a couple of days" until we can get APS or law enforcement involved would be helpful.

Senator CORKER. There's just one other question, Mr. Abagnale. You mentioned the car theft issue and going across state lines, doing a couple of things, and you're right, people end up having insurance, they get their money back. Are you alluding to the fact that there should be a different sentence, if you will, for these types of crimes than exist right now? What were you trying to get at there?

Mr. ABAGNALE. I was trying to say that, unfortunately, white collar crime in America, whether it be someone on Wall Street or it be somebody who is stealing from the elderly or someone stealing identities, are looked upon as a crime where there's really no victim, nobody was physically hurt, and consequently a lot of times it's not treated very seriously. I think that's a big mistake because I think they are extremely hurt when someone has lost their life savings and their pension from those crimes.

So I think we have to look at white collar crime as an extremely fast-growing crime. I mean, fraud in this country has become overwhelming, almost impossible to enforce any longer. And consequently, I think punishment for these types of crimes has to be more severe.

It is interesting that I committed these crimes 40 years ago, writing bad checks. I was a teenager, or when I was caught I was under 21 years old. A Federal judge in Atlanta sentenced me to prison for 12 years. I served four of those 12 years, having already served a year over in Europe when the Federal authorities returned me to the United States. That would have been considered a harsh punishment back then.

But the truth is had they caught me today for the same thing I had done 40 years ago, I probably would end up with community service or probation, or probably 18 months in a Federal prison. So I, having served the time, know that those types of crimes where people's money is taken from them, people need to be punished for those crimes and need to be sent to prison for those crimes and not be treated as if there was no victim or it was a harmless crime.

Senator CORKER. Most of those sentencing laws, are they state or are they Federal?

Mr. ABAGNALE. Most of them now don't—whether Federal or state, there are no determined laws that says a judge has to sentence someone for a certain amount of time to jail. It's usually up to the judge's discretion for the crime. So if the judge looks at it as somebody wasn't physically hurt, nobody was really beat up or taken advantage of physically, the judge may tend to give it a lenient sentence.

I do go out and speak to U.S. Federal judges at their annual meetings and some of their semi-annual meetings, and in the Q&A I always bring up the importance of looking at these crimes in a different light, that they are very serious crimes, and I think that in America we are slowly starting to see, because of the Madoffs of the world, and because of the Enrons and WorldComms and Tycos and Arthur Andersons and all the things we've gone through over the last 10 years, I think that people are starting to realize that these types of crimes are very serious, both on the law enforcement side, on the prosecution side and even as American consumers we're starting to realize that these are devastating crimes and people need to be brought to justice and they need to be punished for those crimes.

Senator CORKER. Did you want to say something, Skip?

Mr. HUMPHREY. Senator, I would just say that I'm aware that there are some states that do have enhanced penalties for the kind of theft that we're talking about against older Americans. There are some states that have that. There are also some states that provide for an accelerated process in their prosecution through docket control. So there are some mechanisms out there, and part of the effort that we want to do is to bring some of these interesting ideas and practices to a place where others can understand what the practice is and how effective it's been. So that's one of the things that we're looking at.

Senator CORKER. Well, thank each of you for your testimony. It's been really interesting, and I hope something good comes out of this. Mr. Abagnale, I'm glad you're on our team now.

[Laughter.]

Thank you very much. Thank you, Mr. Chairman, for a great hearing.

The CHAIRMAN. Thank you so much, Senator Corker. Mr. Smocer, what percentage of your banks are currently making an effort to train their tellers to determine whether or not something fraudulent is taking place?

Mr. SMOCER. I don't know if I have an exact number for you. But I will tell you, with the working group that we formed, virtually all of our banking members. So almost 50 out of the 50 we have are members of that group who are working to improve—either they have a program now or improve a program that they have now. So across the whole industry, I wouldn't be able to answer that question for you. But I know this is a very important topic to them.

The CHAIRMAN. So you would suggest that there should be some training in the case of every teller?

Mr. SMOCER. Yes, I frankly think so, and part of what we're attempting to do, the group that we have is not only members of the Roundtable, but we've invited the other banking trade associations and credit union trade associations to have their members involved, and the group also includes a lot of folks from the agencies as well. For example, we've got CFPB involved and other agencies, because what we're trying to do is really build a broad sector-wide program, so something that any bank or any credit union can use as the base for their training program.

And it is two-fold. It is not only just—well, it's almost three-fold. It's internal in the sense of employees, so employees who are the tellers and the front-end personnel who customers typically come in to see. It's also internal in the sense that we're trying to do work with the fraud investigation and fraud detection folks to make sure that, particularly on the investigative side, that internally they can build better cases to be able to hand off to prosecutors.

I think one of the things that we recognize as an industry is that while Frank is very correct, trying to get in many cases law enforcement or a prosecutor, whether it's local or Federal, to take a case, they often have, because of their workloads, they often have thresholds, and below a certain amount it's hard to convince them to take an interest in the case.

But we also know that if internally the financial institution can help build the case for them and put a lot of the material together and hand it over, then that typically incents them to take some action while we're there.

And then the other component besides the internal side is, as I mentioned earlier, trying to help build this broader consumer education piece too, and use the banks to help build it, and use the banks to help distribute it and distribute the kind of material that others have talked about here.

The CHAIRMAN. Mr. Greenwood, I see you pondering this question, the training of the bank tellers.

Mr. GREENWOOD. It's key Senator. That's why when we saw the change in the law, making bank and credit union tellers mandated reporters, we saw a huge increase in the number of reports, because unfortunately a lot of banks and credit unions in other states are fearful of making that call to Adult Protective Services for fear that they will get retribution from their customer or their member. So even if a state doesn't want to make it mandatory, at least they should make it permissive and give the banks and the financial institutions the protection that they need to encourage them to make these calls.

It also creates a responsibility on the part of Adult Protective Services, on law enforcement and prosecutors to reach out to these financial institutions. So we try to do that. In fact, in California we try to recognize good stewardship by banks and credit unions so that if they have actually intervened and thwarted a crime or have enabled us to prosecute, we want to give that bank teller due recognition and make sure that it's well known throughout the industry.

The CHAIRMAN. You mentioned that financial institutions in California are mandated reporters.

Mr. GREENWOOD. Correct.

The CHAIRMAN. So how has this changed banks' behavior with regard to preventing and reporting financial scams against seniors?

Mr. GREENWOOD. Well, initially what changed was the fact that because the law came into place, they gave those institutions a 15-month grace period to train their staff. So immediately we got awareness for the bank tellers and the credit union tellers, and that created in itself a lot of response by saying, wow, I didn't know these scams went on.

For example, the grandma scam is huge all across the country, and we all know that one where the crook calls up and pretends to be the grandson, he's in jail and he needs $5,000 bail money to get out of jail, and it's happening all the time. Well, the victim goes to the bank or the credit union to withdraw the money in cash so they can then go to Moneygram to wire it.

It's amazing, until this law came into place, how few bank tellers and credit union tellers knew of the existence of this scam. So now they do, and as a result the training and the awareness in the banks and the credit unions has really improved the response.

I think it's also helped encourage the bank tellers and the credit union tellers to know that if they do make the report, Adult Protective Services is going to cross-report to a trained detective in San Diego who will bring it to a dedicated prosecutor in my office, who will then hopefully bring about a prosecution. And actually the bank tellers are very keen to come to court and testify because they can see the end result of their initial phone call, and it's very gratifying to an employee of a bank to know that what that call meant in the end was either to stop the damage or to actually catch the crook in their tracks and put them away, and that's indeed very rewarding to the financial institution.

Mr. SMOCER. And, Senator, if I would follow up, I think Paul made a good point. As we think about the training, there are really two key aspects. One is awareness around the types of scams that are going on, so the grandmother scam, I need to wire money out of the country because, as I mentioned earlier, I want to buy a bride scam, which is a common one as well.

But it's also somewhat behavioral. So the teller recognizing that the customer comes in with a companion, and that the companion appears to be exerting undue influence on the customer, actions like trying to pull the customer aside to question whether, in fact, it's their decision that's going on here or whether they're being influenced by this individual. So it's a little bit of both. It's awareness of the kinds of scams that are going on, but it's also trying to understand the behaviors that are inhibited when some of these situations go on.

But the one thing I would also add to it, and we brought this up at the Elder Justice Coordinating Council meeting, and Frank kind of mentioned it earlier in a way, as we implement some of these new technologies, some of those technologies have an effect that we didn't often think about. So one of the things we talked about at EJCC was the Social Security Administration moving to an all direct deposit model, so elders not getting checks anymore, physical checks.

Those physical checks that they got in the past were often a trigger for them to go to the branch, to see the teller, to see the folks that have known them for years that they always banked with. Now they may still want to do that just because they want to get out, but there's less of an incentive for them to actually go into a branch anymore, for someone to physically see them on an ongoing basis and be able to recognize that something is askance here or there's a change of behavior that is causing a red flag to occur.

That's not to suggest in any way that the training isn't critical, but things are changing as we move into a more electronic world. That face-to-face just doesn't exist quite as much anymore.

The CHAIRMAN. How often do banks alert the police, and under what conditions?

Mr. SMOCER. I would say any time there's a suspicion that something is potentially fraudulent, certainly when it's recognized to be fraudulent. There are situations, obviously, as we talked about earlier, where there are privacy concerns that need to be clarified, and I think once we can clarify those privacy concerns, particularly if we can have a "hold harmless" kind of model put in place, which is I think what Paul alluded to with the California law, that just report it, even if it turns out that it's not fraud, which is a key concern, because what if I report this and it turns out it's not fraud? Am I going to get in trouble? Am I going to get my institution in trouble?

Those kinds of "hold harmless" agreements would go very far, I think, to enhancing it, because honestly I couldn't probably give you an exact number, but I will tell you I have talked to and heard many, many scenarios where the bank tellers in particular—I mean, they're looking out for their customers. They know these folks. They've known them, in many cases, for years and years and years, and they want to do the right thing.

The CHAIRMAN. So are you suggesting that if we had these "hold harmless" laws across the country, we'd be in much better shape?

Mr. SMOCER. I think if we can clarify the privacy issue, and I think CFPB is working on that to some extent. But certainly I think that would—my personal opinion would be that would go a long, long way to enhancing the reporting.

The CHAIRMAN. A long, long way.

Mr. SMOCER. Yes.

The CHAIRMAN. Paul, do you think so?

Mr. GREENWOOD. Well, I do, Senator, because until we had this law in place, as I said, I would have discussions with banks and credit unions all the time when I would see a crime report coming in where a bank teller did not make a report. I would call up the bank and say why didn't you? And the immediate response was we're just afraid to do that, we don't want to get sued. So I think if we provide the protection for the financial institutions, and the encouragement, then it will allow institutions to encourage their bank tellers to make that call.

As my colleague has said, occasionally, 1 out of 100, it might be a wrong call. But no one is going to blame the teller for making that call. It's the silence which is the enemy.

The CHAIRMAN. Okay.

I'll ask you, Ms. Brown, what are the best practices you've found across the four states that you studied that work well for preventing and responding to elder financial abuse?

Ms. BROWN. Well, we've been hearing about many of them right here. I think one of the things that has really struck me is in this panel the types of best practices that we saw, like good training for bank employees, like being careful about background checks. Many of those kinds of things are things we saw in the states. But also I think what has really struck me today is that there are so many good ideas and so many interesting public awareness efforts with brochures that have really attractive and interesting titles.

But what we see is that there are different areas of the country or jurisdictions that have a stronger commitment to this or a stronger interest, and that's one of the reasons why we recommended that the Elder Justice Coordinating Council develop a national strategy, because I think the kinds of best practices like developing brochures that really reach people, or doing training programs that reach relatives or bank employees are something that could be beneficial and would be helpful to be spread out throughout the country and not just in the spots where there's a much stronger commitment or interest in this.

The CHAIRMAN. All right.

Any other comments from members of the panel?

Mr. Humphrey.

Mr. HUMPHREY. Mr. Chairman, I would just like to add that part of the effort here, I think—and it's reflective of what has happened in California and elsewhere. We're in the process of developing upwards of four model prevention networks that are slightly different in each location. We want to try and develop these coordinated local networks between public, private, law enforcement, non-profit organizations, and state, local and Federal agencies to work locally on these efforts. Part of these efforts will be in the area of education and training and just getting people to know one another.

What was so successful in California, one of our models, was just bringing this all together. But then again, it was also framed with a state law of reporting that encouraged that effort to take place.

There's a lot of room for these programs to take place. There are different ways of doing it. That's the wonder of working in the states. You find different approaches. But the coordination and collaboration both at the Federal, state and local level is key, and that's why I think the Coordinating Council will have a very important role to play.

The CHAIRMAN. Good.

We thank you all for coming to speak to us here today.

This is the last hearing of the Aging Committee for the 112th Congress. We've been able to accomplish a lot, and we worked hard to save taxpayer dollars while protecting our seniors.

There are many people that made our success possible. First I'd like to thank my Ranking Member, Senator Corker. He's been a delight to work with, and I appreciate his open manner and bipartisan nature, which I think has been obvious here today, as well as throughout the year. His staff, especially his staff director, Mike

Bassett, have worked well with our side and for the people of his state, Tennessee.

No senator accomplishes anything in this institution without staff, and I've had a great one over the years. They have always focused on doing the right thing for seniors and protecting our most vulnerable people in this country. Joy McGlaun, Sarah Levin and Anne Montgomery have been my preeminent experts on health care. Cara Goldstein and Joel Eskovitz have done a great job protecting seniors and their retirement savings. Jack Mitchell, my fearsome, fearless investigator, has done a great job uncovering malfeasance in the public and private sector. Ken Willis has been great ensuring that the work we do gets noticed. Patricia Hameister has made sure that all of these hearings go off without a hitch, and for that I'm grateful. I'm also grateful to Zac Tretow and Carissa Lewis, who make the people of Wisconsin feel welcome. And as for my staff director, Chad Metzler, who has been with me in various capacities for the past 16 years, he is indeed irrepressible and irreplaceable.

So I thank all of them, and we thank you all for being here today, and we wish you well.

[Whereupon, at 3:25 p.m., the hearing was adjourned.]

APPENDIX

Testimony by Frank W. Abagnale

U. S. Senate

Special Committee on Aging

November 15, 2012

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INTODUCTION

Chairman Kohl, Ranking Member Corker, Members of the Committee, I am honored to be invited to testify before you today on the seriousness of identity theft and financial fraud against the elderly and the need for education. I am Frank Abagnale subject of the book, movie and Broadway musical "Catch Me If You Can".

I have a unique perspective having committed fraud as a teenager some 40 years ago and having spent the last 36 years of my life teaching at the FBI Academy and field offices of the Federal Bureau of Investigation. In my 36 year career, I have conducted over 3,000 lectures and written four books on these subjects. For the past 36 years, I have worked to try to prevent fraud, forgery, embezzlement, identity theft and other white collar crimes.

One serious issue we face is financial fraud against the elderly. This can be perpetrated by family members, financial advisers, home healthcare providers, friends, scam artists, and others. As I'm sure you are all aware, in 2010 the Consumer Financial Protection Board estimated $2.9 billion dollars was stolen from financially exploited elders and the instances of financial theft from seniors grew 12% from 2008 - 2010. This is probably a low estimate because many times the elderly are too embarrassed to admit that they have been defrauded and therefore it goes unreported. Their families may not even be told. Last year, white collar crime in America had reached the $900 billion dollar mark. Medicare fraud alone was estimated conservatively at $179 billion dollars. The IRS paid over $5 billion dollars in fraudulent tax refunds filed by individuals using a stolen social security number.

I make my home in Charleston, SC. Last month 3.5 million social security numbers and over 300,000 credit and debit card numbers were stolen from the SC Department of Tax Revenue by criminals who hacked into the state's computer system. It is believed that they not only stole social security numbers and credit card information, but also the entire return of each person who filed a SC tax return. This means the criminals have the social security number of the dependents; the home address; bank account numbers and copies of the W-2s.

What is truly amazing to an individual like me is that what I did 40 years ago as a teenager is 4,000 times easier to do today due to technology. Unfortunately technology breeds crime -- always has and always will.

There will always be individuals who will use technology in a negative and self-serving way.

I have always believed that the government should take the lead in education to combat this horrendous crime. However, sometimes it seems the government makes it easier for individuals to commit these crimes. For example. The Centers for Medicare and Medicaid Services uses Social Security Numbers as part of the Medicare number. This means that anyone who sees the Medicare number can determine the Social Security Number. In a hospital or medical setting, a worker could have complete access to a senior's Social Security Number, home address, date of birth, possibly credit card numbers, bank account, and other information. This threat of identity theft of seniors will not be alleviated until the Social Security Number is removed from the Medicare card.

The elderly are hungry for information but do not know about legitimate resources where they can turn for help. Numerous companies on television and radio, as well as talk show hosts, promote and market solutions which may or may not actually work. This is a great example of the victim going for help, but being victimized again by those companies that are claiming to help them.

Throughout my career, I have always believed that education is the best prevention. If you educate and explain to people their risks, in most cases they are smart enough to take that information and reduce their risks. I believe education is the only approach to help eliminate elder fraud. Education is not only important for our seniors, but it also helps bring awareness to all citizens so they can recognize the signs of fraud and know how to protect themselves. I believe that one of the most powerful tools at the government's disposal is creative Public Service Announcements that point out the most common scams and explain how to avoid becoming a victim. I recommend the government sponsor Public Service Announcements, mailing stuffers and educational materials so that individuals can learn to protect themselves and their loved ones.

Protecting one's identity is an individual's responsibility. If a person ages to the point that they cannot take care of their personal issues then the family and friends should help take responsibility. Everyone has to be educated. Government regulation is not the answer.

I recommend the following to seniors to protect their identity:

- Review your credit report semi-annually
- Reconcile your bank accounts in a timely manner
- Be suspicious of calls, e-mails or letters asking for personal information
- Don't give out your SSN - Just because a form contains a space for your SSN doesn't mean you have to provide it.
- Invest in a micro-cut shredder.

Finally, I believe that punishment for fraud and identity theft and recovery of stolen funds are so rare, prevention is the only viable course of action.

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United States Government Accountability Office

GAO

Testimony
Before the Senate Special Committee on Aging

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ELDER JUSTICE

Strengthening Efforts to Combat Elder Financial Exploitation

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

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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.[1]

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.[2] 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

[1] 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.

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

agencies;[3] 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[4] 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

[3] 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.

[4] 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.

- 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.[5]

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)[6] 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,[7] 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

[5] Brandl et al, *Elder Abuse Detection and Intervention*, (New York: 2007).

[6] FINRA is a self-regulatory organization that writes and enforces rules for brokers and brokerage firms.

[7] 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.

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 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.

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.

Contacts and Acknowledgments

For questions about this testimony, please contact Kay Brown at (202) 512-7215 or 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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Testimony of Hubert H. "Skip" Humphrey III
Assistant Director, Office for Older Americans
Consumer Financial Protection Bureau

Before the Senate Special Committee on Aging

November 15, 2012

Thank you Chairman Kohl, Ranking Member Corker, and distinguished members of the Committee for the opportunity to speak with you today about the Office for Older Americans at the Consumer Financial Protection Bureau (Bureau or CFPB) and its work to address the devastating problem of elder financial exploitation. Chairman Kohl, on the eve of your retirement from the Senate, we want to thank you for your longstanding dedication and the important role you've played as Chairman of this Committee in enhancing the well-being of our older citizens.

My name is Hubert Humphrey and I joined the Bureau in October, 2011, to serve as Assistant Director in the Office for Older Americans. In fact, exactly one year ago today, I had my first opportunity to testify before a Senate committee about the Bureau's important role in helping older Americans. Before arriving at the Bureau, as Attorney General in Minnesota—and then as a national board member of AARP—I became keenly aware of the many financial challenges that older consumers face.

CFPB Office for Older Americans

During the past year, I've been privileged to lead an Office with a critically important mission: the CFPB's Office for Older Americans is the only federal office specifically dedicated to the financial health of Americans aged 62 and older.

Our Office works closely with all Divisions of the Bureau to carry out its broad mission: to ensure that markets for consumer financial products and services are fair, transparent, and competitive, and that all consumers have access to those markets. The Bureau will fulfill this statutory charge by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.

Our Office's statutory mandate is to help provide consumers aged 62 and over with the tools they need to protect themselves from financial abuse and to make sound financial decisions. To carry out Congress' directives, in our first year we have made preventing, detecting and redressing elder financial exploitation Job Number One.

To do so, we recognize that collaboration is critical -- on the local, state, and national levels, and between both public and private sectors. We agree with GAO that a collaborative and coordinated effort by federal agencies can help optimize strategies to combat the devastation of elder financial exploitation. Congress already recognized the importance of collaboration when it mandated that the Office for Older Americans do two key things:

- Coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective and efficient enforcement; and
- Work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors.

To jumpstart and foster these collaborative efforts, I have spent the past year traveling throughout the country to meet with state and Tribal officials, such as Attorneys General, financial regulators, Adult Protective Services administrators, commissioners on aging, chief justices, and court administrators, to listen to their experiences and insights, to brainstorm with them about how best to prevent elder financial abuse, to develop joint efforts, and to assure them of my commitment to work with them to protect older Americans from devastating financial losses. I, or a member of my small team, have visited 24 states in just over a year.

Similarly, my staff and I have engaged with non-profits, community organizations and industry groups to figure out how our new federal agency can best help and partner with them, and to begin to share resources to support their work. For example, we participate in a working group with the Financial Services Roundtable that addresses issues such as enhancing the capacity of financial institutions to report suspected elder financial abuse. We worked closely with the National Endowment for Financial Education on convening a forum of national experts on diminished capacity to make financial decisions.

Elder Justice Coordinating Council

Our Office has been engaged from the outset in coordinating and building cooperative plans with our Federal partners. We applaud the Secretary of Health and Human Services for convening the Elder Justice Coordinating Council in partnership with the Attorney General. As a member of this eleven-agency body, the Bureau is fully engaged in the Council's work and hopes the Council will shine a light on the disastrous impact of financial exploitation and catalyze the development of a prevention strategy. We recognize the key role in the Council played by HHS Assistant Secretary for Aging Kathy Greenlee, who has been an important partner since I arrived at the Bureau.

At the Elder Justice Coordinating Council's inaugural meeting in October of this year, we heard some important themes from national experts from law enforcement, social services, academia, medicine, law, the judiciary, financial institutions and other stakeholders. These themes include the following:

- Older Americans are victimized by a broad range of perpetrators, including scam artists, family members, caregivers, financial advisers, home repair contractors, and fiduciaries such as agents under power of attorney and court-appointed guardians. Development of strategies to deal with the myriad of "bad actors" is essential.
- There is a need for collaboration at the federal, state and local level, as well as public-private partnerships.

- Diminished capacity to make financial and personal decisions is, as a leading geriatrician and researcher stated, the "800-pound gorilla" in the room.[1] Even mild cognitive impairment disastrously reduces an older adult's ability to detect a fraud or scam. Unfortunately, diminished capacity also undermines the effectiveness of educating older consumers on how to protect themselves.
- It is vital to collect more and better quality data on elder abuse, and to conduct research and evaluate promising tools for prevention, detection and redress.
- We need a broad-scale public education campaign to raise awareness of elder financial abuse and what to do about it. Advocates often make the point that efforts to address elder abuse are thirty years behind the child abuse field—yet we're approaching 50 million seniors aged 62 and over, comprising roughly 20 percent of our population, and all are potential victims.

Office for Older Americans' Initiatives

The CFPB's Office for Older Americans has a number of initiatives underway aimed at combatting elder financial exploitation. Many already address issues flagged for us and our federal partners at the Elder Justice Coordinating Council. Here are a few:

- We are developing a set of **guides for "lay fiduciaries."** We recognize that family members and other fiduciaries often have no experience handling someone else's money, and they need help so they can do the right thing. These user-friendly "how-to" guides will be for agents under powers of attorney, guardians, trustees, Social Security representative payees, and VA fiduciaries. The Bureau will produce a generic national guide in addition to some state-specific guides and a replication manual for other states. They will explain what a fiduciary does, as well as record-keeping, prudent investment requirements, limitations on comingling funds, and other critical basics to manage a vulnerable adult's money. In addition to this essential guidance on how to handle another person's finances, the guides will teach people to spot financial exploitation and protect assets from unfair, deceptive, and abusive practices by third parties. We anticipate publishing these guides in 2013.
- Another project focuses on **financial exploitation of elders in congregate settings.** Often when older adults residing in these settings are the victims of financial abuse of all types, the first sign may be that their bills for their residences aren't getting paid and they are threatened with eviction. These settings include senior housing, assisted living, and skilled nursing facilities. We are producing a national guide to provide operators of congregate facilities with skills to identify and intervene in exploitation cases further upstream and to have protocols for doing so. We already have offers from many national organizations and government entities to help distribute these much-anticipated guides, and similar enthusiastic responses regarding the lay fiduciary guides.
- The Office is developing a new program called **Money Smart for Older Adults,** in collaboration with the FDIC. This community education and awareness program will focus on preventing, recognizing and reporting elder financial exploitation and will serve

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1 Oral statement of Dr. Mark Lachs, Weill Medical College of Cornell University and Director, New York City Elder Abuse Center, October 11, 2012.

as training for older consumers, family caregivers and other key audiences. Partnering with another federal entity will extend the reach of this endeavor.

- On the state and local level, we are working with key stakeholders in several states to help create and sustain **"Older American Protection Networks."** These coalitions aim to develop multi-disciplinary teams to provide community education, raise public awareness, enhance response to reports of abuse, and increase prosecution.
- The Bureau has heard concerns and questions from financial institutions as to whether sharing personal account holder information when reporting elder financial exploitation is permissible under federal law. The Office for Older Americans, in collaboration with other Bureau offices, is developing strategies for communicating clearly to a spectrum of financial institutions that the Gramm-Leach-Bliley Act generally does not prohibit them from reporting suspected abuse to—or respond to requests for personal information from—law enforcement, APS agencies, and other relevant entities. In addition, the Bureau is exploring options for collaborating with other federal agencies in providing this guidance to financial institutions. Through its efforts, the Bureau hopes to convey that these actions are permissible and important.

Other Federal Efforts

Through our outreach efforts and our initial work in the Elder Justice Coordinating Council, we've learned that our federal partners have many initiatives that complement ours and that, taken together, can make a real difference in public education and prevention of financial exploitation. These partners include the Administration on Aging at HHS, the Social Security Administration, the U.S. Postal Inspection Service, the Department of Housing and Urban Development, the Department of the Treasury, the Department of Justice, the Federal Trade Commission, the Department of Veterans Affairs, the Department of Labor, the Corporation for National and Community Service, and the Securities and Exchange Commission.

Conclusion

Congressional leadership and support is critical to implementing a multi-faceted solution to the serious problem of elder financial exploitation. We commend the Chairman, the ranking member and other members of this Committee for holding this hearing to put the issue in the spotlight. We know that this is just one in a series of hearings you have convened to examine various aspects of the problem. We look forward to continued information sharing with members of Congress and the GAO on this important topic.

Again, thank you for the opportunity to present this testimony.

STATEMENT

OF

BITS PRESIDENT PAUL SMOCER

ON BEHALF OF THE FINANCIAL SERVICES ROUNDTABLE

BEFORE THE

SPECIAL COMMITTEE ON AGING

OF THE U.S. SENATE

AMERICA'S INVISIBLE EPIDEMIC:

PREVENTING FINANCIAL ELDER ABUSE

NOVEMBER 15, 2012

Comments of Paul N. Smocer, The Financial Services Roundtable/BITS

The Financial Services Roundtable[1] (the "Roundtable") and BITS appreciate the opportunity to share our thoughts with the members of the Senate Special Committee on Aging regarding the financial exploitation of older Americans and actions we can collectively take to reduce that exploitation.

The financial services industry is a key part of the circle protecting older Americans from financial fraud and exploitation. When employees observe signs of potential exploitation, they can work with families, caregivers, social service agencies and law enforcement to prevent, detect, and help investigate and prosecute the individuals who engage in fraud.

The Roundtable and its members are committed to encouraging their employees comply with high standards of conduct when providing financial advice to all customers, including older Americans and their families. Helping ensure a secure retirement for millions of Americans is central to the business and the mission of the financial services industry.

THE PROBLEM

By 2030, the number of Americans aged 65 and older is projected to double to 71 million, roughly 20 percent of the U.S. population.[2] In some states, fully a quarter of the population is likely to be aged 65 and older.[3] Unfortunately, this increase in the aging population creates a potentially large pool of potential victims for financial exploitation.

It is sad, but true, that the most frequent perpetrators of financial abuse are family members, who by some estimates commit nearly 75% of crimes,[4] and professional criminals. It is also important to note that financial institutions are often the first line of defense against this financial exploitation.

Since many older customers prefer to conduct transactions in person, financial services employees can be the first to detect changes in an older customer's behavior. Signs of exploitation of an elderly customer may include unusual transactions or changes to accounts, unpaid bills, changes in spending patterns, new individuals accompanying the customer to a bank facility, and missing property. When these and other signs are detected, and an investigation suggests that exploitation is taking place, financial institutions can help the

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $85.5 trillion in managed assets, $965 billion in revenue, and 2.3 million jobs.

[2] The State of Aging and Health in America, Centers for Disease Control and Prevention (CDC) and The Merck Company Foundation, 2007, http://www.cdc.gov/Aging/pdf/saha_2007.pdf.

[3] *The State of Aging and Health in America,* Centers for Disease Control and Prevention (CDC) and The Merck Company Foundation, 2007, *http://www.cdc.gov/Aging/pdf/saha_2007.pdf*.

[4] http://www.consumerreports.org/cro/money/consumer-protection/preventing-financial-elder-abuse/overview/index.htm

customer take action to protect his or her assets. Financial institutions also work with agencies such as Adult Protective Services (APS), local law enforcement and prosecutors, many times as part of local or regional task forces focused on elder abuse prevention and prosecution. Institutions also report suspected abuse via the Suspicious Activity Reports (SARs) filed with the Financial Crimes Enforcement Network (FinCEN), an agency of the United States Department of the Treasury.

Following the filing of SARs, institutions may be contacted by law enforcement who are investigating the case. Institutions actively work with law enforcement after filing all legally required documents. Institutions also participate in regional partnerships that involve law enforcement of all levels. During these meetings, institutions will share trends and suspects. This allows for institutions and law enforcement partners to share best practices. Through this active engagement and partnership, cases are able to be more quickly resolved.

For decades, financial institutions have been at the forefront of fraud detection utilizing sophisticated technology, modeling, training and education. Because of these proactive measures, they are often the first to detect patterns associated with fraud. Using a variety of safeguards, financial institutions make every attempt to ensure the reliability and security of financial transactions as well as protect financial privacy. In fact, financial institutions often exceed the standards set by financial regulators in order to protect their customers, shareholders and employees better.

Education – of employees, customers and other stakeholders – is critical for preventing financial abuse of all customers – including more vulnerable ones such as older Americans. Many financial institutions have extensive programs to educate employees and customers on detecting abuse and steps to secure accounts from the lure of fraudsters. Financial institutions also work closely with APS, law enforcement and prosecutors to educate those entities on patterns of fraudulent activity and help identify individual cases of potential fraud. Financial institutions also work closely with community organizations to host panel discussions and community events to educate seniors and their caregivers about the risk of elder financial abuse. These efforts provide older American and their advocates education and resources to not only recognize financial elder abuse, but to also take steps to proactively protect oneself and ones assets through, for example, proper document disposal and identity theft prevention, and reports of the crime when it occurs.

Employees and customers who are better educated about fraudulent behavior and preventing fraud are more likely to take fraud prevention measures. An example of the Roundtable member's education efforts is a white paper produced by the Roundtable's BITS group entitled, *"Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation,"* which helps financial institutions and their customers identify and combat elder abuse.[5]

[5] BITS - "Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation"

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The Roundtable also partnered with the Administration for Community Living/Department of Health and Human Services and the Consumer Financial Protection Bureau to support the June 14, 2012 White House Office of Public Engagement symposium in recognition of the 7th annual World Elder Abuse Awareness Day by providing financial industry speakers for the panel addressing the prevention of elder financial abuse.

Recognizing the scope of this issue, the Roundtable's member believe it is important to continue to focus on it and to bring resources to bear. To that end, the Roundtable's members have formed a working group to focus on the issue of preventing financial abuse of the elderly. Further recognizing that solutions will require a multi-faceted approach, the Group's members consist not only of financial institutions, but additionally of a collaborative cross-section of federal agency representatives, representatives from various adult protective services organizations, and academics focused on the area of elder abuse.

The Elder Working Group currently has identified two key projects on which it will concentrate. These are:

- Develop a structure/syllabus for training financial institution consumer-facing staff and all new hires on elder fraud trends and internal procedures for reacting to suspected elder financial abuse, including engaging Adult Protective Services and law enforcement. This work will focus on building on work done previously, will incorporate new learnings and research and broaden the educational base for employees. Once completed, the work will be shared openly across the financial services sector.
- Work with financial institutions with strong education programs to develop a publicly available awareness and education program to be made available to all financial institutions.

CHALLENGES AND IMPEDIMENTS

As we have engaged in our efforts regarding prevention of elder financial abuse and based on the experiences and feedback of financial institutions, we have identified a number of areas where potential impediments exist to improving prevention. For many of those, the assistance of the agencies forming the Elder Justice Coordinating Council (EJCC), either directly or in concert with other non-EJCC agencies, would be helpful to clarify concerns or remove impediments. On October 11, 2012, I had the opportunity to present these ideas to the agencies involved in the EJCC at its inaugural meeting. The impediments and possible solutions include:

- Clarify the permissibility of age-based fraud monitoring. As noted previously, financial institutions utilize sophisticated fraud detection technology and modeling in their attempts to prevent and identify potential fraudulent activity in an attempt to protect customers. An added layer of sophistication could be to segregate their elder customers' activities for special screening. Many financial institutions are concerned, however, that segregating their customer population for this purpose could be interpreted to place them in violation of existing age discrimination laws and, therefore, put the institution at risk for potential fines or regulatory actions.

It would be extremely beneficial if the involved EJCC agencies, particularly the Department of Justice, could clarify permissibility of age-based fraud monitoring. If such segregation is currently permissible, to assuage the concerns we have heard, a written opinion of the permissibility would be extremely helpful. If, in fact, it is considered a violation of current anti-discrimination laws to segregate this population for fraud monitoring purposes, we encourage the EJCC to undertake an effort to pursue legislative action to allow for an exception.

- Authority to authorize a protective hold on a suspicious transaction. One significant challenge financial institution employees encounter is situations where an elderly customer wants to perform a transaction (e.g., a withdrawal, a request to transfer funds) in a situation where the employee strongly suspects or even knows that fraud is involved. This clearly creates a conundrum pitting the financial institution's contractual obligation to carry out its customers and instructions and the financial institutions' desire to prevent the elderly customer from being defrauded.

  There are a few methods that are suggested for dealing with this issue:
  - Working with CFPB and Treasury create an option allowing institutions to put a minimal hold on the transaction pending the sending of an alert of APS and APS discussing the situation with the customer. It will likely be necessary for CFPB and Treasury to work with the states to implement this suggestion.
  - Working collaboratively with input from the U.S. Department of Justice, U.S. Postal Inspection Service, Federal Trade Commission and other agencies along with input from financial institutions, create and maintain a list of known fraudulent actors that can be used to "convince" elders of their involvement in a fraudulent situation.
  - Leverage the work already underway and led by the Consumer Financial Protection Bureau to create a list of local and regional APS services into a shareable database that financial institutions could use to understand who to contact that might be helpful in discussing these types of situations with involved elders. Along with creating a database for contacts, it will be necessary to further clarify the type of information institutions are legally able to share with APS regarding their older customer.

- Another substantial challenge occurs when an individual with a duly executed Power of Attorney to act on behalf of an elder is suspected of trying to perpetrate fraudulent activity or activity not in the best interest of the elder. Duly executed Powers of Attorney give the holder the legal right to act on behalf of the customer. This essentially creates the same conundrum for the financial institution as noted in the previous point.

There are a series of actions we would ask the EJCC members to consider regarding this issue. They include:

- Powers of Attorney laws and regulations vary by state and, particularly in the case of Durable Powers of Attorney, can involve granting rights to the agent even after the principal becomes incapacitated. While the agent is obligated to exercise due care and protect the principal, state law is not uniform with respect to the specific responsibilities of an agent with regard to financial transactions, particularly when the principal is an elder. The development of uniform state laws and a Uniform Power of Attorney would be very helpful. Study of the feasibility and benefits of having a uniform Power of Attorney, particularly one for situations in which the principle is an elder should be undertaken.
- Select agencies – most likely U.S. Department of Health and Human Services, Social Security Administration, CFPB, U.S. Department of Justice, the Federal Trade Commission and the U.S. Department of Veterans Affairs – should consider working collaboratively to develop educational materials that explain clearly to those agents with Powers of Attorney their financial responsibilities and provide specific examples of what are considered abusive behaviors.
- The U.S. Department of Justice could undertake a study of existing criminal statutes that apply to financial abuse of elders. This should include both federal and state level statutes with the goal to develop a model criminal code applicable to this area that strongly disincents criminal actors and those acting as agents from taking advantage of the elderly.

- Financial institutions are sometimes concerned with the liability they or their employees might incur in situations where they suspect and report elder abuse – particularly if it is a situation in which it is ultimately determined that a fraud was not involved. Today, certain states require the reporting of even suspicions of fraud, but that reporting is not uniform on a national level and statutory hold harmless provisions to protect the reporter seem far from consistent.

  The Council should work toward legislative action that would result in a national reporting statute that provides uniform electronic reporting requirements to a single report point which would disseminate the information (or otherwise make it available) to state and local agencies, as well as uniform hold harmless protections for reporting parties. Additionally, the importance of federal and state agencies such as the CFPB, SEC, FINRA, and NSAA, etc., to coordinate their efforts in addressing elder financial abuse can ensure the avoidance of conflicting rules and regulations, which themselves would potentially harm individual clients. This should also include a definition of those individuals who are protected by the requirements, as in some states fraud of vulnerable adults follow the same requirements as fraud of the elderly.

- Confusion of requirements regarding to whom to report the abuse and under what circumstances.

FinCEN, a part of the U.S. Treasury, issued an advisory on February 22, 2011 that addresses the reporting of actual or suspected elder financial abuse on Suspicious Activity Reports (SARS).[6] This provided financial institutions with guidance on reporting specific to SARs' requirements; however, the reporting of elder financial abuse often goes beyond that type of reporting. Reporting would likely include reporting of situations to Adult Protective Services or similar agencies as well potentially, depending on the circumstances, to local law enforcement. Today, however, the structure of adult protective services type agencies is diffused across the country. Some locations have more centralized statewide or regional agencies will others structure such agencies very locally. Determining the correct agency for reporting is often difficult. Law enforcement capabilities to deal with such reports often vary as well. In addition, today with law enforcement often done at the local level, it is often difficult to synthesize information across jurisdictions to identify when elders in different locations may be being subjected to scams and fraudulent activity that relates to the same set of criminal actors.

To assist with overcoming these issues, we suggest the following actions:

- The CFPB is currently working with various constituencies to develop a database of regional and local Area Agency on Aging across the United States. Making that database accessible to financial institutions would facilitate those institutions ability to know and contact the correct agency.
- Recognizing that local law enforcement lacked skills in investigating cybercrime, in 2007, the Department of Homeland Security, the United States Secret Service, the Alabama District Attorneys Association, the State of Alabama, and the city of Hoover, Alabama partnered to create the National Computer Forensics Institute (NCFI). This partnership provides state and local law enforcement officers the training necessary to conduct basis electronic crimes investigations. Creating a similar model to train state and local law enforcement personnel the training necessary to conduct investigations of elder abuse could have significant merits. Short of such a large effort, creating and providing to local law enforcement bodies an educational opportunity through such options as written best practices, webinars and seminars on the subject would be beneficial.

  Note that these same concepts can be generally applied as well to local prosecutorial authorities, who sometimes also lack the knowledge and experience requisite to the successful prosecution of those who prey financially on the elderly. Similar training programs and best practices can also serve this community well.
- The CFPB is currently working to establish state and regional coalitions of APS, law enforcement, prosecutors and financial institutions that can work together on the issue of elder abuse. We encourage continued expansion of this effort

[6] See http://www.fincen.gov/statutes_regs/guidance/html/fin-2011-a003.html.

and offer our services to assist in connecting our Roundtable members into these coalitions.

- While SARS reporting is working well today, a significant improvement can be made by specifically adding "Elder Financial Abuse" as a category in Section 35 of the SARs Reporting Form. This would allow for easier collation of such activity and facilitate cross matching of potential criminal actors within this area.

- Enhanced financial literacy to empower further consumers, including older Americans, to make sound financial decisions.

  Financial literacy is one of the highest priorities for the Roundtable and its members at the grass roots and at the national policy level. In 2011, Roundtable member companies conducted more than 45,600 financial literacy projects around the country to empower further thousands of consumers to make sound financial decisions.

  As we noted earlier, as a part of the efforts of its Elder Working Group, the Roundtable has committed to work on two projects (i.e., develop a structure/syllabus for training financial institution consumer-facing staff and to develop a publicly available awareness and education program to be made available to all financial institutions).

  We would certainly welcome the engagement of any of the departments or agencies represented on the EJCC in this effort – either in development or ultimately in distribution of the publicly facing awareness and education materials developed. We believe a national-level awareness campaign targeting elder Americans and their family members would provide long-lasting benefits in helping to reduce elder financial abuse.

- One last area of potential improvement involves the licensing of financial professionals who serve the elder community. In its August 20, 2012 letter to the CFPB regarding CFPB's "Request for Information Regarding Senior Financial Exploitation [Docket CFPB-2012-0018]," the Roundtable mentioned another key area to reduce financial abuse of elders. It noted that an effort to make elders more aware of the licensing of financial professionals coupled with an effort by federal and state agencies and professional organizations' role in developing best practices for the training and licensing of financial professionals would have benefits. The Roundtable's comments on this last area are excerpted into Appendix A of this document.

CONCLUSION

We appreciate the opportunity to share our sector's focus on the issue of financial abuse of the elderly. We are committed to continuing to work on these issues to protect older Americans.

As noted, we recently shared these thoughts with the Elder Justice Coordinating Council. The challenge of reducing elder abuse can only be resolved by continued focus on the issue by all relevant parties, including financial institutions, families of elders, government agencies and legislators. Only through this continued commitment will we be able to protect our seniors from financial abuse. We recognize that the ideas we have outlined in this testimony are, in many cases, concepts and suggestions. They are a starting point for this discussion. We recognize there are various methods to approach these issues and look forward to continuing to work with you and other key constituencies on these issues.

Comments of Paul N. Smocer, The Financial Services Roundtable/BITS

Appendix A

Excerpt from August 20, 2012 letter to the CFPB regarding CFPB's "Request for Information Regarding Senior Financial Exploitation [Docket CFPB-2012-0018]

- **Consumers Should Seek Financial Advice Only From Licensed Financial Professionals, and the CFPB Should Work with Federal and State Agencies and Professional Organizations to Develop Best Practices For the Training of These Professionals**

The financial services industry has played a vital role in expanding retirement security for millions of Americans for the last 100 years. The industry currently manages more than $17 trillion in retirement assets, which represents 36% of all U.S. household assets.[7] The U.S. retirement market is projected to grow to nearly $22 trillion by 2016,[8] a 30% increase in retirement savings over four years.

It is important that consumers of all ages seek professional assistance to prepare for and make major financial decisions involving investments, wealth planning, and retirement. When making these decisions, consumers should seek out individuals who are licensed under federal and/or state law.

The Roundtable believes that consumers should only hire properly licensed investment professionals. Federal law regulating securities brokers, securities dealers, and investment advisers provides strong and effective protection for all consumers, including older Americans. The Securities and Exchange Commission, together with securities self-regulatory organizations like the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board, implement the registration and regulatory régime under federal securities law. These protections are complemented at the state level by laws designed to protect consumers from investment fraud. A similar registration and regulatory structure exists for futures professionals and firms, which are subject to oversight by the Commodity Futures Trading Commission, National Futures Association and other futures self-regulatory organizations. Additionally, state insurance commissioners regulate insurance agents in their respective jurisdictions.[9]

[7] http://www.ebri.org/research/?fa=genretire

[8] http://www.bankinvestmentconsultant.com/news/cerulli-predicts-retirment-market-will-exceed-22-trillion-by-2016-2677132-1.html

[9] The most common license for securities professionals is the Series 7 – General Securities Representative, and the most common license for commodity futures professionals is the Series 3 – National Commodity Futures. Depending on the nature of their activities, investment professionals may need the following licenses: (1) Series 6 – Investment Company Products/Variable Contracts Limited Representative; (2) Series 22 – Direct Participation Programs Limited Representative; (3) Series 31 – Futures Managed Funds; (4) Series 32 – Limited Futures; (5) Series 34 – Retail Off-Exchange Forex; (6) Series 42 – Registered Options Representative; (7) Series 52 – Municipal Securities Representative; (8) Series 62 – Corporate Securities Limited Representative; (9) Series 63 – Uniform Securities Agent State Law (NASAA); (10) Series 65 – Uniform Investment Adviser Law (NASAA); (11) Series 66 – Uniform Combined State Law (NASAA); and (12) Series 82 – Limited Representative, Private Securities Offerings.

Comments of Paul N. Smocer, The Financial Services Roundtable/BITS

We understand that a number of states and professional organizations have laws and programs that govern certifications and titles used by retirement professionals. While training that focuses on the specialized needs of older Americans may be valuable and useful, we urge the CFPB to partner with the financial services industry, federal regulators, financial industry self-regulatory organizations, state agencies and professional organizations in developing best practices for the training and certification of professionals who specialize in advising older Americans.

Statement of Paul R. Greenwood, Deputy District Attorney, Head of Elder Abuse Prosecution Unit, San Diego DA's Office

Good afternoon, Mr. Chairman and distinguished members of the Special Committee on Aging. My name is Paul Greenwood and I have the privilege of heading up the San Diego District Attorney's Office Elder Abuse Prosecution Unit, a position which I have held for the past sixteen years. I am also a co-chair of the California District Attorneys Association Elder Abuse Committee.

California defines an elder as anyone over the age of 65.
I am therefore responsible for prosecuting felony crimes that are committed against victims in that age bracket. These crimes cover physical and mental elder abuse, neglect, and financial exploitation.

At least 65% of my prosecutions involve some form of financial exploitation. The conduct of the criminals is becoming more brazen and diverse. The perpetrators are constantly developing new ways to gain access to our seniors' life savings and have focused upon a generation that typically has been more trusting and less able or willing to self report the victimization.

Let me share some cases to illustrate the problem.

Victoria Gilbert was a convicted felon who moved to San Diego from Nevada. She took a job as a caregiver and started work for an elderly widower who was physically and mentally. Within a few days she had convinced the victim to allow her to move in with her boyfriend, Gary Kircus, whom she portrayed as a deputy US Marshall. Soon both Gilbert and Kircus were stealing the victim's medications, and then depleting his checking account and assuming control of his credit card accounts. Fortunately, an alert bank teller became so concerned at the apparent isolation of her customer and the change in banking activity that she contacted the victim's adult children. After making an unannounced visit, the adult daughter discovered her elderly father close to death. Law enforcement was called in and both Gilbert and Kircus were arrested, prosecuted and ultimately convicted after a jury trial.

William Pitre was an unlicensed contractor but described himself in flyers left in church parking lots as a licensed Christian contractor. A 79 year old widow contacted him in response to the flyer left on her car windshield; she wanted her fence repaired and her driveway resealed. The work was shoddy and incomplete; yet Pitre demanded excessive payment. The victim was so fearful that she was unable to write out the checks that Pitre demanded. He wrote out the checks and had the victim sign them. He then left his workmen in the kitchen standing over the victim while Pitre went to the bank to demand cash. The bank became suspicious and called the victim; however she told the bank to give Pitre the cash because she was afraid of what the workmen might do. The victim was too embarrassed to call the authorities; but the bank made a call to Adult Protective

Services who in turn contacted law enforcement after visiting the victim. As a result Pitre was arrested and prosecuted and received a state prison commitment.

Donald Wade was a cab driver hired to drive Peggy twice a month to visit with her 93 year old friend Ruth who was in the advanced stages of Alzheimer's and who resided in a skilled nursing facility. On one occasion Peggy cancelled the scheduled visit because of illness; however, Wade seized the opportunity to drive over to the facility and collect Ruth. He drove her to Ruth's bank and along the way obtained Ruth's signature to a CD surrender form that authorized the bank to cash in her CD for $97,000, albeit with a penalty for early withdrawal. Wade convinced the bank to issue a cashier's check payable to Wade's friend whom he described as Ruth's "attorney." At no time did the teller take Ruth to one side and ask her if she understood what was happening. As a result, Wade and his friend were able to steal $96,000 [the bank deducted $1,000 by way of a penalty] from Ruth's account. The crime was only discovered after Wade shot his friend over a dispute as to how the theft proceeds were being divided. Wade was convicted and sentenced to state prison.

These cases underscore the importance of combating financial elder abuse through a multi-disciplinary approach. Throughout California we have seen examples of effective collaboration such as:

1. The emergence of Financial Abuse Specialist Teams [FAST] consisting of representatives from law enforcement, Adult Protective Services, financial institutions, elder law attorneys, prosecutors, and other qualified professionals.
2. The creation of forensic elder centers that offer wrap around services for elder victims; Orange County has led the way thanks to the pioneering efforts of Dr. Laura Mosqueda from the UCI Medical Center.
3. The expansion of mandated reporting to employees of financial institutions who are now required to immediately report suspected elder exploitation to either law enforcement or Adult Protective Services.
4. The implementation of Operation Guardian by the California Attorney General's Office which since the year 2000 has been conducting surprise, on-site inspections of nursing homes. This operation has often led to the uncovering of financial exploitation of residents within a facility in addition to other incidents of neglect.

In San Diego we have tried to replicate this multi-disciplinary concept in the following manner:

1. Periodic lunchtime meetings are held throughout our County to discuss the latest trends and scams - in which we invite community partners to exchange information and receive updates.
2. Trainings for first responders, the clergy and financial institutions in recognizing red flags of elder abuse.
3. Promoting a public awareness campaign entitled "Silence is not golden" – so that the public is encouraged to call a 1-800 number when observing elder abuse

4. Offering comprehensive services to elderly crime victims through our San Diego Family Justice Center and Center for Community Solutions and funded by the not for profit Archstone Foundation.
5. Launching a series of countywide events entitled "Protect yourself and your wallet" that provide education for seniors in the form of tips to avoid becoming a victim of physical and financial abuse. These seminars are organized by our local Adult Protective Services and the District Attorney's Office and are sponsored by two local Tribal governments. I am attaching to these remarks a copy of my financial exploitation "Top ten tips for seniors".

I am convinced that collaboration by prosecutors with multiple agencies – where the local prosecutor's office takes the initiative – is the key to making an impact on the escalating financial crimes being committed against seniors. There are encouraging signs that prosecutors in several states are capturing the same vision but much more needs to be done. The National Center for State Courts has recently published an excellent resource guide for prosecutors entitled "Prosecuting Elder Abuse cases: Basic Tools and Strategies" funded by the Bureau of Justice Assistance. As more prosecutors take advantage of these training materials, we will see an improvement in how financial elder abuse cases are handled through criminal prosecution.

We also need to eliminate aging discrimination and bias in our attitude towards prosecution of these cases. There has been a tendency in the past for prosecutors to fall into the trap of concluding that:

1. Elders make poor witnesses in court
2. Financial exploitation cases are difficult to prove because of mental capacity issues
3. Cases involving home repair fraud allegations or misuse of Powers of Attorney are best dealt with as civil matters

Prosecutors must find ways to rebut the standard defense that the elder either "loaned" or "gifted" the money to the suspect. Understanding the legal term of consent is at the core of such a case. California crafted a very enlightening jury instruction as follows:
"To consent to a transaction a person must:

> Act freely and voluntarily and not under the influence of threats, force or duress;
> Have knowledge of the true nature of the act or transaction involved;
> Possess the mental capacity to make an intelligent choice whether or not to do something proposed by another person.
> And consent requires a free will and positive cooperation in act or attitude."

Additionally, prosecutors have to learn how to overcome many elderly victims' reluctance to talk about the exploitation because of embarrassment or fear that such exposure might lead to the victim losing their financial independence.

Moreover, prosecutors should be less concerned about the actual monetary loss and focus more on the underlying conduct by the perpetrator. It is frustrating when a case is rejected by a prosecutor's office because the loss involved does not meet the threshold for prosecution. In my experience, theft of $500 can be as devastating to an elderly widow as a theft of $100,000.

We also should examine ways in which to become more creative and assertive in the actual charges that are filed. For example, consider this hypothetical: An unlicensed contractor fraudulently persuades an elderly homeowner that major corrective work is required on the homeowner's roof. The crook enters the victim's kitchen and stands over the victim while he or she writes out a check. The work is unnecessary, inferior and causes damage to a previously good roof. In that situation we should be looking to not only charge the suspect with elder financial exploitation but also with residential burglary; and if the victim felt intimidated we should consider adding a robbery charge.

Having prosecuted felony financial elder abuse cases for over sixteen years, I see the following areas as crucial in our nation's ability to react to the escalating problem of financial elder abuse:

1. Immediate funding of the Elder Justice Act which was passed over two years ago but which has laid essentially dormant. Much has been achieved at the grass roots level in recent years – but we need some leadership and responsibility from the Federal branch of government in tackling financial elder abuse.
2. We need to look at state laws dealing with elder exploitation. For example, we should be very concerned at the fact that convicted felons can easily get employment working as caregivers. Surely, more can be done to protect the unsuspecting public from hiring felons to look after an aging relative. Additionally, we should evaluate whether state laws relating to financial elder abuse are correctly earmarked as felonies rather than as misdemeanors.
3. We should consider creating or expanding lists of mandated reporters of suspected financial elder abuse. Other logical mandated reporters would be health care workers, first responders, caregivers, medical personnel, the clergy, notary publics and wire transfer merchants.
4. We need to make the court room more elder accessible and learn from such judges as Her Honor Judge Patricia Banks, Presiding Judge of the Elder Law Division in Cook County, Illinois who has gained national attention for the way she operates her Elder courts.
5. All major urban communities should consider having a dedicated investigative law enforcement unit that handles elder abuse investigations. San Diego Police Department has had such a unit since 2000; it consists of five detectives and one sergeant.
6. States should invest in more awareness campaigns so that the public knows exactly how and where to report financial elder exploitation quickly and efficiently.
7. The creation of multi-disciplinary task forces in major urban areas involving federal, state and local law enforcement and adult protective agencies, as well as representatives from financial institutions and wire transfer merchants. Such task forces should be established primarily to provide a rapid response to any report of suspected elder financial exploitation involving an out of state or cross border suspect where monies have been wired. The local prosecutor's office should be

willing to seek extradition when a suspect is identified and there is a likelihood of a state prison commitment.

8. The establishing of a national database that tracks different types of elder financial exploitation cases and which offers useful contact information allowing procedures such as obtaining bank records to be expedited.

I last addressed this committee in 2007. Since that time we have made progress both locally and across the country in developing strategies to combat the rising tide of elder exploitation. But I am also aware that the crooks and con artists are becoming more creative and daring in their efforts to deplete the life savings of our senior citizens. It is therefore time for us to go on the offensive in identifying, investigating and prosecuting these suspects. We must expand our multi – disciplinary programs, eliminate misconceptions regarding hurdles to successful prosecution of elder financial abuse, and seek the kind of justice that our seniors deserve.

Paul Greenwood
Deputy District Attorney
Head of Elder Abuse Prosecutions
San Diego District Attorneys Office

TEN TIPS TO HELP YOU REDUCE THE RISK OF BECOMING THE NEXT VICTIM OF FINANCIAL ELDER ABUSE

1) CHOOSE A CAREGIVER WITH CAUTION

Do not assume that by hiring a caregiver through a bonded agency you are guaranteed to get someone who has been checked. There is no current law requiring mandatory background checks for in-home caregivers in California.

2) KEEP AN INVENTORY OF ALL JEWELRY

Jewelry is the number one item that is stolen from homes occupied by elders. Not only should your jewelry be kept in a locked drawer, you should have photographs of rare, valuable or sentimental items in a separate location. In the event of theft, such photographic evidence will be useful in tracking down the missing jewelry at a pawn shop.

3) EVERY HOME SHOULD HAVE A SHREDDER

Every piece of mail containing your name, address and any other identifying information should be shredded before being discarded. The most effective type of shredder is the criss-cross cut shredder. Even envelopes with your name and address should be shredded. Never throw away old checkbooks from closed accounts or bank credit card application forms. There is no danger in over shredding!

4) PROTECT YOUR INCOMING AND OUTGOING MAIL

Never allow incoming mail to sit in an unsecured mailbox where the public have access. Mailbox theft is rampant. Similarly, never leave outgoing mail In an unsecured mailbox with the red flag raised as this simply provides an easy alert to the thief who is cruising the streets. Consider either purchasing a locked mailbox or renting a post office from your local post office.

5) OBTAIN A CREDIT SEARCH ON YOURSELF AT LEAST TWO OR THREE TIMES A YEAR

Identity theft is rampant. The only way to have peace of mind is to obtain a credit search on yourself periodically from one of the three major credit bureaus – Experian, Equifax and Trans Union. This will enable you to discover whether someone has applied for or obtained a credit card in your name.

6) EVERY TELEPHONE SHOULD HAVE CALLER I.D. FITTED

All modern telephones are equipped with Caller I.D. capability and the minimal cost of this extra service is well worth it. By seeing if the incoming call is classified as "private" or "unknown" this will allow you to be immediately on your guard. Crooks love the telephone. It is now their weapon of choice.

7) YOU WILL NEVER WIN THE CANADIAN LOTTERY

If a smooth talking 25 year old male tells you on the telephone that you are the proud winner of the Canadian lottery, he is a liar. Similarly, if you get an email from Nigeria or letter from Madrid indicating that you could receive a substantial amount of money, such communications are always fraudulent. Do not dabble!!

8) CONSIDER ALLOWING YOUR BANK TO SEND A DUPLICATE COPY OF YOUR MONTHLY STATEMENT TO A TRUSTED FAMILY MEMBER OR PROFESSIONAL ADVISOR

Sadly, most financial elder abuse cases are only reported or discovered six to nine months after the initial losses have occurred. Elders whose sight is failing are at greater risk because they may rely upon the very person who is stealing from them to insure that the financial transactions are in order. An independent pair of eyes that is able to look over bank statements every 30 days will be able to catch suspicious activities in the early stages.

9) DON'T ASSUME THAT THE FRIENDLY HANDYMAN IS IN FACT LICENSED

Before committing to any work on your home, always obtain at least three estimates in writing and check on the name of the contractor with both the Better Business bureau and with the State License Contractor's Board. Just because someone gives you an impressive business card with a contractor's license number on it, this does not mean that the person is qualified. The license number may have in fact been stolen. Additionally, never pay more than 10% of the contract price up front.

10) ALWAYS HAVE A SECOND LINE OF DEFENSE AT YOUR FRONT DOOR

You should either have a locked screen door or a security chain guard at your front door. Crooks will attempt to gain entry to your home by using excuses such as a fake emergency, or false uniforms and badges. By having a second line of defense, you will be able to communicate with the stranger on the doorstep without exposing yourself to the possibility of a forced entry. Never allow any stranger into your home even if the emergency seems real. Instead, tell the stranger that you will call 911.

Question Submitted by Senator Wyden for Mr. Abagnale

1. **In your view, sir, do you think opening the Medicare Database to the public – with seniors' personal information private, of course - would help the cause of fraud prevention? Senator Grassley and I have a bill that would do just that, and we have heard from folks who say that making those records public would shine light on abnormalities that may in fact be signs of fraudulent behavior. What is your take on that and how might opening the database change the dynamic of fighting fraud within the system?**

Answer:

I am 100% in support of creating this Medicare Database. I believe it will go a long way to combating and detecting the ongoing enormous amount of fraud committed by healthcare providers. It could also be a deterrent to healthcare providers from filing false and fraudulent claims if they knew their claims were open to public review and scrutiny. In considering this database, the patient's personal information must remain private.

Questions Submitted by Senator Wyden for Mr. Humphrey

1. **Along with having the living facilities help identify exploitation after the fact, have you looked at initiatives to have them help prevent it in the first place by better controlling who has access to their resident populations?**

   Answer:

   In our manual for operators of congregate living facilities, we will provide guidance on prevention and deterrence of elder financial exploitation—not just addressing it after the fact. For example, the manual will provide suggested agendas for staff training as well as resident and family council meetings that raise awareness of elder financial abuse and provide prevention tips. It will suggest protocols for safeguarding resident funds (such as procedures for releasing funds from a resident's personal needs account and documenting the identity of agents under power of attorney and other fiduciaries). These suggested practices will help limit access to residents and their assets.

2. **We've also heard that online exploitation of seniors is on the rise, and internet scams are becoming more complex and harder to detect. Is your office working on anything specifically targeted towards educating seniors about online threats?**

   Answer:

   Yes, we plan to include specific information about internet scams and tips for avoiding them in our Money Smart for Older Americans consumer education program (in collaboration with another federal regulator, the Federal Deposit Insurance Corporation). We address these issues in meetings with federal and state government partners, non-profit organizations, and the public.

United States Government Accountability Office

GAO

Report to Congressional Requesters

November 2012

ELDER JUSTICE

National Strategy Needed to Effectively Combat Elder Financial Exploitation

GAO

Accountability * Integrity * Reliability

GAO-13-110

GAO
Accountability * Integrity * Reliability

Highlights

Highlights of GAO-13-110, a report to congressional requesters

Why GAO Did This Study

Elder financial exploitation is the illegal or improper use of an older adult's funds or property. It has been described as an epidemic with society-wide repercussions. While combating elder financial exploitation is largely the responsibility of state and local social service, criminal justice, and consumer protection agencies, the federal government has a role to play in this area as well. GAO was asked to review issues related to elder financial exploitation. This report describes the challenges states face in (1) preventing and (2) responding to elder financial exploitation, as well as the actions some federal agencies have taken to help states address these challenges.

To obtain this information, GAO interviewed state and local social service, criminal justice, and consumer protection officials in California, Illinois, New York, and Pennsylvania—states with large elderly populations; officials in seven federal agencies; and various elder abuse experts. GAO also analyzed federal strategic plans and other documents and reviewed relevant research, federal laws and regulations, and state laws.

What GAO Recommends

Federal agencies should develop a written national strategy addressing challenges GAO identified, facilitate case investigation and prosecution, and improve data, among other things. The Consumer Financial Protection Bureau and the Department of Health and Human Services supported GAO's recommendations. FTC did not believe it is necessary to examine the feasibility of requiring victim's age in complaints. GAO maintains the importance of its recommendation.

View GAO-13-110. For more information, contact Kay Brown at (202) 512-7215 or brownke@gao.gov.

November 2012

ELDER JUSTICE

National Strategy Needed to Effectively Combat Elder Financial Exploitation

What GAO Found

Officials in each of the four states GAO contacted identified the need for more safeguards and public awareness activities to help prevent elder financial exploitation. They also noted that it is difficult to prevent exploitation by individuals such as financial services providers, power of attorney agents, guardians, and paid in-home caregivers. Although states have primary responsibility for combating elder financial exploitation, the federal government could disseminate information on model power of attorney legislation, for example, to help states better safeguard against power of attorney abuse—one type of federal activity authorized under the Older Americans Act of 1965. In addition, experts and state and local officials told GAO that many older adults need more information about what constitutes elder financial exploitation in order to report and avoid it. The seven federal agencies GAO reviewed have undertaken activities to increase public awareness of elder financial exploitation. While some experts observed that a nationwide approach to educating the public is needed, federal public awareness activities are not currently conducted as part of a broader coordinated approach, which GAO believes could help ensure the effective use of federal resources. The Elder Justice Coordinating Council, which held its first meeting in 2012, could be the vehicle for developing and implementing a coordinated national strategy. The Council is composed of officials from federal agencies and is charged with developing national priorities and coordinating federal elder justice activities.

Experts and officials in each state GAO reviewed indicated that difficulty 1) gaining expertise, 2) sustaining collaboration between law enforcement and adult protective services agencies, and 3) obtaining data hinders their response to elder financial exploitation. As with prevention, many federal agencies have individually taken steps to address these challenges that are in line with their own missions. For example, the Department of Justice (Justice) has begun to construct a website that contains training and other materials prosecutors can use to build their expertise in investigating and prosecuting elder abuse, which includes elder financial exploitation. However, there are gaps in federal support in some areas. For example, law enforcement officials in each of the four states GAO reviewed indicated that it is not clear how they should obtain the federal support they need to respond to interstate and international cases. Justice can provide this information, in keeping with its priority to strengthen its relationship with state and local law enforcement. Similarly, the Federal Trade Commission's (FTC) Consumer Sentinel Network database compiles incidents of financial exploitation reported to it by many sources around the country but receives incidents from state government agencies in only 12 states. The database would be of greater use if FTC obtained incidents from more of the states and contained an indicator that the incident involved an older adult.

Contents

Abbreviations

AoA	Administration on Aging
APS	Adult protective services
CFPB	Bureau of Consumer Financial Protection (commonly referred to as the Consumer Financial Protection Bureau)
CDAA	California District Attorneys Association
Consumer Sentinel	Consumer Sentinel Network database
HHS	Department of Health and Human Services
Justice	Department of Justice
EFPN	Elder Financial Protection Network
EJA	Elder Justice Act of 2009
EJCC	Elder Justice Coordinating Council
FTC	Federal Trade Commission
FinCEN	Financial Crimes Enforcement Network
FINRA	Financial Industry Regulatory Authority
NASAA	North American Securities Administrators
NCEA	National Center on Elder Abuse
Office for Older Americans	Office for the Financial Protection of Older Americans
OAA	Older Americans Act of 1965
RFPA	Right to Financial Privacy Act of 1978
SEC	Securities and Exchange Commission
SAR	Suspicious Activity Report

GAO
Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

November 15, 2012

Congressional Requesters

Elder financial exploitation is the illegal or improper use of an older adult's funds, property, or assets.[1] Experts have described it as an epidemic with society-wide repercussions. Perpetrators may be family members; paid home care workers; those with fiduciary responsibilities, such as financial advisors or legal guardians; or strangers who inundate older adults with mail, telephone, or Internet scams. Older adults are particularly vulnerable to financial exploitation because, as research has shown, financial decision-making ability decreases with age. Moreover, older adults are often ashamed to report exploitation or even admit that they have been exploited because they are afraid of losing their independence. As a result, existing data on elder financial exploitation may substantially underestimate its extent.

Elder financial exploitation has far-reaching effects on its victims in particular and society in general. A study of media reports from April to June 2010 estimated that financial exploitation cost older adults at least $2.9 billion in 2010.[2] The money that older adults lose in these cases is rarely recovered, and the loss can undermine both the health of older adults and their ability to support or care for themselves. Consequently, the burden of caring for exploited older adults may fall on various state and federal programs. For example, a review of 80 elder financial exploitation cases in Utah in 2010 found the state's Medicaid program would potentially have to pay about $900,000 to cover the cost of care for older adults in that state who had suffered substantial losses.[3]

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[1] See GAO, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, GAO-11-208 (Washington, D.C.: March 2, 2011).

[2] MetLife Mature Market Institute et. al., *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation against America's Elders* (2011). The study assumed that the approximately $530 million in loss from all forms of elder financial abuse occurred at the same rate for the other 9 months of the year. It further assumed that this loss would be the same for the 36 percent of articles about elder financial abuse that the study identified but did not cite a specific dollar figure for.

[3] Gunther, Jilenne, *The 2010 Utah Cost of Financial Exploitation*, Utah Division of Aging and Adult Services (2012).

As the U.S. population ages, growing numbers of older adults could be at risk of financial exploitation, so its potential impact on society is likely to increase. Combating elder financial exploitation is primarily the responsibility of state and local agencies. At the same time, however, multiple federal agencies have a role to play in supporting state and local efforts. In light of these growing concerns, we were asked to provide information on elder financial exploitation issues. Specifically, this report addresses the challenges states face in (1) preventing and (2) responding to elder financial exploitation, as well as the actions some federal agencies have taken to help states address these challenges.

To address these objectives, we interviewed officials from agencies that included state and local social services, criminal justice, and consumer protection agencies in California, Illinois, New York, and Pennsylvania. We selected these states to achieve variation in location, because of the large size of their elder population, and because each state had a number of initiatives to combat elder financial exploitation. Across the four states, we held interviews with representatives from entities such as state and local adult protective services (APS) agencies; offices of attorneys general; police and sheriffs' departments; local district attorneys and courts; and state banking, securities, and insurance regulators. In three of the four states we also spoke with private organizations that work on issues related to elder financial exploitation, such as a university research center, elder abuse forensic center, and state banking association. In Pennsylvania, we met with experts from the Institute on Protective Services at Temple University and also attended an elder financial exploitation training for APS workers that was hosted by the Institute. We focused only on financial exploitation of older adults living at home, not on older adults in long-term care facilities.

We also interviewed experts in the field of elder abuse—including academics and practitioners—and representatives from a variety of non-profit and private sector organizations, such as the AARP, American Bar Association, and American Bankers Association. We interviewed representatives from University of California at Irvine's Center of Excellence on Elder Abuse and Neglect and the University of Kentucky's Justice Center for Elders and Vulnerable Adults. In addition, in order to gain the perspectives of large national and small community banks, we interviewed officials at six financial institutions. These banks are not, however, representative of banks nationwide.

Furthermore, we interviewed officials and analyzed strategic plans and other documents from seven federal agencies—including the

Administration on Aging (AoA) within the Department of Health and Human Services (HHS), Bureau of Consumer Financial Protection (commonly referred to as the Consumer Financial Protection Bureau or CFPB), Department of Justice (Justice), Federal Trade Commission (FTC), Financial Crimes Enforcement Network (FinCEN) within the Department of the Treasury, Postal Inspection Service, and Securities and Exchange Commission (SEC). In total, we held dozens of interviews with experts and officials from federal, state, local, and non-governmental organizations.

We also reviewed relevant federal laws and regulations, as well as selected state laws. Moreover, we attended the initial meeting of members of the Elder Justice Coordinating Council (EJCC), which includes officials from 11 federal agencies with an interest in elder abuse. We also attended several conferences related to elder financial exploitation, including the American Society on Aging's 2012 Aging in America Conference, California District Attorneys Association's (CDAA) 2011 Elder Abuse Symposium, Stanford Center on Longevity and the Financial Industry Regulatory Authority's (FINRA) 2011 State and Future of Financial Fraud Conference, Elder Financial Protection Network's (EFPN) 2012 Call to Action Conference, and a 2011 webcast on elder issues hosted by the Nebraska Department of Health and Human Services and State Bar Association's 2011 Elder Issues Webcast. At the CDAA Symposium, we held small group meetings with district attorneys and investigators from various counties in California. And at the EFPN Conference we held a small group meeting with local district attorneys, advocates, a state insurance agency official, and a financial institution.

To illustrate the complexities of combating elder exploitation, we met with a social service agency, several criminal justice agencies, and, in one case, a family member to develop detailed case histories on six prosecuted cases of elder financial exploitation. The perpetrators in these cases were family members, financial services providers, or telephone scammers. We identified cases from news stories and internet searches. We selected six cases because they (1) occurred in three of our four review states (California, New York, and Pennsylvania), (2) involved each of the different types of elder financial exploitation (exploitation by family or trusted others, exploitation by financial services providers, and exploitation by strangers), and (3) included instances where more than one agency or system was involved. The cases we selected are a non-generalizable sample of elder financial exploitation cases.

Lastly, we identified and reviewed research published from 2000 onward on elder financial abuse or elder financial exploitation by searching numerous bibliographic databases and reviewing materials cited by elder abuse experts or published by federal, state, and non-governmental organizations. We focused our review on published research on the extent, impact, cost, and nature of elder financial exploitation. We also interviewed an official from the Utah Division of Aging and Adult Services to discuss the state's study on the cost of elder financial exploitation.

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.

Background

Elder financial exploitation, one type of elder abuse, can occur in conjunction with, and might lead to other types of elder abuse.[4] Financial exploitation of older adults can take many forms and perpetrators can include family members, friends, legal guardians, paid caregivers, and strangers. Table 1 provides some examples.

Table 1: Examples of Forms of Elder Financial Exploitation by Type of Perpetrator

Perpetrators	Forms
Family members, friends, in-home caregivers, legal guardians, representative payees[a], etc.	—Theft of cash or other valuables —Withdrawals from bank accounts or use of credit cards —Transfer of deeds —Misuse of an older adult's power of attorney —Misappropriation of an incapacitated older adult's income or assets —Identity theft

[4] Other types of elder abuse include physical, psychological, and sexual abuse, as well as neglect and self-neglect.

Perpetrators	Forms
Financial services providers (brokers, financial advisors, insurance agents, or others in the financial services industry)	—Sale of fraudulent investments (Ponzi or pyramid schemes) —Sale of financial products or services unsuitable for an older adult's circumstances, such as long-term annuities
Strangers	—Lottery, mail, telephone, or Internet scams —Door-to-door home repair scams —Identity theft

Source: GAO analysis of published research.

[a]Representative payees are persons who receive Social Security benefits on behalf of recipients who are determined to be incapable of managing their finances. 20 C.F.R. §§ 416.601 and 416.2001.

Older adults are particularly attractive targets for financial exploitation by unscrupulous individuals. As a group, older adults tend to possess more wealth than those who are younger because they have had a longer time to acquire it. In addition, the incidence of Alzheimer's disease and other dementias that undermine judgment increases with age.[5] Moreover, financial capacity—the capacity to manage money and financial assets in ways that meet one's needs—generally declines with age, and this decline may go unaddressed until it is too late.[6]

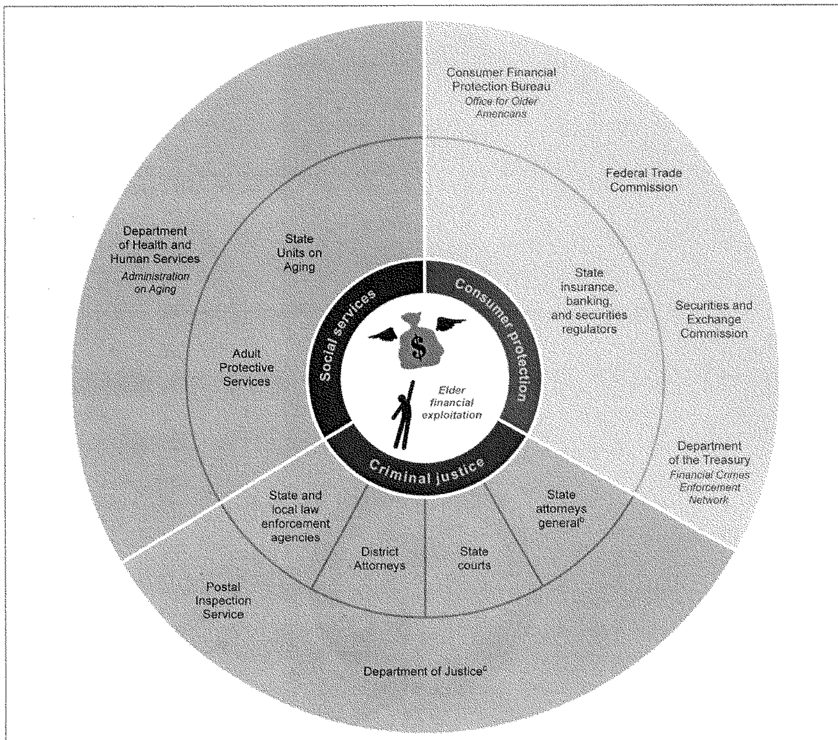
State and local agencies in the social services, criminal justice, and consumer protection systems in each state are at the forefront of efforts to prevent, detect, and respond to elder financial exploitation. Seven federal agencies whose missions correspond to the state and local social service, criminal justice, and consumer protection systems are positioned to contribute to state and local efforts in this area: AoA, CFPB, Justice, FTC, FinCEN, SEC, and the Postal Inspection Service (see fig. 1).[7]

[5] Hebert et al., "Alzheimer Disease in the US Population," *Archives of Neurology*, 60 (August 2003): 1119-1122.

[6] Agarwal et al., "The Age of Reason: Financial Decisions over the Life Cycle with Implications for Regulation," Brookings Papers on Economic Activity 2 (Washington, D.C.: 2009): 51-117.

[7] See appendixes I through IX for additional information on each of these agencies. The Department of Housing and Urban Development (HUD) also functions as a federal consumer protection agency in that they administer the Home Equity Conversion Mortgage Program, the nation's largest reverse mortgage program for older adults.

Figure 1: State and Federal Systems and Agencies Positioned to Combat Elder Financial Exploitation[a]



Source: GAO analysis of agency information.

[a] The relationship between the federal and the state and local agencies in a given system varies.

[b] State attorneys general also play a consumer protection role.

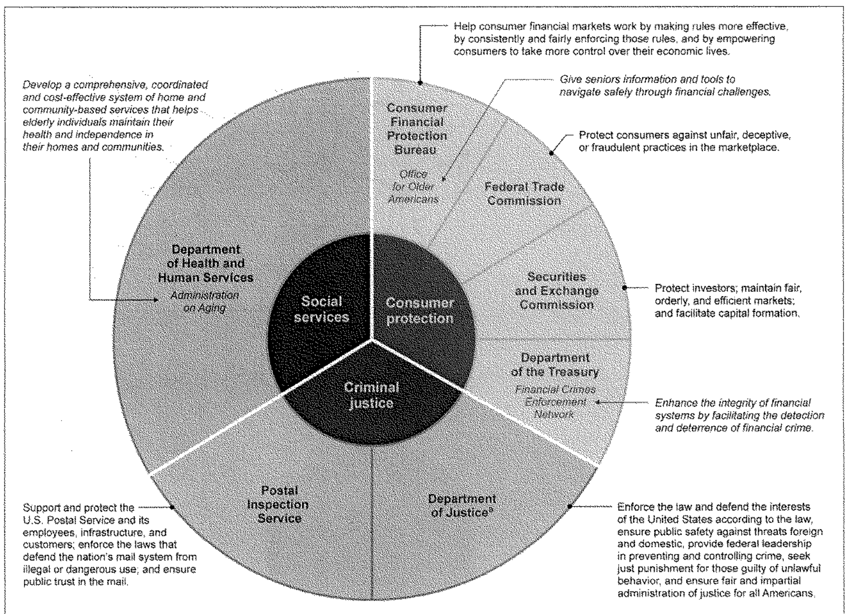
[c] Justice also plays a consumer protection role.

At the state and local level, APS agencies investigate and substantiate reports of suspected elder abuse, including financial exploitation and, if the client agrees to accept help, can arrange for services to secure their safety and meet their basic needs. APS can also refer cases to law enforcement agencies or district attorneys for criminal investigation and prosecution. Whether an elder financial exploitation case comes to the attention of criminal justice authorities through referral from APS or some other means, law enforcement agencies and district attorneys can exercise broad discretion when deciding if a case warrants any action on their part.

State-level consumer protection agencies—such as banking, securities, and insurance regulators—conduct examinations to ensure that rules to protect consumers are followed and take enforcement actions against institutions that break the rules. State attorneys general may also prosecute cases or respond to consumer protection inquiries.

Although combating elder financial abuse is explicitly included in the mission of only one federal agency, CFPB's Office for the Financial Protection of Older Americans (Office for Older Americans), it is implicit in the mission of others that work to combat elder abuse, protect consumers or investors, or prevent fraud (see fig. 2).

Figure 2: Federal Agencies with Missions That Involve Combating Elder Financial Exploitation



Source: GAO analysis of agency strategic plans.

[a]Justice also plays a consumer protection role. Specifically, two of Justice's strategic objectives are to (1) prevent and intervene in crimes against vulnerable populations; uphold the rights of, and improve services to, America's crime victims; and (2) combat corruption, economic crimes, and international organized crime.

Federal legislation has established a foundation for the federal government to assume a leadership role in combating elder abuse, including elder financial exploitation, and basis for greater coordination across federal agencies in this area. The Older Americans Act of 1965 (OAA)[8] requires AoA to develop objectives, priorities, policy, and a long-term plan for

- facilitating the development, implementation, and continuous improvement of a coordinated, multidisciplinary elder justice system in the United States;
- promoting collaborative efforts and diminishing duplicative efforts in the development and carrying out of elder justice programs at the federal, state, and local levels;
- establishing an information clearinghouse to collect, maintain, and disseminate information concerning best practices and resources for training, technical assistance, and other activities to assist states and communities to carry out evidence-based programs to prevent and address elder abuse, neglect, and exploitation;
- working with states, Justice, and other federal agencies to annually collect, maintain, and disseminate data on elder abuse, neglect, and exploitation, to the extent practicable;
- establishing federal guidelines and disseminating best practices for uniform data collection and reporting by states;
- conducting research on elder abuse, neglect, and exploitation; and
- carrying out a study to determine the extent of elder abuse, neglect, and exploitation in all settings.[9]

The Elder Justice Act of 2009 (EJA)[10] contains provisions pertaining to APS as well as elder justice, in general. It authorizes funding for

[8] Pub. L. 89-73, 79 Stat. 218 (codified as amended at 42 U.S.C. §§ 3001-3058ff).

[9] 42 U.S.C. § 3011(e)(2).

[10] Pub. L. No. 111-148, tit. VI, subtit. H, 124 Stat. 119, 782-804 (2010) (codified at 42 U.S.C. §§ 1320b-25, 1395i-3a, and 1397j-1397m-5). The EJA was enacted as part of the Patient Protection and Affordable Care Act, which was signed into law on March 23, 2010.

- HHS to
  - annually collect and disseminate data regarding elder abuse, neglect, and exploitation of elders in coordination with Justice;[11]
  - develop and disseminate information on best practices and provide training for carrying out adult protective services;[12]
  - conduct research related to the provision of adult protective services;[13]
  - provide technical assistance to states and others that provide or fund the provision of adult protective services;[14] and
  - establish 10 elder abuse, neglect, and exploitation forensic centers, in consultation with Justice, that would (1) conduct research on forensic markers for elder abuse, neglect, or exploitation, and methodologies for determining when and how health care, emergency, social and protective, and legal service providers should intervene and when these cases should be reported to law enforcement; (2) develop forensic expertise regarding elder abuse, neglect, and exploitation; and (3) use the data they have collected to develop, in coordination with Justice, the capacity of geriatric health care professionals and law enforcement authorities to collect forensic evidence, including evidence needed to determine if elder abuse, neglect, or exploitation has occurred.[15]

[11] § 2042(a)(1)(B) and (2), 124 Stat. 794 (codified at 42 U.S.C. § 1397m-1(a)(1)(B) and (2)).

[12] § 2042(a)(1)(C), 124 Stat. 794 (codified at 42 U.S.C. § 1397m-1(a)(1)(C)).

[13] § 2042(a)(1)(D), 124 Stat. 794 (codified at 42 U.S.C. § 1397m-1(a)(1)(D)).

[14] § 2042(a)(1)(E), 124 Stat. 794 (codified at 42 U.S.C. § 1397m-1(a)(1)(E)).

[15] § 2031, 124 Stat. 790-91 (codified at 42 U.S.C. § 1397*l*).

- Grants to state and local governments for demonstration projects that test methods and training to detect or prevent elder abuse or financial exploitation;[16] and
- An Elder Justice Coordinating Council and an Advisory Board on Elder Abuse, Neglect, and Exploitation to develop priorities for the elder justice field, coordinate federal activities, and provide recommendations to Congress.[17]

Currently, the Elder Justice Coordinating Council consists of the following federal agencies: Consumer Financial Protection Bureau, Corporation for National and Community Service,[18] Department of Health and Human Services, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of the Treasury, Department of Veterans Affairs, Federal Trade Commission, Postal Inspection Service, and Social Security Administration.

Coordination among federal agencies is also a feature of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which established CFPB, requiring it to coordinate its consumer protection efforts of older adults with other federal agencies.[19] CFPB's Office for Older Americans is charged with facilitating the financial literacy of seniors on protection from unfair, deceptive, and abusive practices and on current and future financial choices.[20]

[16] § 2042(c), 124 Stat. 795 (codified at 42 U.S.C. 1397m-1(c)).

[17] §§ 2021 and 2022, 124 Stat. 786-89 (codified at 42 U.S.C. §§ 1397k and 1397k-1).

[18] The Corporation for National and Community Service is a federal agency that engages Americans in service through Senior Corps, AmeriCorps, and the Social Innovation Fund. 42 U.S.C. § 12651.

[19] Pub. L. No. 111-203, § 1015, 124 Stat. 1376, 1974 (2010) (codified at 12 U.S.C. § 5495).

[20] § 1013(g)(1), 124 Stat. 1973 (codified at 12 U.S.C. § 5493(g)(1)).

States Identified the Need for More Safeguards and Public Awareness Activities to Prevent Elder Financial Exploitation

States Cited Need for More Safeguards to Prevent Elder Financial Exploitation

According to officials in the four states we visited, financial exploitation of older adults by financial services providers, power of attorney agents, and in-home caregivers is particularly difficult to prevent.[21]

Financial Services Providers

Older adults may consult with a variety of financial professionals, such as financial planners,[22] broker-dealers,[23] and insurance agents.[24] However,

[21] See appendix X for examples of activities undertaken by APS, criminal justice, and consumer protection agencies in California, Illinois, New York, and Pennsylvania to prevent elder financial exploitation by financial services providers, power of attorney agents, and in-home caregivers. See appendix XI for examples of these activities undertaken by private organizations.

[22] Financial planners can provide a variety of services, including preparing financial plans for clients based on their financial circumstances and objectives and making recommendations for specific actions clients may take. In many cases, financial planners also help implement these recommendations by, for example, selling investment products, such as insurance, securities, or other investments. Financial planners are subject to federal and state regulation pertaining to investment advisers, broker-dealers, and insurance agents, depending on the services they provide. See GAO, *Consumer Finance: Regulatory Coverage Generally Exists for Financial Planners, but Consumer Protection Issues Remain,* GAO-11-235 (Washington, D.C.: January 18, 2011).

[23] Broker-dealers handle trades between the buyers and sellers of securities and charge a fee to do so. Broker-dealers may buy securities from customers or sell from their own inventory. Most are also members of the Financial Industry Regulatory Authority (FINRA). FINRA is a self-regulatory organization with oversight of all broker-dealers doing business with the public in the United States.

[24] Insurance agents sell products, such as life insurance or annuities. They must be licensed by the states to sell these products and are subject to state insurance regulation. The sale of variable insurance products, such as variable life insurance or variable annuities, is subject to both state insurance regulation and broker-dealer regulation. See GAO-11-235.

older adults, similar to other consumers, may lack the information to make sound decisions about choosing a financial services provider and protecting their assets from exploitation. As a result, they may unknowingly put themselves at risk of financial exploitation.

Individuals who present themselves as financial planners may adopt a variety of titles and designations. In some cases, privately conferred designations—such as Certified Financial Planner®—require formal certification procedures, including examinations and continuing professional education credits, while other designations may merely signify that membership dues have been paid. Designations that imply expertise in advising older adults have been a source of particular concern among state securities regulators, according to the North American Securities Administrators Association (NASAA).[25] Older adults may lack information to distinguish among the various senior specific designations. Indeed, in 2011, we reported that there is some confusion about what these titles mean and the level of skill required to obtain them.[26]

Exploitation by "Senior Specialist"

Calling himself a senior financial advisor, an insurance agent licensed in California met an 89-year-old partially blind, intermittently confused man at a senior center. The agent persuaded him to invest about $250,000 in a flexible premium deferred annuity, warning him not to let anyone talk him out of it. As a result, the man was left with no penalty-free access to his entire life savings for the next 11 years, while the agent earned a commission on this transaction. To earn about $16,000 more in commissions, the agent then convinced the man to move half the amount invested in the annuity into unregistered stock, which cost the man a surrender fee of about $10,000. The stock turned out to be worthless, leaving the man with a fraction of what he had when he met the agent. Attempts by the man's nephew to retrieve his uncle's money were unsuccessful. The nephew reported the insurance agent to the California Department of Insurance, which eventually revoked the agent's license, but local police did not pursue the older adult's case. While the insurance agent faced no criminal charges in this case, he was later sentenced to 3 years in prison for defrauding another older adult.

Another concern is that older adults may be fooled by investment professionals who use questionable tactics to market financial products,

[25] NASAA is a national membership organization for state securities regulators.

[26] See GAO-11-235.

such as "free lunch seminars" at which financial professionals seek to sell financial products to older adults during a free meal. SEC, the Financial Industry Regulatory Authority (FINRA), and NASAA examined 110 firms that sponsored free lunch seminars from April 2006 to June 2007 offered in seven states and found that 63 seminars used misleading advertising and sales materials, 25 seminars resulted in unsuitable recommendations, and in 14 seminars there were fraudulent practices used, such as selling fictitious investments.[27]

Preventing the sale of unsuitable or fraudulent investments to older adults is difficult.[28] An investment can be unsuitable for an older adult if it has features that might not provide its intended benefit during the investor's lifetime. Older adults also can be sold what they believe to be legitimate investments, but are actually completely fraudulent products that hold little or no value.

Investment Fraud Using a "Ponzi" Scheme

The founder and president of a real estate and financial consulting firm convinced around 200 individuals—about one-third of whom were older adults—to invest in real estate projects that failed to generate any significant revenue. He also convinced them to obtain reverse mortgages on their homes, and to invest the proceeds with his firm. The investments turned out to be a "Ponzi" scheme. Specifically, the perpetrator paid distributions to some investors from others' deposits; misled investors with false amortization schedules; and used investors' money to pay for his Porsche, mortgage, and other personal expenses. The scheme was reported to FINRA, investigated by the FBI, and prosecuted by the Eastern District of New York U.S. Attorney's Office, which sought sentencing enhancements for targeting the elderly. Victims lost over $12 million. They also reported irreplaceable financial losses, emotional distress, feelings of betrayal and disbelief, and various physical symptoms as a result.

SEC has developed some educational materials and SEC and CFPB have conducted research related to investment fraud that targets older adults. For example, SEC has published a guide for older adults that counsels them to check their investment adviser's disciplinary history, lists warning signs of fraud, and provides information on where to go for

[27] SEC, FINRA, and NASAA, *Protecting Senior Investors: Report on Examinations of Securities Firms Providing "Free Lunch" Sales Seminars* (2007).

[28] SEC, *Guide for Seniors: Protect Yourself Against Investment Fraud*; SEC, FINRA, and NASAA, *Investor Alert, Investment Products and Sales Practices Commonly Used to Defraud Seniors: Stories from the Frontline.*

help.[29] SEC also provides a link to a FINRA website that provides consumers with the required qualifications, including educational requirements, of the designations used by securities professionals. In August 2012, SEC released a study on financial literacy among investors and stated the agency's desire to develop a strategy for increasing the financial literacy of certain groups, including older adults. CFPB plans to issue a report in early 2013 to Congress and the SEC that will address providing information to older adults about financial advisors and their credentials. In June 2012, the CFPB issued a public inquiry for information about elder financial exploitation, including a question on what resources older adults have to determine the legitimacy, value, and authenticity of credentials held by investment professionals.[30] CFPB expects to share its results in 2013.

Power of Attorney

Older adults 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. Having a financial power of attorney enables an older adult (a principal) to choose the person who can legally make these decisions for them, when needed. Powers of attorney are easy for anyone to create, can vary in specificity and format, and do not require legal assistance or a court for execution. Each of the four states we contacted has a law that helps prevent misuse of powers of attorney by specifying the responsibilities of agents and, in at least one, penalties for misuse. However, powers of attorney can be forged or perhaps otherwise improperly obtained without a principal's knowledge or consent and an agent can easily use the principal's money for his or her own benefit. For this reason, many state and local officials we interviewed in the four states were concerned about misuse of these instruments. For example, one Pennsylvania official described power of attorney documents as a "powerful, simple, and dangerous tool."

[29] SEC, *Guide for Seniors: Protect Yourself Against Investment Fraud.*

[30] CFPB, "Request for Information Regarding Senior Financial Exploitation," 77 Fed. Reg. 36,491 (June 19, 2012).

Power of Attorney Abuse

A month after an elderly man with dementia and his wife agreed to add their daughter's name to their bank account, the daughter convinced her mother to sign a document providing her financial power of attorney. When the woman signed, she was in the hospital for a broken hip and a stroke and later claimed she was heavily medicated. Over the next 3 months, the daughter placed the deed to her parent's home in her name, wrote checks on their account totaling nearly $600,000 that were never questioned by the bank, and attempted to withdraw about $500,000 more. When the woman's son discovered what had been happening, he had the bank stop payment on the $500,000 and asked the local district attorney to investigate. The daughter was charged with numerous counts of theft, pled guilty, and was sentenced to 3 years probation. The deed was transferred back to the woman and although the prosecutor sought restitution, the $600,000 was not recoverable—it had been used to pay off the daughter's mortgage, country club membership, and other bills.

Some APS and criminal justice officials we spoke to indicated that stronger state power of attorney laws could help prevent elder financial exploitation by agents. For example, Pennsylvania officials said that current state laws have been ineffective at (1) creating practices to monitor the activities of power of attorney agents and (2) encouraging banks to question power of attorney documents they find questionable. In California, law enforcement officials noted that notaries were not always held accountable for their role in signing power of attorney documents.

To help strengthen state laws designed to prevent misuse of financial powers of attorney, the Uniform Law Commission[31] has developed the Uniform Power of Attorney Act, which

- explicitly defines the duties of the power of attorney agent, including fiduciary duties such as acting in good faith and keeping careful records;
- 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;
- allows co-agents to be appointed for additional third-party oversight; and
- imposes liability on agents who violate the law.

[31] The Uniform Law Commission is a state-supported organization that drafts model legislation to promote clarity and stability to critical areas of state statutory law.

According to the Uniform Law Commission, 13 states have adopted the entire Uniform Power of Attorney Act.[32] Others have enacted various other power of attorney laws. For example, New York requires an agent to provide a full accounting to APS when it is investigating a report that the principal may be in need of protective or other services or the victim of abuse or neglect. If it is not provided within 15 days, APS can commence a special proceeding to compel the production of the information. Illinois has added safeguards for principals to its law and created additional court remedies for violations of the law. However, according to the Uniform Law Commission, a number of states have made no changes to laws governing powers of attorney since the Uniform Power of Attorney Act was published.

Powers of attorney are generally regulated under state, not federal, law; however, AoA and CFPB are providing some information to states and power of attorney agents to help prevent power of attorney abuse. The AoA-supported National Legal Resource Center co-sponsors trainings for states on the adoption of the Uniform Power of Attorney Act. Furthermore, the CFPB is developing a guide to educate "lay fiduciaries"—including guardians and agents under powers of attorney—about their responsibilities, and is planning to develop several state-specific lay fiduciary guides, scheduled for release in 2013.

Guardians

There are limited safeguards to protect older adults from abuse by guardians, who are granted authority by a state court to make decisions in the best interest of an incapacitated individual concerning his or her person or property. While guardians can play a key role in managing the assets of these older adults, we have noted in past reports that guardians are only subject to limited safeguards that could protect these older adults from financial exploitation. For example, local officials in California noted that it can be hard to determine whether a person applying to be a guardian is doing so to further his ward's best interests. We have also reported that few states conduct criminal background checks on potential guardians. Moreover, we have noted concerns with weak court oversight of appointed guardians, as well as poor communication between the

[32] According to the Uniform Law Commission, Alabama, Arkansas, Colorado, Idaho, Maine, Montana, Nebraska, Nevada, New Mexico, Ohio, Virginia, West Virginia, and Wisconsin have adopted the Uniform Power of Attorney Act.

courts and federal agencies that have enabled guardians to chronically abuse their wards and/or others.[33]

Caregivers

Exploitation by in-home caregivers was also cited by local APS officials, police, and district attorneys we spoke to as a type of abuse that is difficult to prevent. These caregivers range from personal care aides who provide non-medical assistance such as helping with laundry and cooking, to home health aides who check an older adult's vital signs or assist with medical equipment. In-home caregivers may be employed by a private company approved to provide services via a state's OAA[34] program or independently hired by older adults or their families. Caregiver services may also be covered under a state Medicaid program if the individual is eligible for Medicaid.[35]

Older adults may rely on and trust in-home caregivers, and some caregivers have used that relationship to exploit their clients.[36] For example, a caregiver may be given access to an older adult's ATM or credit card to help with banking or grocery shopping and later be found withdrawing money or purchasing items for themselves. As the population ages and public policies encourage older adults to remain in their homes for as long as practical, there will be an increased need for in-home caregivers.

States are responsible for protecting older adults from exploitation by in-home caregivers, and safeguards vary by state. Police and district attorneys we interviewed were concerned that in-home caregivers are

[33] See GAO, *Guardianships: Cases of Financial Exploitation, Abuse, and Neglect of Seniors*, GAO-10-1046 (Washington, D.C.: September 30, 2010), and GAO, *Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement*, GAO-11-678 (Washington, D.C.: July 22, 2011).

[34] OAA Title III-B provides funding for in-home services, such as personal care, chore, and homemaker assistance.

[35] 42 U.S.C. § 1396d(a)(7). Medicaid is a joint federal-state financing program for health care services for certain low-income individuals. State Medicaid programs may cover home-based care, such as personal care and homemaker services, for Medicaid beneficiaries who need help with self-care due to disabilities or health conditions.

[36] According to AoA, many of those who exploit older adults are informal or family caregivers who are not employed or subject to background checks and this may be a more difficult type of exploitation to prevent.

subject to limited, if any, background checks. A California law enforcement official told us that caregivers suspected of exploiting older adults sometimes have a history of theft. While the Medicaid program requires states to develop and implement home care provider qualification standards, there is no federal Medicaid requirement for criminal background checks.[37] According to the National Conference of State Legislatures, while many states have required agencies to conduct background checks before employing in-home caregivers who are paid by Medicaid or with other state funds, these laws vary greatly in their breadth and scope and the amount of flexibility afforded the agencies when they use the checks to make hiring decisions.[38] Napa County, California recently initiated an innovative paid in-home caregiver screening initiative. Before in-home caregivers can work in that county, they must submit to a background check and obtain a permit annually.[39]

While background checks for in-home caregivers help flag potential abusers, an AARP study has found that states do not always use all available federal, state, and local criminal data systems. For one, the implementation cost may discourage their use. Moreover, their effectiveness in reducing elder abuse, in general, is unproven.[40] As required by the Patient Protection and Affordable Care Act of 2010,[41] the Centers for Medicare and Medicaid Services implemented the National Background Check Program that encourages states to adopt safeguards to protect clients of in-home caregivers. This voluntary program provides grants to states to conduct background checks for employees of long-term care facilities and providers, such as home health agencies and

[37] States must enact standards for provider participation to ensure that providers are qualified, effective, and cost-efficient, and to protect program beneficiaries. At the same time, these requirements must not unfairly restrict participation in the Medicaid program. As long as states meet these criteria, they have significant latitude in specifying their provider qualification requirements. AARP Public Policy Institute, *Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers* (September 2010).

[38] National Conference of State Legislatures, *State Policies on Criminal Background Checks for Medicaid-Supported In-Home Direct Care Workers* (December 18, 2008).

[39] See appendix XII for examples of background check requirements for in-home caregivers in the four states we reviewed.

[40] See AARP Public Policy Institute, *Safe at Home?*

[41] Pub. L. No. 111-148, tit. VI, subtit. C, § 6201, 124 Stat. 119, 721.

personal care service providers. As of November 2012, 19 states were participating. The results of this program could provide data on the effectiveness of background checks in preventing elder abuse, including elder financial exploitation.[42]

State and local authorities in the four states we visited told us current safeguards are not always sufficient to prevent exploitation by those older adults depend on for assistance. Although states are generally responsible for laws and regulations regarding these issues, the OAA directs the federal government to disseminate information about best practices to prevent elder abuse, including elder financial exploitation. According to our analysis, there is a role for the federal government to provide more information and guidance to prevent these types of elder financial exploitation.

State and Federal Officials Called for Greater Focus on Public Awareness

Experts and federal, state, and local officials told us that older adults need more information about what constitutes elder financial exploitation in order to know how to avoid it.[43] However, APS and law enforcement officials told us that it is difficult for them to reach many older adults with this message and that they have little funding to promote public awareness. For example, in one California county officials reported that due to budget cuts, they had lost many positions that involved educating the public about elder financial exploitation.

Each of the seven federal agencies we reviewed independently produces and disseminates public information on elder financial exploitation that is tailored to its own mission. For example, SEC produces information to educate investors about fraud prevention, including an investment guide for older adults. FTC publishes information to protect consumers, and AoA disseminates information to help reduce elder abuse, including elder financial exploitation. (See table 2 for examples of the types of information provided by each of these agencies.) These seven agencies

[42] In addition to criminal background checks, APS agencies in several states maintain a registry of elder abuse offenders that can be used to flag in-home caregivers who might financially exploit older adults.

[43] See appendix X for examples of activities undertaken by APS, criminal justice, and consumer protection agencies in California, Illinois, New York, and Pennsylvania to educate and inform older adults about elder financial exploitation. See appendix XI for examples of these activities undertaken by private organizations.

have also worked together at times to increase public awareness of elder financial exploitation. For example, each year FTC and the Postal Inspection Service collaborate on community presentations during National Consumer Protection Week.

Table 2: Selected Public Awareness Efforts of Federal Agencies Related to Elder Financial Exploitation

Agency	Public Awareness Efforts
CFPB	Office for Older Americans provides information for the public on its website about how to avoid being exploited. Published a guide for consumers about reverse mortgages.
FTC	Produces publications, pamphlets, and videos on a range of consumer protection issues, such as telemarketing fraud, and distributes them via its website, the media, and partnering organizations. Piloted a partnership with the AARP Foundation that funds peer counseling for older adults or their relatives who think they have been victimized. Works with AoA's Senior Medicare Patrols to distribute educational materials to older adults and collect complaints.
AoA	Distributes an e-newsletter discussing elder abuse, including financial exploitation. Maintains Senior Legal Helplines. Provides elder abuse prevention grants. Collaborates with nonprofit Women's Center for a Secure Retirement to provide a gateway for financial information for women.
Justice	Provides grants to states, localities, and nonprofits for elder abuse prevention activities, including education and public awareness campaigns. Provides information through its public websites on how individuals can protect themselves from and report various types of financial fraud.
SEC	Distributes investor information that may relate to elder financial exploitation via its website, hotline, pamphlets, and regional events. Provides an investment fraud guide for older adults. Produces investor alert bulletins. Works with AARP, FINRA, and state securities regulators on the Outsmarting Investment Fraud campaign.
FinCEN	Provides the public with information via its website on scams and resources for victims of fraud or identity theft.
Postal Inspection Service	Deployed FakeChecks.org Campaign in 2007 to target international fraud schemes that are often directed toward older adults. In 2010, sent a postcard containing information about preventing fraud, including elder financial exploitation, to every U.S. household. Participated in AARP Town Hall meeting in 2011. Conducts ongoing fraud prevention messaging on its website. Makes community presentations on how to avoid scams during National Consumer Protection Week each March (with FTC).

Source: GAO analysis of agency documents and interviews.

However, although the OAA calls for a coordinated federal elder justice system,[44] which includes educating the public, the seven agencies we reviewed do not conduct these activities as part of a broader coordinated approach. In previous work, we found that agencies can use limited funding more efficiently by coordinating their activities and can strengthen their collaboration by establishing joint strategies.[45] Similar calls for coordination were raised when the EJCC held its first meeting on October 11, 2012, to begin implementing its mandate to coordinate federal elder justice activities and develop national priorities. As EJCC Chairman, the Secretary of HHS stated that combating elder abuse—which includes elder financial exploitation—is an "all-of-government" effort and that federal programs are not organized in a strategic way, which decreases their effectiveness. One expert noted that there is a clear need for a strategic, multi-faceted public awareness campaign on elder abuse. An official from the Financial Services Roundtable[46] added that many agencies are trying to focus on awareness and education, but their efforts appear unorganized and uncoordinated.

Difficulty Gaining Expertise, Sustaining Collaboration, and Obtaining Data Hinders States' Responses to Elder Financial Exploitation

[44] 42 U.S.C. § 3011(e)(2).

[45] See GAO, *Results-Oriented Government: Practices that Can Help Enhance and Sustain Collaboration Among Federal Agencies,* GAO-06-15, (Washington, D.C.: October 21, 2005).

[46] The Financial Services Roundtable is an advocacy group with members from the banking, securities, investment, and insurance sectors. It aims to protect and promote the economic vitality and integrity of its members and the U.S. financial system.

Special Knowledge and Skills Are Needed to Respond to Elder Financial Exploitation

According to state and local officials we spoke with in four states, effectively investigating and prosecuting elder financial exploitation requires special skills and knowledge, which APS workers, law enforcement officers, and district attorneys sometimes lack. For example, APS officials noted that some case workers have little background or training in investigating financial crimes, and would find it difficult to respond to these cases. Local law enforcement officials also noted that they receive little training on elder financial exploitation and need additional training to build expertise. In addition, we were told that some prosecutors and judges are reluctant to take on cases of suspected elder financial exploitation because of competing priorities and limited resources, a continuing belief that elder financial exploitation is primarily a civil issue, or a view of older adult victims as unreliable witnesses.

State and local officials in the four states we reviewed are attempting to increase their expertise.[47] For example, some state and local officials told us they attempt to acquire investigative expertise through formal and on-the-job training, by dedicating units or staff to investigate suspected cases of elder financial exploitation, or by contracting for assistance from certified fraud examiners or other forensic accountants.[48] However, state and local officials also told us that funding constraints limited their ability to build this additional expertise. Moreover, officials and experts told us that in order to more effectively allocate their limited resources, state and local entities would need more information about which practices have proven to be most effective for investigating, as well as preventing, elder financial exploitation.

AoA and Justice have developed some resources that could be used to help state and local agencies build expertise in identifying, investigating, and prosecuting elder financial exploitation (see table 3).

[47] See appendix X for examples of activities undertaken by APS, criminal justice, and consumer protection agencies in California, Illinois, New York, and Pennsylvania to build additional expertise. See appendix XI for examples of these activities undertaken by private organizations.

[48] Forensic accountants specialize in investigating financial crimes. The Certified Fraud Examiner credential is one professional designation that a forensic accountant may hold.

Table 3: Examples of AoA and Justice Resources That Could Be Used to Increase State and Local Expertise about Elder Financial Exploitation

Agency	Resource
AoA	National Center on Elder Abuse website has materials on elder abuse, including elder financial exploitation.
	AoA makes formula grants to states and territories under Title VII of the Older Americans Act that are used to fund training.[a]
	National Adult Protective Services Resource Center provides information and technical assistance aimed at APS professionals.
	National Legal Resource Center provides training and information on legal issues affecting older adults.
	Model Approaches to Statewide Legal Assistance Systems demonstration program includes two elder abuse projects that focus on elder financial exploitation.
Justice	Funding the development of APS elder abuse training modules.
	Justice's Office on Violence Against Women, Office for Victims of Crime, and Bureau of Justice Assistance fund a number of trainings—including some material devoted to elder financial exploitation—to law enforcement and others in the field each year.
	Prosecutors in the Criminal Division's Fraud Section have provided training at national conferences on elder fraud.
	Created an elder financial exploitation guide for police officers.
	Plans to fund the development of online training for legal aid attorneys on identifying and responding to elder abuse, including financial exploitation.
	Developing strategies and best practices for financial fraud and identity theft investigations.

Source: GAO analysis of HHS and Justice materials and interviews.

[a] 42 U.S.C. §§ 3058b and 3058i.

Under the EJA, HHS is authorized to develop and disseminate best practices and provide training for APS workers,[49] and AoA-supported resource centers compile information about elder abuse in general for easy access. However, information pertaining specifically to elder financial exploitation topics—such as mass marketing fraud, power of attorney abuse, or investment fraud—may be dated or more difficult to find because it is intermingled with other materials.[50] For example, AoA's National Center on Elder Abuse (NCEA) has compiled a list of elder abuse training materials from a variety of sources, but we could find no quick and clear way to identify which trainings cover financial exploitation.

Additionally, Justice officials told us that it would be beneficial for more training to be available to prosecutors of elder abuse. Justice has identified providing training and resources to combat elder abuse as a

[49] § 2042(a)(1)(C), 124 Stat. 794, 1397m-1(a)(1)(C).

[50] See appendix XIII for more information on AoA resource centers.

strategy to achieve its objective of preventing and intervening in crimes against vulnerable populations. Justice officials indicated that they are developing an elder justice prosecution website that could serve as a resource and help build expertise. The website is expected to consolidate training materials in use across the country, primary litigation materials from local district attorneys, and information from relevant academic centers, such as the University of California at Irvine and Stanford University. However, it is unclear when this project will be completed, as Justice officials are waiting for materials from local district attorneys. As a result, prosecutors and other law enforcement officials currently do not have access to these materials.

States Identified Additional Federal Support Needed to Sustain Crucial Collaborations across Systems and Levels of Government

Collaboration between APS and Criminal Justice Systems

The OAA requires AoA to develop a plan for promoting collaborative efforts to support elder justice programs at all levels.[51] Officials we met from state and local social service and criminal justice agencies in three of the four states we reviewed said that while collaboration between their systems is important for combating elder financial exploitation, collaborating can sometimes be difficult because the two systems differ in the way they respond to exploitation and carry out their work. Specifically, APS focuses on protecting and supporting the victim, and criminal justice focuses on prosecuting and convicting exploiters. However, according to experts, by working together, APS, the criminal justice system, and other partners can more easily accomplish both of these goals.[52] Experts have noted that some type of multidisciplinary response to elder abuse—including elder financial exploitation—is prudent because of the complex

[51] 42 U.S.C. § 3011(e)(2)(a)(ix).

[52] See Adria E. Navarro et al., "Holding Abusers Accountable: An Elder Abuse Forensic Center Increases Criminal Prosecution of Financial Exploitation" (funded by Justice), *The Gerontologist*, vol. 0, (May 15, 2012). This study was funded by Justice.

nature of the problems faced by victims and the wide variety of responses required to help them and to prosecute exploiters.

In each of the four states we reviewed, local initiatives helped bridge the gap between APS and criminal justice agencies.[53] In some locations APS, criminal justice agencies, and other public and private entities have formed groups that meet periodically to develop awareness activities, foster information sharing, and discuss and resolve individual cases. Some multidisciplinary groups discuss elder abuse broadly, such as elder abuse task forces in some Pennsylvania counties and multidisciplinary groups in New York City. Others concentrate on financial exploitation specifically, such as the Philadelphia Financial Exploitation Task Force, and Financial Abuse Specialist Teams in some California counties.

Although multidisciplinary groups responding to elder financial exploitation already exist in each of the four states we visited and elsewhere, forming and sustaining these groups continues to be challenging, according to law enforcement officials in one state we visited and experts. Busy schedules and competing priorities make it difficult for some participants to attend meetings regularly, and a group's focus influences how extensively members are willing to participate. For example, in one location officials told us that when the primary focus of their group shifted from prosecuting cases to providing services, participation by law enforcement officials declined. Collaborative efforts can also be undermined by a history of poor interaction between member organizations, differences in systemic understanding of elder financial exploitation, difficulties communicating across disciplines, different understandings of limits on information sharing, unclear roles, and failure to address the group's long-term survival.[54] However, information on relevant promising practices in this area could help promote creation of such groups—particularly when resources are limited—and ensure their success.

[53] See appendix X for examples of activities undertaken by APS, criminal justice, and consumer protection agencies in California, Illinois, New York, and Pennsylvania to support collaboration. See appendix XI for examples of these activities undertaken by private organizations.

[54] Brandl et al., *Elder Abuse Detection and Intervention* (New York: 2007).

Federal agencies have made some efforts to promote and inform collaboration between the APS and criminal justice systems in states. However, agencies have taken few steps to compile or disseminate promising practices in creating or sustaining multidisciplinary groups responding to elder financial exploitation, even though the OAA requires AoA to develop and disseminate information on best practices for adult protective services. AoA and Justice have offered a small number of grants to states to combat elder abuse or other crimes that require or encourage collaborative efforts such as multidisciplinary teams (see Table 4).

Table 4: Examples of Federal Grants That Encourage Collaboration among State Agencies That Respond to Elder Abuse

Agency	Grant
AoA	Elder Abuse Prevention Interventions Program: Requires grantees to have a partnership that includes at least the APS and criminal justice systems. AoA expected to award between $625,000 and $1.02 million each to 5-8 grantees in 2012.
	Elder Justice Community Collaborations: Relatively small ($10,000) grants specifically for setting up elder justice coalitions were awarded to over 40 grantees from 2007 to 2010.
	Prevention of Elder Abuse, Neglect, and Exploitation (OAA Title VII-A3), formula grants to all states and territories that broadly require collaboration between social services and criminal justice systems.
	Attorneys funded by Title IIIB of the Older Americans Act may work with APS in various situations, including situations dealing with guardianship issues.
	Funding from AoA's Model Approaches to Statewide Legal Assistance Systems demonstration grants may be used to support projects that address financial fraud in a collaborative fashion.
Justice (Office on Violence Against Women)	Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life Program: Requires a partnership of criminal justice agencies, prosecutors, and nonprofits.

Source: GAO analysis of HHS and Justice documents and interviews.

AoA's Elder Justice Community Collaborations program offered over 40 $10,000 grants, along with technical assistance and training, from 2007 to 2010 for the purpose of setting up elder justice coalitions. These coalitions, which included members across a broad range of disciplines, were required to create an elder justice strategic plan for their community, including plans for continuation beyond the grant period. This program was the only one we identified that was created specifically for the purpose of setting up new coalitions; other grants either allowed funds to be used for that purpose or required a coalition to be in place to implement the grant-funded initiative.

Collaboration on International and Interstate Financial Crimes

Interstate or international mass marketing scams include "grandparent scams," which persuade victims to wire money to bail "grandchildren" out of jail or pay their expenses, and foreign lottery scams that require victims to pay sizeable sums before they can receive their winnings.[55] In 2011, the FBI's Internet Crime Complaint Center[56] received over 300,000 complaints from victims of all ages about online fraud alone, with reported losses of about $485 million.

International Mass Marketing Scam

From 2005 to 2009, about 100 older adults wired or mailed millions of dollars to scam artists working out of "boiler rooms" in a Middle Eastern country, in response to a phone call from "an attorney" claiming they had won a lottery or sweepstakes but had to first pay several thousand dollars in "taxes" or "fees" to receive their winnings. The perpetrators used information individuals had provided on sweepstakes entry forms to target older adults with some savings or assets, in particular. Many of the victims, who ranged in age from 70 to 80, suffered from debilitating conditions including Alzheimer's or some other form of dementia. Once the perpetrators received a payment, they re-contacted victims to inform them that they needed to send more. Victims typically did as they were told, continuing to send tens and even hundreds of thousands of dollars. To lend legitimacy to this elaborate scheme, victims were sent fake documents that appeared to come from the U.S. Internal Revenue Service or another government agency, and received calls from perpetrators impersonating public officials. In addition to losing their life savings, victims of this scam suffered emotional distress and declining health. The FBI was the lead U.S. investigating agency in this case. Six suspects pled guilty to conspiracy charges filed by the U.S. Attorney's Office involving wire and mail fraud through telemarketing. Several were sentenced to between 40 and 150 months in prison. Four more have been extradited to the United States and are

Local law enforcement authorities in the four states we visited indicated that investigating and prosecuting the growing number of cases involving interstate and international mass marketing fraud, which often target older adults, is particularly difficult for them. For example, coordinating with law enforcement authorities in other jurisdictions is labor intensive,[57] so state

[55] Mass-marketing fraud refers generally to any type of fraud scheme that uses one or more mass communication techniques and technologies—such as the Internet, telephones, the mail, and even mass meetings in person—to contact, solicit, and obtain funds or other items of value from multiple victims in one or more jurisdictions. See appendix XIV for an example of a letter promoting a sweepstakes scam.

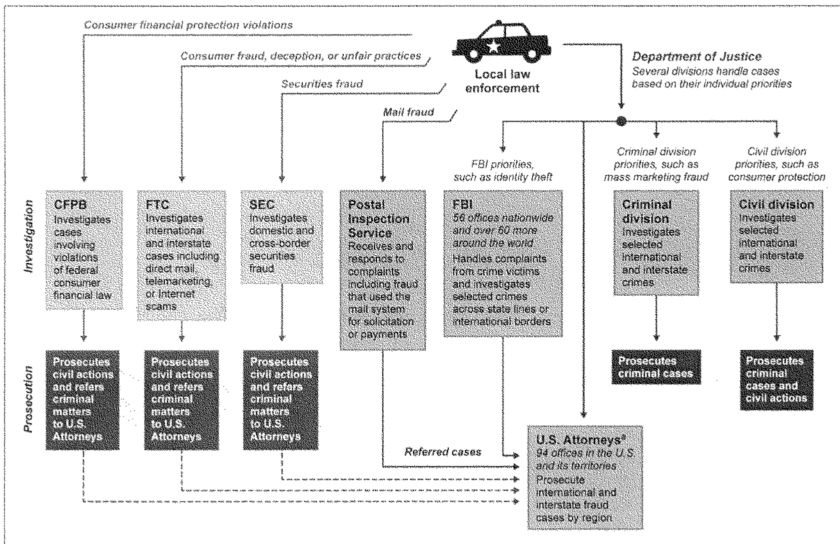
[56] The Internet Crime Complaint Center is an online system that collects complaints of suspected criminal or civil Internet-related violations and develops referrals to law enforcement and regulatory agencies at the federal, state, local, tribal, and international levels. It is a partnership between the FBI and the National White Collar Crime Center, a nonprofit that supports the investigation and prosecution of economic and high-tech crime.

[57] According to the Fraud Section of Justice's Criminal Division, lottery scam perpetrators are operating from a growing number of countries, including Costa Rica, the Dominican Republic, Jamaica, the Netherlands, Nigeria, and Spain.

and local officials are often unable to pursue these cases themselves. Furthermore, even though various federal agencies have the authority to investigate and prosecute interstate and international scams (see fig. 3),[58] local law enforcement officials told us there is not enough information available on whom they should contact when they need to refer a case to the federal level. They indicated that the lines of communication between local and federal agencies tend to be informal, based on whom local law enforcement officers know in a federal agency. Providing accurate contact information is consistent with Justice's strategic objective for fiscal years 2012-2016 to strengthen its relationships with state and local law enforcement. Justice officials told us they believe that local officials know which federal officials to contact about international and interstate cases, but state and local law enforcement officials told us that it would be helpful to have more specific information. Cases that local officials do not refer to a federal agency due to a lack of correct contact information may not be investigated or prosecuted by either federal or local authorities.

[58] In addition to the work of individual agencies, the Financial Fraud Enforcement Task Force—a broad coalition of more than 20 federal agencies, 94 U.S. Attorneys' Offices, and state and local partners—was created by executive order to (1) investigate and prosecute significant financial crimes and other violations related to the current financial crisis and economic recovery efforts, (2) recover the proceeds of such crimes and violations, and (3) ensure just and effective punishment of those who perpetrate such crimes and violations. Exec. Order No. 13,519, 74 Fed. Reg. 60,123 (Nov. 19, 2009). The Consumer Protection Working Group formed under the Task Force in early 2012 focuses on strengthening the government's collective efforts to address consumer-related scams targeting vulnerable populations.

Figure 3: Federal Agencies' Responsibilities in Combating International and Interstate Financial Crimes



Source: GAO analysis of information provided by federal agencies.

[a] U.S. Attorneys also participate in the investigation of cases, either alone or in cooperation with other agencies.

In addition to not knowing whom to contact, state and local law enforcement officials in the four states we reviewed told us that they are concerned that federal agencies do not take enough of the cases that are referred to them. For example, a law enforcement official from California described a case of widespread interstate check fraud, expressing frustration with federal agencies that would not provide any support when he requested it. Federal officials, on the other hand, told us that they cannot take all cases referred to them by state and local law enforcement and that they must prioritize their caseload to make the best use of their limited resources. Justice and FTC officials said they tend to focus on larger cases in which many victims were affected or a significant amount of money was lost, and Justice's U.S. Attorneys also apply regional priorities, such as the vulnerability (including age) of the victim, when determining which cases to take.

Even if federal agencies choose not to take a case a state or local agency refers to them, officials told us that consistent referrals of cases by state and local authorities allow them to identify patterns or combine several complaints against the same individual into one case. FTC's Consumer Sentinel Network database (Consumer Sentinel) collects consumer complaint data and aims to be an information-sharing tool to enable state and local law enforcement to become more effective.[59] Justice officials said they encourage individuals and state and local authorities to file a complaint of suspected fraud to either the Consumer Sentinel or the FBI's Internet Crime Complaint Center. However, while some state Attorneys General were familiar with the FTC database, local law enforcement officials we spoke with did not say that they reported cases to it or used its data. One official said he did not find the Consumer Sentinel database useful because law enforcement officials are not familiar with it.

FTC officials explained that while they have made attempts to get state-level offices to contribute to the Consumer Sentinel, barriers such as reservations about data sharing, obsolete technological infrastructure, and severe budgetary cutbacks have kept the numbers of contributors low. When state officials do not contribute to the Consumer Sentinel, the information in the database does not give a national picture of the extent of cross-border scams. As a result of this—in addition to the impact of some law enforcement officials not using the system—it may be more difficult to combat these scams, and officials at all levels may not have the information they need to target their resources appropriately.

Working Cooperatively with Banks

According to state and local officials, banks are important partners in combating elder financial exploitation because they are well-positioned to recognize, report, and provide evidence in these cases. Indeed, frontline bank staff are able to observe elder financial exploitation firsthand. For

[59] FTC's Consumer Sentinel Network is an online database that houses millions of consumer complaints available to law enforcement. Sentinel's roster of 28 current data contributors includes 12 state attorneys general, the FBI's Internet Crime Complaint Center, and the Council of Better Business Bureaus. More than 2,600 users from over 2,000 law enforcement agencies worldwide use the system to share information, prosecute cases, conduct investigations, and pursue leads.

example, a bank teller who sees an older adult regularly is likely to notice if that individual is accompanied by someone new and seems pressured to withdraw money or if the older adult suddenly begins to wire large sums of money internationally.

There are state efforts and bank policies to help bank employees recognize exploitation. In Illinois, all state-chartered banks are required to train their employees on what constitutes elder financial exploitation.[60] State and local agencies in California and Pennsylvania provide information and training to banks to help them recognize elder financial exploitation. Most of the six banks we spoke with had a policy for periodically training employees on identifying elder financial exploitation. In addition, these banks had a system in place that routinely monitors bank transactions for unusual activity and can help identify exploitation.

Banks may also help report suspected elder financial exploitation to local authorities. Training initiatives, such as Illinois' program, encourage bank employees to report exploitation. Most of the six banks we spoke with had procedures in place for frontline employees to report suspected elder financial exploitation to bank management. Some of these banks also had internal units that are dedicated to receiving staff reports of elder financial exploitation and referring them to the proper authorities.

Notwithstanding such efforts, APS and criminal justice officials told us elder financial exploitation is generally underreported by banks.[61] Despite the training they receive, bank staff may not be aware of the signs of elder financial exploitation or know how to report it. In addition, in five of the six prosecuted cases we reviewed in depth, there were missed opportunities for banks to raise questions about transactions. For example, in one case, bank officials did not take any action in response to repeated withdrawals of large amounts of money that were not typical for

[60] The Illinois Department on Aging designed and administered the training protocol and the Illinois Department of Financial and Professional Regulation certifies compliance with the training requirement.

[61] Most states require some classes of professionals or organizations to report suspected elder abuse, which may include financial exploitation of older individuals, to state authorities. Some states, including California—a state we contacted—specifically include banks as mandatory reporters. Cal. Welf. & Inst. Code § 15630.1 (2012). Some states immunize individuals who make such reports in good faith from civil and/or criminal liability under state law.

that customer. Bank officials said they do report suspected elder financial exploitation, but also emphasized that banks are not law enforcement agencies. Officials said their primary responsibility is to protect customer assets and privacy and ensure customers have access to their funds. In addition, a banking association representative told us that even though federal privacy laws do not prohibit banks from reporting suspected abuse, banks are concerned that they will be held liable if they report suspected exploitation that is not later substantiated.

Three federal agencies—CFPB, AoA, and FinCEN—are positioned to encourage banks to identify and report elder financial exploitation, either due to the agency's mission or via proposed or existing activities. The CFPB is the primary federal consumer protection regulator with respect to a variety of financial institutions, including banks. The Dodd-Frank Act authorizes the CFPB to protect consumers, including older adults, from abusive practices committed in connection with the offering or provision of consumer financial products or services.[62] In a November 2011 congressional testimony, the Assistant Director of CFPB's Office for Older Americans said the agency has a unique opportunity to help enhance, coordinate, and promote efforts of a variety of groups, including financial services providers.[63]

While the federal government generally requires banks to train employees on a variety of issues, such as money laundering, physical bank security, and information security,[64] we could find no similar requirements for banks to train employees to recognize and report elder financial exploitation. However, AoA is considering collaborating with one large national bank on a project to encourage bank training on elder financial exploitation.

Banks are also required to file Suspicious Activity Reports (SAR) with FinCEN to alert them of potentially illegal bank transactions that involve, individually or in the aggregate, at least $5,000, which could include elder

[62] § 1031, 124 Stat. 1979-80 (12 U.S.C. § 5531).

[63] Testimony before the Subcommittee on Financial Institutions and Consumer Protection United States Senate Committee on Banking, Housing, and Urban Affairs (Washington, D.C., November 15, 2011).

[64] 31 U.S.C. § 5318(h)(1)(C), 12 C.F.R. § 21.3(a)(3), and pt. 30, app. B (2012).

financial exploitation.[65] In February 2011, FinCEN issued an advisory to banks that described elder financial exploitation, provided potential indicators of elder financial exploitation, and requested the use of a specific term ("elder financial exploitation") when applicable in SAR narratives related to this activity.[66]

Bank records can help investigators track an older adult's use of funds over time and detect irregularities. APS officials in Pennsylvania told us that although Pennsylvania state law grants APS access to bank records, they are often denied access on the basis of federal privacy laws or the bank's policies. APS officials from California, Illinois, and New York also reported that they are denied access to bank records for the same reasons.[67] As a result, investigators are unable to obtain the information necessary to investigate suspected exploitation, identify perpetrators, stop further exploitation from occurring, or obtain restitution for victims. Bank officials told us the federal government could help clarify bank roles and responsibilities related to privacy and financial exploitation of older adults.[68]

There are two federal laws that generally protect the privacy of consumer banking records: the Right to Financial Privacy Act of 1978 (RFPA)[69] and

[65] 31 C.F.R. § 1020.320(a) (2012). If a financial institution knows, suspects, or has reason to suspect, for example, that transactions have no business or apparent lawful purpose or are not the sort in which a particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, the financial institution must file a SAR.

[66] FinCEN stores SARs in a database and each state has a law enforcement point-of-contact with access to the database. Local police and district attorneys rely on their state's FinCEN point-of-contact to obtain SAR information. While SARs could contain leads on elder financial exploitation cases, local officials we spoke with said they did not use SARs often to build criminal cases and SARs are not a vehicle for fast action.

[67] Local criminal justice agencies said that they are able to obtain bank records with a subpoena or search warrant, but banks sometimes take a long time to provide the records. This, in turn, extends already time-intensive investigations.

[68] The American Bar Association completed a report on this issue and concluded that federal privacy laws do not prohibit banks from sharing information in suspected cases of elder financial exploitation. American Bar Association, *Can Bank Tellers Tell? Legal Issues Relating to Banks Reporting Financial Abuse of the Elderly* (2003).

[69] Pub. L. No. 95-630, tit. XI, 92 Stat. 3641, 3697-3710 (codified as amended at 12 U.S.C. §§ 3401-3422).

the Gramm-Leach-Bliley Act.[70] Each establishes standards that banks must meet to safeguard customer banking information. The RFPA generally prohibits financial institutions, including banks, from providing any federal governmental authority with access to copies of information in any customer's records without first providing notice to the customer. Because a government authority is defined in RFPA to include only federal agencies and officials, however, it should not prevent banks from reporting possible financial exploitation of older adults—or providing bank records to—state APS.

The Gramm-Leach-Bliley Act generally prohibits financial institutions, including banks, from disclosing nonpublic personal information to third parties including, but not limited to, federal governmental authorities. Nonetheless, the act has a number of general exceptions permitting disclosure, such as: to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; consistent with the RFPA, for an investigation on a matter related to public safety; or to comply with a properly authorized civil, criminal, or regulatory investigation, subpoena, or summons by federal, state, or local authorities.

Incomplete Data Hinder Efforts to Combat Elder Financial Exploitation

The NCEA and experts have called for more data on the cost of elder financial exploitation to public programs and for trend data on its extent. According to our analysis, these data could help determine what government resources to allocate and how best to prevent and respond to this problem. According to one Utah official, quantifying the impact of elder financial exploitation in that state helped that state's legislators understand the importance of combating this problem and convinced them to simply decrease, rather than eliminate, state APS funding altogether.[71] However, according to our analysis, no other state has undertaken such a study.

Similarly, data on the extent of elder financial exploitation over time could help state and local APS, as well as law enforcement agencies, assess

[70] Pub. L. No. 106-102, §§ 501-510, 113 Stat. 1338, 1436-1445 (codified as amended at 15 U.S.C. §§ 6801-6809).

[71] See Gunther, "The 2010 Utah Cost of Financial Exploitation."

the effectiveness of their efforts to combat it. The OAA[72] and EJA both require the federal government to take steps to collect and disseminate data on all types of elder abuse,[73] yet the studies federal agencies have funded in this area have produced little data on its extent over time, as we previously reported,[74] or on its cost.

Several federal agencies do collect administrative data on the number of complaints submitted by consumers or criminal cases that sometimes involve elder financial exploitation (see table 5)—data that could help state and local APS and law enforcement authorities determine what resources to allocate and how best to prevent and respond to this problem. Each agency publishes material containing a range of administrative data from its system that is available to the public. FTC, for example, publishes statistics from the Consumer Sentinel on the number and types of complaints, amount of losses, and characteristics of victims.[75]

Table 5: Federal Administrative Data Systems That Collect Incidents of Elder Financial Exploitation

Data System/Agency	Information Collected	Identifies Age of Victim?	Contributors
FTC's Consumer Sentinel Network	Information on consumer complaints, including investment and mass marketing fraud, and identity theft. The FTC adds cases from the FBI's Internet Crime Complaint Center to the Consumer Sentinel.	Optional. Less than half of complaints currently include age.	Some state and local law enforcement agencies, federal agencies, nongovernmental and private entities, and individuals.
FinCEN's SAR Data	Information on suspicious financial transactions, both actual and attempted.	Option to identify suspected elder financial exploitation[a] and age of victim.	Banks and other financial institutions.
FBI's Internet Crime Complaint Center	Complaints about cyber-crime, including online fraud.	Age is a required field.	State and local law enforcement agencies, as well as individuals.
Justice's National Incident-Based Reporting System	Each single incident of and arrest for 46 crimes collected from state, local, and federal law enforcement agencies that participate in the system.	Age is a required field for individual victims.	State and local law enforcement agencies.

[72] 42 U.S.C. § 3012(e)(2)(A)(iii) and (iv), and (16).

[73] § 2042(a)(1)(B), 124 Stat. 794 (codified at 42 U.S.C. 1397m-1(a)(1)(B)).

[74] See GAO-11-208.

[75] FTC (2012) *Consumer Sentinel Network Data Book for January - December 2011.*

Data System/Agency	Information Collected	Identifies Age of Victim?	Contributors
SEC's Tips, Complaints, and Referrals Portal	Complaints about investments or financial professionals.	Information about age is not required.	All sources, including individual investors.

Source: GAO analysis of documents provided and interviews granted by FTC, FinCEN, Justice, and SEC.

[a] In 2012, FinCEN released a revised SAR that includes a check box that enables filers to indicate clearly that they are reporting suspected elder financial exploitation. The revised SAR is currently available for use, and will become mandatory at the end of March 2013, according to FinCEN officials.

While the number of reported incidents of elder financial exploitation in each agency's system represents only a portion of all cases that actually occur in a given period and geographic area, the number over time could provide an indication of fluctuations in the extent of certain types of elder financial exploitation.

Data from the Consumer Sentinel could be of particular interest to state and local APS and law enforcement authorities, because over half of the consumer complaints reported to this system involve financial exploitation through fraud. Individual complaints can be directly reported to the Consumer Sentinel by victims or others on their behalf. Cases reported to the FBI Internet Crime Complaint Center and non-governmental organizations, such as the Council of Better Business Bureaus, are also added to the complaints in the Consumer Sentinel. Currently, however, the Consumer Sentinel does not receive any of the complaints reported to any of the law enforcement or consumer protection agencies in 38 states. Moreover, less than half the complaints in the Consumer Sentinel contain the age of the victim because FTC does not require complaints to include this information or other indicators of whether the case involved elder financial exploitation.[76] FTC officials told us the agency does not require complaints to include the age of the victim because of concerns regarding privacy and the potential burden this might place on individual complainants. In contrast, SARs in the FinCEN system will soon all be clearly identified when a filing institution reports suspected elder financial exploitation.

In 2011, we found that state-level APS data could provide useful information on the extent of elder abuse, including elder financial exploitation, over time. We recommended that AoA work with states to

[76] See appendix XV for additional information on the data in the Consumer Sentinel Network.

develop a nationwide system to collect and compile these data.[77] AoA officials told us they have initiated discussions with states about establishing such a system, but have been unable to develop a comprehensive plan for implementing one due to a lack of funding.

Conclusions

Elder financial exploitation is a multi-faceted problem spanning social service, criminal justice and consumer protection systems of government. As a result, combating it is challenging and requires action on the part of not only many state and local agencies, but also multiple agencies at the federal level. Each of the seven federal agencies we reviewed is working to solve this problem in ways that are consistent with its own mission. However, the problem is large and growing. It calls for a more cohesive and deliberate approach governmentwide that, at a minimum, identifies gaps in efforts nationwide, ensures that federal resources are effectively allocated, establishes federal agency responsibilities, and holds agencies accountable for meeting them.

The EJCC has recognized that combating elder abuse, including elder financial exploitation, is an effort that requires federal agencies to work together. A clearly articulated national strategy is needed to coordinate and optimize such federal efforts to effectively prevent and respond to elder financial exploitation, and the EJCC can be the vehicle for defining and implementing this strategy. In the current economic climate, state and local APS and law enforcement agencies will find it increasingly difficult to cope with growing numbers of cases without a national strategy attuned to their need for information and guidance on preventing and responding to elder financial exploitation, as well as additional data on its extent and impact.

In addition to working together to build a national strategy to combat elder financial exploitation, there are a number of ways individual federal agencies could better support state and local APS and law enforcement agencies. For example, Justice has identified providing training and resources to combat elder abuse as a strategy to achieve its objectives of preventing and intervening in crimes against vulnerable populations. Without easily accessible information and guidance tailored to the needs of prosecutors nationwide, they may continue, given limited resources, to

[77] See GAO-11-208.

make such cases a low priority. Similarly, many cases cross jurisdictions and could involve multiple victims or have perpetrators located in other countries. These cases may not be investigated or prosecuted unless state and local law enforcement have better information on the process for contacting the federal government regarding these cases or the ways in which the federal government could provide support.

Without information to correct banks' misconceptions about the impact of federal privacy laws on their ability to release bank records, APS and law enforcement agencies will continue to find it difficult to obtain the information they need from banks to investigate suspected cases of elder financial exploitation. Moreover, without educating bank employees nationwide on how to identify and report suspected elder financial exploitation, many cases will continue to go unreported, uninvestigated, and unprosecuted. The CPFB is positioned to provide additional information to banks, as part of the agency's consumer protection regulatory function and dedication to protecting the financial health of older Americans.

Finally, to fulfill its mission of protecting consumers against unfair, deceptive, or fraudulent practices, the FTC established the Consumer Sentinel Network database to enhance information-sharing and support law enforcement at all levels. The Consumer Sentinel could serve as a valuable source of data on the extent of some types of elder financial exploitation nationwide and as an important resource for law enforcement authorities as they identify, investigate, and prosecute cases. The Consumer Sentinel's usefulness in this area, however, will continue to be limited until the number of contributors to it is increased and complaints are required to include the age of the victim or other indicators of whether the case involved elder financial exploitation. In the absence of the latter, it is difficult to determine the number of financial exploitation complaints that involve older adults, which in turn makes any Consumer Sentinel data contributed less useful to state and local APS and law enforcement agencies.

Recommendations for Executive Action

To coordinate and optimize federal efforts to prevent and respond to elder financial exploitation, we recommend the Secretary of HHS, as chairman of the Elder Justice Coordinating Council, direct the Council to develop a written national strategy for combating this problem. This strategy should include a clear statement of its purpose and goals and indicate the roles and responsibilities particular federal agencies should have in implementing it. The strategy could address, among other things, the need to

- identify and disseminate promising practices and other information nationwide that can be used by state and local agencies to prevent exploitation, educate the public, and help state and local agencies collaborate, investigate, and prosecute elder financial exploitation;
- ensure coordination of public awareness activities across federal agencies; and
- collect and disseminate better data nationwide to inform federal, state, and local decisions regarding prevention of and response to elder financial exploitation.

To develop expertise among prosecutors and other criminal justice officials, we recommend the Attorney General establish timeframes for and take the steps necessary to launch the elder justice prosecution website that Justice has begun to construct.

To facilitate investigation and prosecution of interstate and international elder financial exploitation, we recommend the Attorney General conduct outreach to state and local law enforcement agencies to clarify the process for contacting the federal government regarding these cases and the ways in which the federal government could provide support.

To encourage banks to identify and report suspected elder financial exploitation and to facilitate release of bank records to APS and law enforcement authorities for investigating this activity, we recommend the Director of the Consumer Financial Protection Bureau

- develop a plan to educate banks nationwide on how to identify and report possible elder financial exploitation; and
- develop and disseminate information for banks on the circumstances under which they are permitted, under federal privacy laws, to release relevant bank records to law enforcement and APS agencies.

To increase the usefulness of data from the Consumer Sentinel Network database for federal, state, and local investigation and prosecution of elder financial exploitation, we recommend the Chairman of the Federal Trade Commission:

- take additional steps to encourage more state and local law enforcement authorities nationwide to report to the Consumer Sentinel relevant individual complaints they receive of elder financial exploitation and to encourage and enable these authorities to query the system; and
- study the feasibility of requiring that all complaints to the Consumer Sentinel include either the victim's age or an indication of whether the complaint involves elder financial exploitation

Response to Agency Comments

We provided a draft of this report to the seven federal agencies that we reviewed for their comments. CFPB concurred with our recommendations and agreed that a collaborative and coordinated effort by federal agencies can help optimize strategies to combat elder financial exploitation (see appendix XVI). CFPB further noted that financial institutions can play a key role in preventing and detecting elder financial exploitation, and that CFPB is collecting information on financial institution training programs and considering how best to help institutions that request this information. HHS indicated in its general comments that our recommendations are consistent with what it heard during the inaugural meeting of the EJCC, and added that it looks forward to working with Congress to continue implementing the EJA (see appendix XVII).

In an e-mailed response, FTC's Bureau of Consumer Protection noted that the Consumer Sentinel database provides law enforcement with access to millions of consumer complaints. FTC added that the database has no required fields, and expressed its belief that if consumers were required to provide detailed personal information as a condition to filing a complaint, they might refuse to do so, thereby decreasing the overall effectiveness of the system. FTC explained that almost 48 percent of all fraud complaints in 2011 included the voluntary submission of age, and that nearly half of its non-individual data contributors do not submit age information in the data they provide to FTC. Given the potential for the Consumer Sentinel database to support and enhance state and local law enforcement agencies' response to elder financial exploitation, particularly interstate and international cases, we continue to believe that FTC should study the feasibility of requiring that all complaints to the Consumer Sentinel database include the victim's age or another indicator of whether the complaint involves elder financial exploitation. In doing so, FTC can examine different options, including the use of a check box similar to the one that FinCEN has included in its SARs.

We are sending copies of this report to the seven agencies we reviewed, relevant congressional committees, and other interested parties. We will also make copies available to others upon request. The report is available at no charge on GAO's website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or brownke@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix XVIII.

Kay E. Brown

Kay E. Brown, Director
Education, Workforce, and Income Security Issues

List of Requesters

The Honorable Herb Kohl
Chairman
Special Committee on Aging
United States Senate

The Honorable Bernard Sanders
Chairman
Subcommittee on Primary Health and Aging
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Richard Blumenthal
United States Senate

The Honorable Jeff Merkley
United States Senate

The Honorable Bill Nelson
United States Senate

The Honorable Sheldon Whitehouse
United States Senate

Administration on Aging (HHS)[1]

AoA

Mission

To develop a comprehensive, coordinated, and cost-effective system of home- and community-based services that helps elderly individuals maintain their health and independence.

How agency prioritizes elder financial exploitation

Strategic goal of ensuring the rights of older people and preventing their abuse, neglect, and exploitation.

Agency's role in combating elder financial exploitation

The Older Americans Act Amendments of 1965 calls for AoA to develop objectives, priorities, policy, and a long-term plan for facilitating the development of a coordinated, multidisciplinary elder justice system in the United States

The Elder Justice Act of 2009 (EJA) calls for HHS to, among other things:

- collect and disseminate data related to exploitation,
- conduct research on and develop information on best practices for Adult Protective Services (APS),
- provide technical assistance to APS, and
- establish centers to conduct research, develop expertise, and improve law enforcement's ability to combat elder financial exploitation

Contact information

Call: (202) 619-0724

Email: aoainfo@aoa.hhs.gov

Source: GAO analysis of AoA documents and interviews

Relevant agency divisions

Assistant Secretary for Aging: Assists the Secretary with activities that address challenges and opportunities for older adults

Office of Elder Rights: Administers the provisions of the Older Americans Act related to elder abuse prevention

Selected activities

- Funds and oversees the National Center for Elder Abuse (NCEA; www.ncea.aoa.gov), a national resource center dedicated to preventing elder abuse
- Funded the National Adult Protective Services Resource Center, which provides information and technical assistance to APS officials
- Provides formula grants to State Units on Aging in each state to prevent elder abuse
- Provides funds to local legal services providers, which may use the funds to assist elder financial exploitation victims
- AoA's Model Approaches to Statewide Legal Assistance Systems program funds demonstration grants, which aim to strengthen states' legal services networks, may be used to support projects that address elder financial exploitation

Coordination with other agencies

- Works with state aging agencies to help them develop statewide plans to combat elder abuse
- Through NCEA, partnered with Treasury on its Go Direct financial literacy campaign
- Partnered with Treasury and the Financial Services Roundtable on a toolkit for training financial institutions on elder financial exploitation
- Worked with the SEC on several Seniors Summits that brought agencies together to discuss elder financial exploitation
- Chairs the Elder Justice Coordinating Council, a collaborative body of federal agencies created under the EJA to recommend federal policies to combat elder abuse and ways federal agencies should coordinate to implement these policies.
- Co-leads an informal interagency workgroup that helps facilitate federal elder justice activities.

[1] On April 16, 2012, AoA became part of the Administration for Community Living, which also includes HHS's Office on Disability and Administration on Developmental Disabilities.

Consumer Financial Protection Bureau (CFPB)

Mission

To implement and enforce federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive

How agency prioritizes elder financial exploitation

Agency's organizing statute requires emphasis on older Americans and protecting them from financial exploitation

Agency's role in combating elder financial exploitation

Leadership: Office for Older Americans is the first federal office dedicated to the financial health of older Americans

Information dissemination: Provides information to consumers and to others who assist them in combating elder financial exploitation

Supervision and Enforcement: Supervises certain banks and nonbanks and brings enforcement actions when appropriate

Rulemaking: Issues rules, orders, and guidance

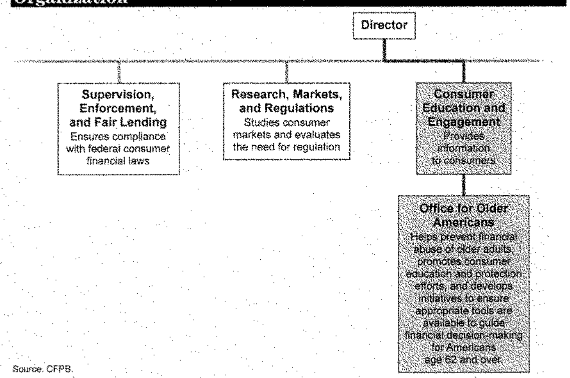
Contact information

Call: (855) 411-2372

General Information: www.consumerfinance.gov

Source: GAO analysis of CFPB documents and interviews.

Organization



Source: CFPB.

Selected activities

- Posts information for older adults on website
- Conducts research on issues affecting older Americans, such as reverse mortgages, financial advisors and their credentials, and fiduciaries
- Gathering information from the public on elder financial exploitation to learn more about the ways in which older adults are financially exploited and best practices for elder financial management. CFPB expects to share its results in 2013.

Coordination with other agencies

- Member of the Elder Justice Coordinating Council
- Member of Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime
- Works with AoA, Justice, Department of Labor, and SEC on various projects related to protecting older Americans

Federal Trade Commission (FTC)

Mission

To prevent business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity

How agency prioritizes elder financial exploitation

FTC identifies older adults as a target population for its consumer education efforts. Elder financial exploitation is included as part of the Bureau of Consumer Protection's responsibility to protect all consumers.

Agency's role in combating elder financial exploitation

Legal action: Investigates and prosecutes large-scale fraud cases

Information dissemination: Provides educational materials to consumers

Data collection: FTC's Consumer Sentinel database stores individual fraud complaints; other federal, state, and local agencies use and submit information to the database

Contact information

1-877-FTC-HELP (1-877-382-4357)

General information: www.ftc.gov

To submit a complaint online: www.ftccomplaintassistant.gov/

Source: GAO analysis of FTC documents and interviews.

Relevant agency divisions

Bureau of Consumer Protection: Works to protect consumers against unfair, deceptive, or fraudulent practices in the marketplace. The Bureau conducts investigations, sues companies and people who violate the law, develops rules to protect consumers, and educates consumers and businesses about their rights and responsibilities. The Bureau also collects complaints about consumer fraud and identity theft and makes them available to law enforcement agencies across the country.

- **The Divisions of Advertising Practices, Enforcement, Financial Practices, Marketing Practices, and Privacy and Identity Protection, and FTC Regional Offices** are involved to some extent in the Bureau's elder financial exploitation activities.
- **The Division of Consumer and Business Education's** mission is to give consumers the tools they need to make informed decisions and to give businesses the tools they need to comply with law. The Division produces, promotes, and disseminates information that is timely, targeted, objective, actionable, and in plain language.

Selected activities

- The Enforcement Division, as part of its overall mission, has dedicated resources to investigating misrepresentations aimed at the "oldest old" and their caretakers. In 2012, the Division settled two administrative cases with companies that misrepresented the services they provide when referring seniors to long-term care facilities.
- In April 2012, the Division of Privacy and Identity Protection gathered information on the types of senior identity theft, how it happens, and possible solutions.
- FTC actively prosecutes fraudulent telemarketers, online and direct mail merchants engaged in a wide variety of deceptive scams.

Coordination with other agencies

- Member of Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime
- May work with international, federal, state, and local law enforcement officials to investigate cases and bring enforcement actions against scammers
- Hosts Common Ground Conferences that bring federal, state, local agencies and non-profit organizations together to share information on scams

Financial Crimes Enforcement Network (FinCEN)

Mission

To enhance the integrity of financial systems by facilitating the detection and deterrence of financial crime

How agency prioritizes elder financial exploitation

FinCEN does not specifically identify protecting older adults in its agency priorities; however, it recently released a new Suspicious Activity Report form that enables financial institutions specifically to identify suspected elder financial exploitation

Agency's role in combating elder financial exploitation

Law enforcement: FinCEN supports financial criminal investigations, most often those involving money laundering

Data collection: FinCEN aggregates data reported by financial institutions on suspicious activity reports, including reports of suspected elder financial exploitation

Rulemaking: FinCEN can issue rules and regulations implementing the Bank Secrecy Act of 1970[a] (anti-money laundering), as amended by the USA PATRIOT Act[b]

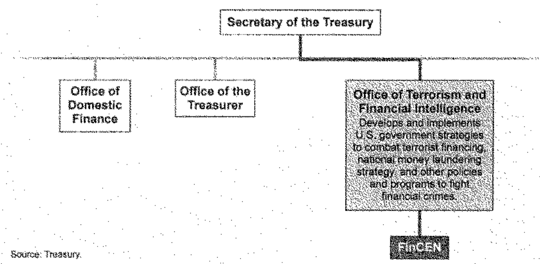
Contact information

Regulatory Helpline :
(800) 949-2732

General information:
http://www.fincen.gov

Source: GAO analysis of FinCEN documents and interviews.

Organization



Source: Treasury.

Selected activities

- Provides analytical support to law enforcement investigations and access to Suspicious Activity Reports collected from financial institutions under the Bank Secrecy Act of 1970
- Regulates financial institutions, requiring them to have anti-money laundering programs and to report suspicious activity, including elder financial exploitation
- Issued advisory to financial institutions with information about how to identify and report elder financial exploitation

Coordination with other agencies

- Member of Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime

[a] Pub. L. No. 91-508, 84 Stat. 1114 (codified as amended at 12 U.S.C. §§ 1829(b), 1951-1959; 31 U.S.C. §§ 5311-5330).

[b] The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat 272 (2001). We refer to this act as the USA PATRIOT Act.

Department of Justice

Mission

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans

How agency prioritizes elder financial exploitation

Priority goal of protecting vulnerable populations, including the elderly

Agency's role in combating elder financial exploitation

Assistance to victims: Provided as part of the Victims of Crime Act Crime Victims Fund and Violence Against Women Act of 1994, as amended

Research, technical assistance, and training: Funds research in the field of elder abuse and technical assistance and training to those in the field

Law enforcement: Investigates fraud crimes and makes arrests

Legal action: Prosecutes fraud cases

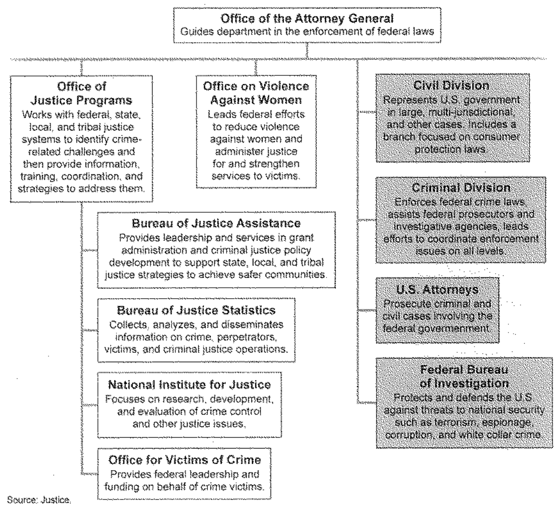
Contact information

Main number:
202-514-2000

On the web:
www.justice.gov

Source: GAO analysis of Justice documents and interviews.

Organization



Source: Justice.

Selected activities

- Prosecutes perpetrators of elder financial exploitation
- Conducts public awareness activities on elder financial exploitation
- Office on Violence Against Women and Office for Victims of Crime both provide grants for training that includes elder financial exploitation
- Bureau of Justice Statistics and National Institute of Justice both fund or conduct studies on elder financial exploitation
- See FBI and U.S. Attorney pages for details on those agencies

Coordination with other agencies

- Mandated member of Elder Justice Coordinating Council
- Member of Elder Justice Working Group
- Coordinates the Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime

Department of Justice

Federal Bureau of Investigation (FBI)

Mission

To protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States; and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners

How agency prioritizes elder financial exploitation

Priority goal of combating financial/white collar crime. Mass marketing fraud, which may include elder financial exploitation, ranks fourth among the FBI's financial crime priorities

Agency's role in combating elder financial exploitation

Law enforcement: Investigates fraud crimes and makes arrests

Contact information

Main number:
202-324-3000

On the web:
www.fbi.gov

To find your field office:
www.fbi.gov/contact-us/field

Source: GAO analysis of FBI documents and interviews

Organization

56 field offices located in major metropolitan areas and in Puerto Rico, as well as legal attaches in U.S. embassies around the world

Selected activities

- Responds to complaints from victims of crime
- Investigates selected cases of potential elder financial exploitation.
- Internet Crime Complaint Center receives complaints about internet-related crime and shares them with the Federal Trade Commission (FTC) Consumer Sentinel Network database and federal, state, and local law enforcement offices as appropriate
- Conducts outreach about elder financial exploitation to local entities such as nursing homes and financial institutions

Coordination with other agencies

- Works with local U.S. Attorneys' offices to make determinations about whether to open or continue investigations of potential elder financial exploitation cases
- Works with other federal and state agencies, such as the U.S. Postal Inspection Service, to conduct investigations
- May work jointly with foreign law enforcement agencies to investigate international mass marketing fraud cases
- Coordinates with the National White Collar Crime Center to run the Internet Crime Complaint Center (see above)
- Maintains Memorandum of Understanding with the FTC to get access to FTC's Consumer Sentinel Network database
- Participates in regional task forces on financial crime
- Member of Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime

Department of Justice

U.S. Attorneys

Mission

As the nation's principal litigators, U.S. Attorneys prosecute criminal cases brought by the federal government; prosecute and defend civil cases in which the United States is a party; and collect certain debts owed to the federal government

How agency prioritizes elder financial exploitation

Each U.S. Attorney exercises wide discretion in determining which cases to pursue to best use the office's resources to further the priorities and needs of their jurisdiction. Offices may prioritize investment and securities fraud

Agency's role in combating elder financial exploitation

Law enforcement: Investigates fraud crimes and makes arrests

Legal action: Prosecutes fraud cases

Contact information

On the web:
www.justice.gov/usao

To find your field office:
http://www.justice.gov/usao/about/offices.html

Source: GAO analysis of Justice documents and interviews.

Organization

94 offices across the country and in U.S. territories

Selected activities

- Prosecutes perpetrators of elder financial exploitation
- Provides assistance to elder financial exploitation victims

Coordination with other agencies

- May receive cases from other federal agencies, such as the FBI, the Postal Inspectors, and the SEC, as well as from state and local agencies
- May pursue cases in conjunction with partner agencies
- Participates in regional task forces on financial crime
- Member of the Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime

United States Postal Inspection Service

Mission

To support and protect the U.S. Postal Service and its employees, infrastructure, and customers; enforce the laws that defend the nation's mail system from illegal or dangerous use; and ensure public trust in the mail

How agency prioritizes elder financial exploitation

The Postal Inspection Service does not specifically identify protecting older adults in its agency priorities; however, older adults are often victimized in the mail fraud schemes it investigates

Agency's role in combating elder financial exploitation

Law enforcement: Investigates mail fraud crimes and makes arrests and has administrative authority to shut down addresses used for fraud

Information dissemination: Provides information to the public about mail fraud

Data collection: Tracks data on its cases, mines data for trends, and shares this data with FTC's Consumer Sentinel Network database

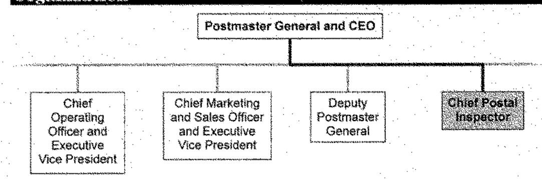
Contact information

Main number:
1-877-876-2445

On the web:
postalinspectors.uspis.gov

Source: GAO analysis of agency documents and interviews.

Organization



Source: U.S. Postal Service.

Selected activities

- 2010 mass mailing to every U.S. household on fraud, including elder financial exploitation
- Community presentations about scams during National Consumer Protection Week
- Participates in community discussions about mail fraud, such as an AARP Town Hall meeting and a panel discussion hosted by Stanford Research Center on the Prevention of Financial Fraud
- Plans to have a campaign in 2013 on preventing fraudulent lottery schemes, focusing on older adults

Coordination with other agencies

- Member of the Elder Justice Coordinating Council
- Member of the Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime
- Collaborates with Canadian and Jamaican criminal justice systems on international fraud
- Collaborates with FTC on National Consumer Protection Week

Securities and Exchange Commission (SEC)

Mission

To protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation

How agency prioritizes elder financial exploitation

SEC does not specifically identify elder financial exploitation as a priority, but it does identify older adults as a target population for its investor education, enforcement, and industry-compliance related efforts

Agency's role in combating elder financial exploitation

Supervision of investment professionals: Conducts exams and inspections of investment professionals, such as broker-dealers, investment companies, and investment advisors

Legal action: Conducts investigations and prosecutes violations of the federal securities laws

Information dissemination: Provides educational materials to investors

Rulemaking: Establishes rules on matters affecting the operations of securities markets

Contact information

Investor Information Service: 1-800-SEC-0330

www.sec.gov

www.investor.gov

Source: GAO analysis of SEC documents and interviews

Relevant agency divisions

Office of Investor Education and Advocacy: Carries out SEC's investor education program; responds to questions and complaints from members of the public; and reviews agency rulemaking from the perspective of the individual investor

Division of Enforcement: Conducts investigations into possible violations of the federal securities laws, and prosecutes cases in civil suits in the federal courts, and in administrative proceedings before an administrative law judge

Office of Compliance Inspections and Examinations: Administers the SEC's nationwide examination and inspection program and conducts inspections to foster compliance with securities laws and to detect violations of the laws

Division of Trading and Markets: Assists the Commission in executing its responsibility for maintaining fair, orderly, and efficient markets, including day-to-day oversight of major securities market participants

Selected activities

- Published *A Guide for Seniors: Protect Yourself Against Investment Fraud*
- Produced reports on free lunch seminars and promising practices that businesses can undertake to prevent and detect fraud against older adults
- Maintains a website that allows investors are able to research investment advisor firms, and provides a link to a similar website for brokers on the Financial Industry Regulatory Authority's (FINRA) website
- Issues approximately 25 investor alerts and bulletins per year
- Works with FINRA, AARP, and state securities regulators on the Outsmarting Investment Fraud campaign, which is designed to reduce investment fraud among older adults

Coordination with other agencies

- Member of Financial Fraud Enforcement Task Force, which brings numerous federal agencies together to prevent, investigate, and prosecute financial crime
- Participates in the multi-agency Financial Literacy and Education Commission, which coordinates federal financial education efforts and developed a national strategy for financial literacy

Appendix X: Examples of State and Local Activities to Prevent and Respond to Elder Financial Exploitation

State	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
California	Napa County • Caregiver Ordinance – all in-home caregivers must submit to and pass a background check and obtain a permit to provide services State Law • Mandatory elder abuse reporting for health care professionals, social workers, nursing home workers, and employees of banks and credit unions • Discretionary background checks for paid in-home caregivers Department of Corporations • Seniors Against Investment Fraud—older adults are able to check the licensing status of financial services professionals	San Bernardino County APS • Scam blasts are sent to senior centers and law enforcement agencies to alert older adults of potential scams. • "It's not your fault" publication —campaign to reduce elder financial exploitation stigma among older adults San Joaquin District Attorneys Offices Communities Against Senior Exploitation—representatives from the District Attorney's office provide examples of financial fraud and tips for personal safety and protecting personal information San Francisco District Attorney's Office • "Elder Financial Abuse the Invisible Crime" —outreach/public awareness campaign with posters in different languages urging individuals to report suspected elder financial abuse to APS Department of Corporations • Seniors Against Investment Fraud—alerts and educates Californians over the age of 50 about financial and investment fraud,	Institute on Aging • Houses the San Francisco Elder Abuse Forensic Center, which works to improve coordination among those responding to elder abuse cases; assists victims; and educates professionals and the general public on preventing, reporting, and stopping elder abuse San Bernardino County APS • Shift change briefings and pocket guide to elder abuse penal codes for local law enforcement Center of Excellence on Elder Abuse and Neglect at UC Irvine • Central source of technical assistance, multidisciplinary training, research, and policy issues in CA and nationally Stanford Center for Longevity • Conducts research on financial fraud and older adults • Created a financial fraud research center in collaboration with the Financial Industry Regulatory Authority California District Attorneys Association	San Francisco Elder Financial Abuse Collaboration • Participants from across local government and the private sector. Goal is to conduct innovative and comprehensive research and to bring stakeholders together to advocate for improved responses to elder financial abuse. San Francisco • Multidisciplinary Teams—representatives from the fields of aging, civil law, adult protective services, mental health, social work, law enforcement, and other disciplines meet to review complex abuse cases and to learn about service resources and intervention techniques. San Bernardino County • Multidisciplinary Teams—a variety of groups exist, and they discuss issues ranging from those specific to the District Attorney population to limited capacity. Teams also work on training and discuss individual cases. State Law • CA Financial Abuse Reporting Act—employees of banks

State	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
		common scams, and unscrupulous sales practices that specifically target seniors Department of Financial Institutions • Website: provides information for consumers on preventing and reporting elder financial exploitation,as well as information for banks on reporting requirements	• Provides training for police investigators San Francisco District Attorney • Provides training for CA mandated reporters Elder Financial Protection Network • Events and training for financial professionals	and credit unions are required to report suspected financial elder abuse to APS or law enforcement authorities Financial Elder Abuse Roundtable • Consists of Departments of Corporations, Insurance, Attorney General, and Aging. The roundtable hears from local members about issues that are of concern and determines how the state might help.
Illinois	Department on Aging • Volunteer Money Management Program —a protective service for limited income seniors who need help managing their finances State Law • Mandatory elder abuse reporting for social services and health care professionals • Power-of-attorney law enhanced to create liability for the agent in cases of abuse. If an agent violates the law, they will be required to repay what was stolen. • Mandatory background checks for paid in-home caregivers	Department on Aging • "Be a Savvy Senior" — publications designed to raise older adults' awareness of financial exploitation and to teach them to look for the warning signs Attorney General • Fraud alerts — information on the most common scams perpetrated against seniors • "When in Doubt, Check it Out"—consumer fraud hotline to learn of any complaints filed against a company before doing business with them • "Every Cent Counts" — tips for protecting finances of senior citizens	Department on Aging • B*SAFE program to train bank personnel on how to prevent, detect, and report financial exploitation • "Protocol for Law Enforcement: Responding to Victims of Elder Abuse, Neglect, and Exploitation" - provides model guidelines and investigation procedures for law enforcement responding to elder abuse. Protocol was created in collaboration with the Illinois Family Violence Coordinating Councils • "Reporting Elder Abuse: What Professionals Need to Know" —pamphlet to raise awareness about elder abuse and	Department on Aging • Multidisciplinary Teams— representatives from law enforcement, medical, legal, clergy, financial, and mental health sectors consult on complex cases, support case workers, and improve networking among group members Suburban Elder Justice Coalition • Led by AgeOptions, suburban Chicago AAA, the coalition works to improve coordination and cooperation between elder abuse provider agencies and law enforcement. Statewide • TRIAD programs—law enforcement officials,

State	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
		• "Just Hang Up" —to warn seniors about telephone scams Cook County Sheriff's Department • Senior Law Enforcement Academy —trains older adults on crime prevention	reporting requirements Attorney General • Elderly Service Officer Program—40 hours of elder abuse training for law enforcement officers Department of Financial and Professional Regulation and Department on Aging • Training for state-chartered bank employees—a training was developed to identify the indicators of financial exploitation, as well as how to report. Compliance will be checked for during bank examinations.	as well as senior community advocates and other community activists. TRIAD activities help implement crime prevention, education and volunteer programs for older citizens.
New York	NY APS • Financial management —APS receives the older adult's monthly income, pays their bills, and provides money to the older adult for incidentals • Power-of-attorney controls—APS can require an accounting of funds from older adult's power-of-attorney agent Brookdale Center for Healthy Aging and Longevity at Hunter College • Daily Money Management Services —helps older adults make financial decisions or make financial decisions on behalf of older adults who are no longer able	NYC Department for Aging • "It's my Money" game created a tool —in collaboration with the Department of Consumer Affairs—that can be used to help older adults avoid financial fraud and scams • Study of prevalence of elder abuse in NY state, in conjunction with LifeSpan and Weill Cornell Medical college Attorney General • "Smart Seniors" publication —a guide for older adults to help guard against scams and prevent elder abuse	NY State Office of Children and Family Services, Bureau of Adult Services • Training on investigating financial exploitation for protective services caseworkers Weill Cornell Medical College Division of Geriatrics and Gerontology • Project on Elder Abuse and Neglect—conducts research and provides training on elder abuse, including financial exploitation Brookdale Center for Healthy Aging and Longevity at Hunter College • Primary trainer of APS workers in NY state	NYC Elder Abuse Center • Goal is to improve professional, organizational and system responses to elder abuse, neglect and exploitation through collaboration and coordination among agencies • Multidisciplinary Teams—representatives from the health, mental health, public safety, legal, victim assistance, and social services sectors review, discuss, and coordinate cases of elder abuse; identify problems that can be brought to the attention of others for strategizing and intervention; and identify research needs

State	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
	State Law • Revised Power-of-attorney form • Mandatory background checks for paid in-home caregivers	NYPD • Community outreach at senior centers NYC Department of Consumer Affairs • "Be a Savvy Senior" — guide for older adults		NYC Elder Abuse Network • Brings police, district attorneys' offices, social service agencies, and others together to discuss legislation, policy, research, and program planning Weinberg Center for Elder Abuse Prevention • Emergency shelter for victims of elder abuse District Attorney's Offices • Elder Abuse or Financial Crimes units with staff working specifically on elder financial exploitation
Pennsylvania	State Law • Mandatory reporting for healthcare professionals • Mandatory background checks for paid in-home caregivers PA Securities Commission • Investor alerts – a collection of tips, techniques, and advisories for investors	Attorney General • Senior Consumer Reference Guide — information on how to avoid scams and fraud • Senior Crime Prevention University — outreach program to make older adults aware of common scams, to teach them how to avoid becoming a victim, and to know whom to alert when they are concerned about their safety and well-being • "Safe Seniors" Pamphlet — information for older adults on how to protect themselves from abuse, including financial exploitation • Toll-free senior help line	Institute on Protective Services at Temple University • Staff at the Institute, including a financial accountant, provide investigative assistance to APS and law enforcement for elder financial exploitation cases • Develops curriculum and provides training to APS Philadelphia Corporation for the Aging • Staff member who only works on financial exploitation cases • Training to bank employees, local prosecutors, and other professionals on elder financial exploitation	Philadelphia Financial Exploitation Task Force • Collaboration between APS, law enforcement, and private sector, with the goal of promoting awareness and prevention campaigns, delivering training, and increasing their joint capacity to conduct focused investigations and effectively prosecute cases Statewide • Elder Abuse Task Forces - task forces review elder abuse cases on a regular basis and membership may include APS, law enforcement, judges, clergy, bankers, healthcare providers, or others

State	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
		Philadelphia Police Department • Outreach at senior centers PA Securities Commission • Elder Investment Fraud and Financial Exploitation Prevention Program (EIFFE)—educates medical professionals about how to spot older adults who may be particularly vulnerable to financial abuse and then to refer suspected investment fraud involving these at-risk patients to state securities regulators and/or to APS • "Confessions of a Scam Artist" publication—information to raise awareness Department of Banking • "Protect Yourself, Protect Your Money"—publication includes information on common scams and tips on avoiding scams	Adult Protective Services Agencies • State law grants APS access to bank records for elder financial exploitation investigations PA Securities Commission • ABCs for APS Professionals—information for APS workers on how to identify investment fraud Attorney General • Elder Abuse Unit—investigates and prosecutes elder financial exploitation Philadelphia Police Department • Crimes Against Retired and Elderly Unit—investigates crimes affecting older adults SeniorLAW Center • Provides legal assistance to senior crime victims	

Source: GAO interviews and review of documents from California, Illinois, New York, and Pennsylvania.

Appendix XI: Examples of Non-Governmental Organization Activities to Prevent and Respond to Elder Financial Exploitation

	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
AARP *AARP is a nonprofit, nonpartisan organization, with a membership of more than 37 million, that helps people age 50 and above have independence, choice, and control in ways that are beneficial to them and society as a whole.*	<u>Free Lunch Monitor Program</u> • AARP asks members to send them invitations they receive to free lunch seminars that sell investment products. Members also attend and report back to AARP on the specific investment offers. AARP has compiled information on the trustworthiness of these investment sales pitches.	<u>Protecting Your Assets Project</u> • Project provides basic tips on avoiding fraud to AARP members, including email blasts and website links for additional information <u>No Free Lunch Program</u> • Provides information on responding to high pressure sales tactics on AARP's website, as well as information on senior financial advisor designations <u>Research Projects Related to Elder Financial Exploitation</u> • AARP has conducted several research projects related to elder financial exploitation including studies of: • personality traits of fraud victims and effective prevention messages, • effective outreach activities for investor fraud victims, • diminished financial capacity of older adults and implications for the financial services industry, • preventing the use of misleading senior designations, • power-of-attorney abuse and what states can do about it,	<u>MoSafe Program</u> • In conjunction with the Missouri Bankers Association, the AARP Missouri state office developed a training program for bank clerks on financial exploitation	

	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
		and • background checks and other screenings for home care providers		
American Bar Association *A voluntary professional organization. The mission of the American Bar Association Commission on Law and Aging is to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders.*		Research Projects Related to Elder Financial Exploitation • Several research projects related to elder financial exploitation have been conducted, including studies of: • state APS laws and types of elder abuse, • bank employees and their ability to report elder financial exploitation, • court-focused elder abuse initiatives, and • elder abuse registries	Continuing Legal Education Seminars • Webinars on topics related to elder abuse	
American Bankers Association *Represents banks of all sizes and types and is the voice for the nation's banking industry and its employees*		Protecting the Elderly From Financial Abuse Pamphlet • Pamphlet is designed for older adults and the general public. It includes information on signs of financial abuse, protecting from financial abuse, and what to do if someone suspects financial abuse.	Information for members • Shares information with members on how to identify elder financial exploitation • Provides information via conferences and phone briefings to its members on federal bank privacy laws, encouraging members to report suspicious activity Frontline Training for Bank Employees • Consumer protection and privacy training is intended for frontline	

	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
			bank employees. Training includes various aspects of consumer protection, including elder financial exploitation. <u>Bank Compliance Magazine article July-August 2011 edition</u> • In a magazine distributed to banks, types of elder financial exploitation, why older adults are particularly vulnerable, the role of banks, and relevant state and federal laws were described	
National Adult Protective Services Association *A national non-profit with over 500 members in all fifty states. Provides state and local Adult Protective Services program administrators and staff with a forum for sharing information, solving problems, and improving the quality of services for victims of elder and vulnerable adult abuse.*		<u>Research Projects Related to Elder Financial Exploitation</u> • Currently conducting a baseline survey of state APS programs • Report on state APS responses to financial exploitation of vulnerable adults	<u>National Adult Protective Services Resource Center</u> • Runs the Resource Center, which is funded by the Administration on Aging <u>National Conference</u> • Hosts a conference for APS professionals and several sessions are usually dedicated to elder financial exploitation <u>Webinars</u> • Hosts webinars on various topics related to elder abuse for APS	

	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
			professionals Creating APS Core Training • Working with California officials to create core competencies for APS workers, which would include financial exploitation, with a goal of creating national core training for APS workers	
Financial Industry Regulatory Authority *The largest independent regulator for all securities firms doing business in the United States. Its mission is to protect America's investors by making sure the securities industry operates fairly and honestly.*	Collects investor complaints • Investors are able to make complaints via its website, phone, fax, or mail.	Investor Alerts • Disseminates information about scams, trends, or new financial products Research Projects Related to Elder Financial Exploitation • Conducted several research projects related to elder financial exploitation, including studies of: • Investment fraud • National Financial Capability Study • Senior Investor Literacy and Fraud Susceptibility • Senior Fraud Risk • Senior Financial Advisor Designations		Collaboration with federal and state regulators • Works closely with the Securities and Exchange Commission on investor education and examinations • Works with state securities regulators on investor education campaigns Collaboration with other non-governmental organization Together with the Stanford Center on Longevity, founded a financial fraud research center
Investor Protection Trust *A nonprofit organization devoted to investor education. The primary mission is to provide*	Elder Investment Fraud and Financial Exploitation Prevention Program • The program educates medical	Research Projects Related to Elder Financial Exploitation • Surveyed older adults and their families about handling personal		

	Efforts to Prevent Exploitation by Financial Services Providers, Power-of-Attorney Agents, and Paid In-Home Caregivers	Efforts to Educate and Inform Older Adults and the General Public	Efforts to Provide Information to and Enhance Expertise for Professionals Responding to Exploitation	Efforts to Foster Collaboration among Institutions Responding to Exploitation
independent, objective information needed by consumers to make informed investment decisions.	professionals on how to spot older Americans who may be particularly vulnerable to financial abuse, particularly those with mild cognitive impairment, and then to refer suspected investment fraud involving these at-risk patients to state securities regulators and/or to local APS professionals.	finances, current financial conditions, and experiences with financial fraud or abuse. • Surveyed experts about elder financial exploitation. National Call-in Day: Protecting Elders from Financial Abuse • Hosted a call-in day, in collaboration with other organizations, for older adults and their families to receive free advice and guidance on protecting against investment swindles and financial abuse		
Financial Services Roundtable, BITS *The mission of the Financial Services Roundtable is to protect and promote the economic vitality and integrity of its members and the United States financial system. BITS addresses issues at the intersection of financial services, technology and public policy, such as critical infrastructure protection, fraud prevention, and the safety of financial services.*		Older Americans Financial Abuse Prevention Working Group Pamphlet • Contains fraud prevention tips for consumers and for organizations working with older adults	BITS Fraud Prevention Toolkit • Information for banks on the role of financial institutions in preventing and responding to elder financial exploitation, red flags and types of offenders and scams, and the role of APS	Collaboration with state and local governments and other non-governmental organizations Older Americans Financial Abuse Prevention Working Group

Source: GAO interviews and information collected on organization websites.

Appendix XII: Criminal Background Check Requirements for In-home Caregivers in Selected States

State	Criminal Background Checks Mandatory or Discretionary?	Checks for Publicly Funded Care Only or Publicly and Privately Funded Care?	Type of Background Check	Conditional Employment Allowed?[a]	Disqualifying Offenses
California	Discretionary	Publicly & privately funded care	State and federal	State does not specify	Offenses that are against dependent or vulnerable individuals or fraud-related
Illinois	Mandatory	Publicly & privately funded care	State only	Yes	Homicide; other violent, sex-related, drug-related, fraud-related; and property offenses
New York	Mandatory	Publicly & privately funded care	State and sometimes federal	Yes	Homicide; other violent, sex-related, drug-related, and fraud-related offenses; and offenses against dependent or vulnerable individuals
Pennsylvania	Mandatory	Publicly & privately funded care	State and sometimes federal	Yes	Homicide; other violent, sex-related , drug-related, and fraud-related offenses; and offenses against dependent or vulnerable individuals

Source: AARP Public Policy Institute. (September 2010) Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers

Note: Information is as of December 2008.

[a] Conditional employment occurs when in-home caregivers are allowed to begin working before background checks are complete.

Appendix XIII: Resource Centers Supported by the Administration on Aging

Name	Intended Users	Information and Services
National Center on Elder Abuse	National, state, and local professionals working with victims of elder mistreatment, including APS professionals, state and federal agencies, law enforcement, legal professionals, health care professionals, domestic violence networks, community-based organizations, elder rights advocates Public policymakers Researchers General public	Disseminates news items related to elder abuse Operates a listserv for professionals Provides information about promising practices and interventions Provides a training library Funds research
National Adult Protective Services Resource Center	Adult Protective Services professionals nationwide	Disseminates a monthly newsletter Maintains an APS-specific listserv Publishes brief descriptions of recent applicable research Holds regular webcasts Collects and compiles detailed information about APS throughout the country Provides information to state and local APS programs to facilitate implementation of identified best practices and research findings
National Legal Resource Center	Professionals involved in protecting the rights of older persons, including: Providers of legal assistance, including senior legal helplines State and local APS professionals Elder rights advocates	Disseminates information on a wide range of legal issues affecting older adults Training on legal issues Technical assistance on the provision of legal services to older adults Case consultation, including on elder financial exploitation cases

Source: GAO analysis of information provided by NCEA, National Adult Protective Services Resource Center, and National Legal Resource Center.

Appendix XIV: Example of a Letter Promoting a Fraudulent Sweepstakes Scheme

OFFICIAL PRIZE PAYMENT

*** Official signed document established by the prize commission ***

*************************MIXED AADC 07099
3019276677 08485.0.14 15067
MR [redacted]
[redacted] PKWY APT [redacted]
CINCINNATI OH [redacted]

DEFINITIVE FINDINGS AND RESULTS

All information in these financial documents is official.

Mr [redacted], payment of the sum of $ 29,400.00 is 100% SURE. Do not waste any time and return your acceptance form as soon as possible.

After receiving your acceptance form confirmed and recognized winner, I could write the following to you:

1. Here are the definitive results:
MR [redacted] YOU HAVE REALLY WON!

2. This is no joke. It is true:
YOU HAVE BEEN CONFIRMED AS THE MAIN WINNER OF A CHECK!*

3. As soon as we receive your declaration of prize acceptance,
WE GUARANTEE THAT A CHECK WILL BE SENT
in your name and for
$ 29,400.00 by registered mail with acknowledgment of receipt to your address in CINCINNATI!

I am very happy for you!

[redacted] Pkwy Ap[redacted]
Cincinnati OH [redacted]
UNITED STATES

We are now waiting for your response before acting!

Attribution No.:	659.001.360
Type of prize to pay:	CHECK
Amount of the check:	$ 29,400.00

Conditions of participation:
You must be at least 18 years old to participate. This is a free contest with no obligation to purchase, in which prize distribution is governed by laws of chance and in which there is one winner and losers. Participation in the contest implies that you accept all the conditions of participation. The contest closes on Dec. 31, 2011. The main prize to be won is $ 29,400.00. Every participant has received several documents, including an acceptance form that is the participation form. In order to be eligible to win, participants must return the acceptance form with or without an order for the Magic Method. This is confirmation of participation. If you also place an order, use the enclosed, pre-addressed reply envelope. If you participate without placing an order, please use a plain white envelope and return your acceptance form directly to the address of Angela and Angelina. Participation at the same time as placing an order is processed more rapidly to ensure that you rapidly receive the Magic Method and the Cosmic Sign of the Sun. One participant will be randomly selected among all those who responded, who will be the main winner who may receive the check for $ 29,400.00. All other participants may receive consolation prizes that can also be purchase reduction vouchers. The winner of the main prize of $ 29,400.00 will be informed by registered post and will then have 4 weeks to respond. In the absence of a response, the prize will be definitively lost. If the response is received in time, the prize will be sent to the legitimate winner within 48 hours. All decisions are final. This is an international contest. The chance of winning the main prize is 1:50,000.

*according to the conditions of participation

- 1 -

Source: Postal Inspection Service.

Appendix XV: Total Number of FTC Consumer Sentinel Network Complaints by Source, CY 2011

Source	Number of Complaints	Percent of Total
Complaints made directly to the FTC, by individuals and others[a]	788,576	43%
Better Business Bureaus	416,520	23%
Internet Crime Complaint Center[b]	302,381	17%
Western Union Money Transfer	54,657	3%
Canadian Anti-Fraud Centre	39,260	2%
Publisher's Clearinghouse	37,311	2%
Others (such as state and local agencies and U.S. Postal Inspectors)	174,375	10%
TOTAL	**1,813,080**	**100%**

Source: FTC

[a]These complaints may be made by phone, mail, or on the FTC's website.

[b]The Internet Crime Complaint Center, co-sponsored by the FBI and the National White Collar Crime Center, collects internet-related criminal complaints and aims to further research, develop, and refer these complaints to appropriate federal, state, local, and international agencies.

Appendix XVI: Comments from the Consumer Financial Protection Bureau

cfpb Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

November 7, 2012

Ms. Kay E. Brown
Director, Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Brown:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) draft report, ***Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation***, GAO-13-110.

The report reviews the harmful effect of financial exploitation on older Americans. Although the report finds that combating elder financial exploitation is primarily the responsibility of state and local agencies, it calls for implementation of a multi-faceted solution, including collaboration among federal agencies. Since the Consumer Financial Protection Bureau's (CFPB or Bureau) Office for Older Americans began its operations, we have developed several initiatives that will directly assist older consumers and those who provide services to them. We are actively developing collaborative relationships on the federal, state and local level, with public and private entities, for current and future targeted strategies. As the only federal office specifically dedicated to the financial health of Americans aged 62 and older, we believe we can make a unique contribution in this area.

The CFPB agrees that a collaborative and coordinated effort by federal agencies can help optimize strategies to combat this threat to the well-being of older Americans. In October 2012, the Bureau joined with ten other federal agencies to convene the federal Elder Justice Coordinating Council. The Council is expected to serve as an important avenue to coordinate strategy to prevent, detect and redress elder abuse, including financial exploitation.

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We concur with the recommendations addressed to the CFPB in the draft report. We agree that the Bureau should develop and disseminate information for financial institutions on the circumstances under which they would not violate relevant Federal consumer financial laws, should they release relevant bank records to law enforcement and Adult Protective Services (APS) agencies. Financial institutions (including banks, credit unions and other "non-bank" providers of consumer financial products and services supervised by the Bureau) can play a key role in preventing and detecting elder financial exploitation. Prompt reporting of suspected abuse can trigger appropriate intervention, prevention of financial losses, and other remedies.

Like GAO, the Bureau has heard concerns and questions from financial institutions as to whether sharing personal account holder information when reporting elder financial exploitation is permissible under federal law. The Gramm-Leach-Bliley Act (GLBA) establishes privacy protections for account holders but provides several specific exceptions to the notice and opt-out requirements generally imposed by GLBA before nonpublic personal information can be shared with nonaffiliated third parties. These exceptions generally permit the sharing of nonpublic personal information with state and federal agencies for the purpose of reporting suspected elder financial abuse. The CFPB's Office for Older Americans, in collaboration with other Bureau offices, is developing strategies for communicating clearly to a spectrum of financial institutions that GLBA generally does not prohibit them from reporting suspected abuse to—or respond to requests for personal information from—law enforcement, APS agencies, and other relevant entities. In addition, the Bureau is exploring options for collaborating with other federal agencies in providing this guidance to financial institutions. Through its efforts, the Bureau hopes to convey that these actions are permissible and important.

In addition, we agree that the Bureau can play a key role in developing a plan to educate financial institutions on how to recognize and report elder financial exploitation. The Bureau has received requests from financial institutions about the availability of staff training programs. The Office for Older Americans has collected information on training programs that are currently available or in use by financial institutions. We are considering options for how best to help financial institutions that request information

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on curricula and materials for their staff about identifying and reporting elder financial exploitation.

Thank you again for the opportunity to comment on the draft report.

Sincerely,

Hubert H. Humphrey III
Assistant Director
Office of Financial Protection for Older Americans

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Appendix XVII: Comments from the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

NOV 8 2012

Kay E. Brown
Director, Education, Workforce,
and Income Security Issues
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Ms. Brown:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation" (GAO-13-110).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Jim R. Esquea
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "ELDER JUSTICE: NATIONAL STRATEGY NEEDED TO EFFECTIVELY COMBAT ELDER FINANCIAL EXPLOITATION" (GAO-13-110)

The Department appreciates the opportunity to review and comment on this draft report. The recommendations for HHS are consistent with what we heard during the inaugural meeting of the Elder Justice Coordinating Council. We view the inaugural meeting of the Coordinating Council as a huge success. During the meeting, we highlighted the activities of federal agencies to address elder justice issues broadly, and specifically financial exploitation. Experts from the field and Council members, including GAO, discussed areas for collaboration to avoid duplication in federal efforts, gaps calling for additional action, and opportunities to enhance our federal response absent appropriations.

HHS has submitted requests previously to implement portions of the Elder Justice Act, including those involving data, the Coordinating Council, and other efforts that would begin to address these recommendations. We look forward to working with Congress to continue implementation of the Elder Justice Act.

1

Appendix XVIII: GAO Contacts and Staff Acknowledgements

GAO Contacts:

Kay E. Brown, (202) 512-7215 or brownke@gao.gov.

Staff Acknowledgements:

In addition to the contacts named above, Clarita Mrena, Eve Weisberg, Andrea Dawson, and Brittni Milam made significant contributions to this report, in all aspects of the work. 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.

Related GAO Products

Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement. GAO-11-678. Washington, D.C.: July 22, 2011.

Elder Justice: Stronger Federal Leadership Could Help Improve Response to Elder Abuse. GAO-11-384T. Washington, D.C.: March 2, 2011

Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse. GAO-11-208, Washington, D.C.: March 2, 2011

Older Americans Act: More Should Be Done to Measure the Extent of Unmet Need for Services. GAO-11-237. Washington, D.C.: February 28, 2011.

Consumer Finance: Regulatory Coverage Generally Exists for Financial Planners, but Consumer Protection Issues Remain. GAO-11-235. Washington, D.C.: January 18, 2011.

Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors. GAO-10-1046. Washington, D.C.: September 30, 2010.

Guardianships: Little Progress in Ensuring Protection for Incapacitated Elderly People. GAO-06-1086T. Washington, D.C.: September 7, 2006.

Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies. GAO-06-15. Washington, D.C.: October 21, 2005.

Guardianships: Collaboration Needed to Protect Incapacitated Elderly People. GAO-04-655. Washington, D.C.: July 13, 2004.

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Congressional Relations	Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548
Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

Senator Bernie Sanders
Statement for the Record
America's Invisible Epidemic: Preventing Elder Financial Abuse
Thursday, November 15th 2012

Thank you to Chairman Kohl, Ranking Member Corker, and members of the Special Committee. We are here today to learn about the very serious issue of senior financial abuse. As Chairman of the Subcommittee on Primary Health and Aging, which has jurisdiction over the Older Americans Act and elder abuse, I recognize the need for greater attention to this critical issue.

This country is experiencing an epidemic of senior financial abuse – which is both a moral crisis and a financial scandal. In the United States seniors face a very real threat as targets for scams and abuse.

Several of the witnesses today will testify that financial exploitation costs older adults $2.9 billion a year! Let's just think about that number for a minute. Many seniors across this country are struggling to make ends meet, and it appalling that they are being taken advantage of in times of great need. If we consider that most cases of elder abuse are never reported, the cost to our country of continuing to keep our head in the sand about this issue is overwhelming.

Despite the fact that the Elder Justice Act was passed over two years ago, most of its provisions have never been funded. And although I commend the administration for commemorating the seventh annual World Elder Abuse Awareness Day and convening the first meeting of the Elder Justice Coordinating Council, the Administration can and should do more – for example, by implementing provisions of the Elder Justice Act that do not require funding, such as issuing much needed guidance documents that would promote elder justice research. This country's attention to the issue of elder abuse lags 40 years behind child abuse and 20 years behind domestic violence, and both the Administration and Congress must do much more to protect our seniors.

We must also strengthen and reauthorize the Older Americans Act, which includes important funding for the Administration on Aging, a critical federal partner in preventing elder abuse and providing seniors with important protections and legal services.

In my home state of Vermont, a working group on Protecting Older Consumers is considering a range of proposals to prevent and reduce consumer fraud among seniors, including enhanced civil penalties and protections, improved prevention efforts, and additional research. I'm proud that the Attorney General's office in Vermont is spearheading this effort in collaboration with both the public and private sector.

We must remember that financially exploited seniors are often embarrassed, scared, and vulnerable. They may be reluctant to speak out about their experience. And if their family members or friends are the people exploiting them, these seniors may not have anyone to whom to turn. Unlike big corporations, these seniors do not have highly-paid lobbyists speaking up for them. So we, as their elected officials, must seek out their stories and share their message for change to take place.

And in the case of financial exploitation, there is not only a moral argument for improving our efforts, but we also know that elder abuse is an incredibly expensive problem. If seniors are scammed and lose their savings and homes, federal programs such as Medicare and Medicaid bear the cost of seniors moving into nursing homes and increased health care costs. In fact, a recent report of 80 cases in Utah found that the state's Medicaid program would potentially have to pay almost a million dollars to cover care for seniors who had suffered substantial losses in that state. Multiply that times fifty states and you see some staggering costs.

I look forward to hearing the witnesses this afternoon share their expertise and ideas on how to prevent and address financial exploitation.

Written Statement of

Gerri Walsh

Vice President, Office of Investor Education

Financial Industry Regulatory Authority

Before the Special Committee on Aging

United States Senate

November 15, 2012

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

The Financial Industry Regulatory Authority (FINRA) appreciates the opportunity to submit this statement for the record of the Committee's hearing to examine fraud among senior investors. Our comments focus on the outreach and educational initiatives FINRA has underway to protect all investors—including seniors—from falling victim to financial fraud.

FINRA and the FINRA Investor Education Foundation

FINRA is the largest non-governmental regulator for all securities firms doing business with the public in the United States. FINRA oversees nearly 4,345 brokerage firms and about 162,410 branch offices, and more than 635,140 registered securities representatives. We touch virtually every aspect of the securities business—from registering and educating industry participants to examining securities firms; writing rules; enforcing those rules and the federal securities laws; informing and educating the investing public; providing trade reporting and other industry utilities; and administering the largest dispute resolution forum for investors and registered firms.

FINRA believes that investor education is a critical component of investor protection—and that we are uniquely positioned to provide valuable educational information and tools to retail investors. Over the last decade, we have worked hard to develop a strong investor education outreach program. We produce alerts, interactive tools and educational content to help investors make wise financial decisions. Our BrokerCheck tool, for example, provides investors with a quick way to check a broker's disciplinary and professional background. Encouraging people to take this simple step before doing business—or continuing to do business—with a broker is part of our greater commitment to protecting investors.

In 2003, FINRA created the FINRA Investor Education Foundation, currently the largest foundation in the United States dedicated to investor education. The FINRA Foundation seeks to provide underserved Americans with the knowledge, skills and tools necessary for financial success throughout life. To date, the FINRA Foundation has approved approximately $73 million in financial education and investor protection initiatives through a combination of educational and research grants, as well as targeted projects managed directly by the FINRA Foundation.

How FINRA Protects Older Investors

At FINRA, we serve every U.S. investor, from newlyweds planning to buy a home to parents saving for a child's college education to seniors depending on a secure retirement. Over the past five years, we have been keenly focused on issues impacting older investors, especially those at or approaching retirement. For example, in September 2007, FINRA issued *Regulatory Notice 07-43*, which highlighted certain issues common to many older investors—including suitability, senior- or retirement-specific credentials or professional designations, high-pressure sales seminars and diminished capacity. The *Notice* reminded broker-dealers of their obligations in this area and provided examples of industry best practices. That same year, FINRA's Member Education and Training Department launched the first in a series of webcasts to help registered representatives and other frontline brokerage firm employees learn about their compliance obligations when working with senior customers. Topics in this free educational series include *Senior Investor Issues: Diminished Decisional Capacity, Senior Investor Suitability Considerations* and *Supervisory Considerations for Working with Seniors*—and are available at *www.finra.org/Industry/Issues/Seniors*.

In 2008 and 2010, FINRA joined with other regulators to issue findings and guidance on firms' practices relative to senior investors. More recently, at the beginning of 2011, FINRA issued its Annual Regulatory and Examination Priorities Letter, which reiterated that the protection of vulnerable customers, including senior investors, continues to be a high regulatory priority—and that one area of particular focus is the use of certifications and designations that imply expertise, certification, training or specialty in advising senior investors. And in November 2011, FINRA published *Regulatory Notice 11-52: FINRA Reminds Firms of Their Obligations Regarding the Supervision of Registered Persons Using Senior Designations* to remind firms of their supervisory obligations regarding the use of certifications and designations that imply expertise, certification, training or specialty in advising senior investors.

In addition to educational outreach to regulated firms and registered personnel, FINRA has also increased our efforts to fight fraud and, to that end, established several programs to help root out bad actors and help consumers protect themselves. In early 2009, we created the Office of the Whistleblower, and later that year, also established the Office of Fraud Detection and Market Intelligence (OFDMI). Through this office, staff with expertise in fraud detection and investigation can provide a heightened review of potentially serious frauds. OFDMI's mission is to ensure that allegations of serious fraud received by FINRA in the form of complaints, regulatory filings and other sources are subjected to a heightened review. OFDMI serves as a centralized point of contact on fraud issues, within FINRA and externally with other regulators and the public. The creation of OFDMI has expedited fraud detection and investigation, by pursuing matters as far as possible and by referring cases that fall outside of FINRA's scope to the appropriate authorities.

Investor Protection Campaign

One of the major initiatives of the FINRA Foundation aims to reduce investor susceptibility to fraud. Launched in 2008, the Investor Protection Campaign (IPC) is an innovative, research-based, multi-faceted effort intended to help investors understand how they might be susceptible to investment fraud and to replace risky investment behaviors with fraud detection and prevention behaviors. Armed with research around investment fraud victims and fraudster tactics, as well as the field-tested *Outsmarting Investment Fraud* curriculum and related resources, the program has achieved the following results to date:

- public television distribution of the award-winning documentary, *Trick$ of the Trade: Outsmarting Investment Fraud*, with 760 airings on 172 public television stations in 76 television markets across 31 states since September 2010, reaching an estimated 51 million households of consumers age 50 and older;
- in-person and direct-mail distribution of more than 100,000 DVD copies of the documentary and over 300,000 *Fighting Fraud 101* brochures;

- delivery of more than 640 presentations in conjunction with national, state and local partners that have reached more than 33,000 investors nationwide;
- training of 40 percent of Better Business Bureau affiliates to deliver the curriculum in local communities;
- "live" fraud prevention counseling to almost 28,000 investors through outbound calls from a network of Fraud Fighter Call Centers; and
- creation of a Financial Fraud Research Center and release of a white paper that comprehensively examines what is currently known about retail financial fraud.

The campaign builds upon FINRA Foundation-funded research unveiled in July 2006 that shattered the stereotypes of senior investment fraud victims, revealing a fraud victim profile that was counterintuitive in many respects. Instead of being isolated, frail and gullible, fraud victims tended to be married, college-educated males with above-average incomes and above-average levels of financial literacy. The research further identified the sophisticated and highly effective influence tactics that fraudsters use to carry out investment scams. These findings forced regulators and senior citizen advocates alike to rethink how best to approach the challenge of equipping older investors with the tools and information they need to thwart fraudsters touting investment scams.

In 2007, the Foundation conducted extensive due diligence to develop a program to meet these challenges, coordinating closely with one of the lead social scientists on the 2006 study, Doug Shadel, director of AARP's Washington State office. Adopting best practices recommended by the Organization for Economic Co-operation and Development (see OECD, *Examining Consumer Policy: A Report on Consumer Information Campaigns Concerning Scams* (December 20, 2005)), we structured the Investor Protection Campaign to focus less on shortterm, information-led "warning" strategies and more on a longer term, skills-based "educating" strategy backed by significant research and resources.

In 2008, the FINRA Foundation launched the Investor Protection Campaign, seeking to protect all investors, especially those over the age of 55, from investment fraud by helping them to recognize their vulnerability to financial fraud, to identify persuasion tactics and to take simple steps to reduce risky behaviors. The centerpiece of the campaign is a field-tested persuasion resistance curriculum, *Outsmarting Investment Fraud*, which we developed in consultation with an array of experts in psychology, marketing and fraud. Designed to be flexible (with half-hour and hour-long versions available), the curriculum typically features a moderated presentation with video clips and hands-on learning activities that covers some of the most common tactics employed by fraudsters:

- Phantom Riches—dangling the prospect of wealth or enticing investors with something they want but can't have. "These oil wells are guaranteed to produce $6,800 a month in income."

- Source Credibility or Authority—building credibility and trust by claiming to be an expert. "I've been in the business for 20 years, hold the 'XYZ' credential and wouldn't offer an investment that doesn't make money for my clients."

- Social Consensus—leading the target to believe that other savvy investors have already invested. "This is how 'Famous Person' got his or her start. I know it's a lot of money, but I'm in—and so is my mom and half her church. Everyone agrees it's worth every dime."

- Reciprocity—manipulating human tendencies to return one favor with another, often used to prospect clients at free meal seminars and build a relationship. "I'll give you a break on my commission if you buy now—half off" or "You came to my seminar last week, let me come to your home to discuss more opportunities."

- Scarcity—creating a false sense of urgency by claiming an offer is limited, either by time, quantity or audience. "There are only two units left, so I'd sign today if I were you" or "Only a select group of investors will be able to get in on this deal."

The steps investors can take to avoid fraud and to separate fraudulent offers from legitimate opportunities boil down to two words: ask and check. We arm investors with questions to ask about both any investment they're considering and the individuals who tout it—and we show them where to turn to independently verify the answers they get.

Our curriculum has been field-tested twice using treatment and control groups—first to determine the extent to which our workshops reduced susceptibility to fraudulent sales pitches, and then to assess both impact and persistence over time. In each instance, investors who had participated in one of our persuasion resistance workshops prior to being pitched on a new investment opportunity were half as likely to agree to receive materials about the deal compared with a control group (who had not yet been exposed to the campaign's messaging).

In 2009, we produced an hour-long documentary, *Trick$ of the Trade: Outsmarting Investment Fraud*, modeled specifically after the *Outsmarting Investment Fraud* curriculum. American Public Television began distributing the documentary in September 2010 through public television stations nationwide and remains available for station airings through September of 2013. The show has received two Telly Awards (which honor the best local, regional and cable television commercials and programs, the finest video and film productions, and exemplary work created for the Web)—one for social issues and one under the how-to/instructional category. In 2010, *Trick$ of the Trade* was also recognized by *Kiplinger's Personal Finance* magazine as a "Best of Everything 2010: Best Personal-Finance Resources."

Since launching the campaign, we have endeavored to de-stigmatize victimhood and to engage multiple partners and the media to help spread key messages. National partners include the Securities and Exchange Commission, the AARP Foundation, the Council of Better Business Bureaus and the National White Collar Crime Center, among others. Partners at the local level include state securities regulators, state AARP offices and various other government, non-profit and grassroots organizations, including crime prevention networks.

The ongoing project comprises three primary elements:

1) Research Facilitation: adding to and beginning to organize the body of knowledge around investment fraud in order to better equip fraud detection and prevention professionals with evidence-based information and resources;
2) Educational Resources & Programs: developing and testing interventions and resources that help investors avoid fraud; and
3) Outreach Partnerships & Public Awareness: leveraging partnerships to expand the reach of the project and refining outreach strategies to maximize the number of investors positively reached with the field-tested curriculum and research-based messages.

With respect to the research element of the campaign, the FINRA Foundation partnered with the Stanford Center on Longevity to launch the Financial Fraud Research Center in August 2011.

The Center's focus is individual consumer financial fraud—particularly fraud achieved using deception, including phony lottery awards, investment scams and online phishing schemes. The Center seeks to facilitate understanding, prevention and detection of financial fraud by compiling and making available information about research across a range of disciplines (from psychology to criminology to marketing and more), connecting research to practical policy and fraud-fighting initiatives and facilitating research by providing seed funding and connecting funding opportunities to interested researchers. More information is available at the Center's website at *fraudresearchcenter.org*.

Understanding Professional Designations Database

As explained more fully in *Regulatory Notice 11-52,* FINRA rules require brokerage firms to have, at a minimum, supervisory procedures in place that are reasonably designed to prevent their registered representatives from using a senior designation in a manner that is unethical or misleading. Firms and registered representatives are also prohibited from making false, exaggerated, unwarranted or misleading statements or claims in communications with the public—and this prohibition includes referencing nonexistent or self-conferred degrees or designations or referencing legitimate degrees or designations in a misleading manner.

To help investors make sense of the dozens of credentials securities industry professional might use, FINRA created a Professional Designations Tool, which currently provides objective data on more than 140 designations and credentials. The tool allows investors to better understand what education and experience requirements are necessary for a designation—and to determine whether the granting organization mandates continuing education, offers a public disciplinary process, provides a means to check a professional's status and otherwise ensures that a professional designation is more than just a string of letters. The tool is available on FINRA's website at *www.finra.org/designations.*

Conclusion

We appreciate the opportunity to submit this statement for the record of the Committee's hearing on preventing elder financial abuse. FINRA and the FINRA Investor Education Foundation are committed to expanding the knowledge and confidence of all Americans wishing to build a more secure financial future through saving and investing, and we share your interest in protecting those savings and investments.

Elaine Roberts Musser | 1
Attorney at Law
P.O. Box 2366
Davis, CA 95617

To: Senator Herb Kohl (D-WI), Chair, Special Committee on Aging
From: Elaine Roberts Musser, Volunteer Attorney, Yolo County Multidisciplinary Team
Date: November 19, 2012
Inre: America's Invisible Epidemic: Preventing Elder Financial Abuse, 11 a.m., November 15, 2012

I would like to submit the following statement, to be included in the above referenced hearing record. It was with great interest that I listened to this informative hearing and read the accompanying November 2012 GAO Report to Congressional Requesters entitled "National Strategy Needed to Effectively Combat Elder Financial Exploitation" (GAO-13-110).

I wholeheartedly concur with the Special Committee on Aging's conclusion that more consumer education is needed on the subject of financial elder abuse. As the GAO Report noted *"Experts and federal, state, and local officials told us that older adults need more information about what constitutes elder financial exploitation in order to know how to avoid it."* **However, I also believe that an entire facet of financial elder abuse is not being addressed: the practice of some legitimate businesses perpetrating fraud upon our senior citizens.** Obviously not every legitimate business engages in the sort of dreadful conduct I am about to describe, but enough do that it should be of grave concern to the Special Committee on Aging.

Allow me to give ten specific examples, a small sampling of cases I have encountered in my law practice and as a volunteer member of the Yolo County Multidisciplinary Team in the state of California. I will also give some suggestions, depending on the specific circumstance, about what sort of solutions might have prevented such reprehensible behavior on the part of some legitimate business.

Case I. – Banks A retired school teacher's elderly husband walked into his bank one morning. A teller steered him towards an investment advisor ensconced in a corner of the bank. This investment advisor was employed by a subsidiary of the bank. Apparently the bank had discovered the retired school teacher, Mrs. A, over the years had accumulated $250,000 in savings, which currently resided at a local credit union. Both Mrs. A and her husband were soon convinced by the investment advisor to transfer the entire $250,000 from the credit union into the bank subsidiary's aggressive investment portfolio. A sign in the bank window assured the couple "all accounts" were FDIC insured, even though buried in the wordy prospectus was a disclaimer to the contrary for investment accounts.

Very soon the investment account began rapidly losing its value. Mrs. A was not paying close attention, because she was nursing her father through cancer. Upon her father's demise, she finally took notice of the worth of her account, now reduced to a paltry $70,000. She tried to contact the investment advisor, but he refused to return her frantic phone calls. Nor was the bank particularly helpful either. It was at this point that she sought help from me, a retired attorney volunteering my time and expertise at a senior legal hotline.

Upon investigation, I discovered Mrs. A had been placed in an overly risky investment account completely unsuitable to her financial situation and experience, contrary to state and federal law. It was also apparent she would be required, unbeknownst to her, to settle any dispute through arbitration. Eventually I was able to obtain for her an experienced attorney knowledgeable in financial arbitration, who took the case pro bono. My client was only required to put up a $5000 deposit for the arbitration venue, and the attorney paid for everything else himself. The bank offered to settle the dispute for a measly $2,000. The case went to arbitration, and an award to my client was made for an undisclosed amount. My client was quite satisfied with the result.

Suggested prevention strategies:

- Banks should not be permitted to steer wealthy customers toward investment advisors renting space inside their banks – it is a clear conflict of interest, particularly if the investment advisor works for a subsidiary of the bank.
- Nor should banks be allowed to rent out space inside their bank branches to investment advisors - to prevent confusion about whether investment accounts are FDIC insured or not.

Case II. – Financial Institutions Mr. B was an elderly gentleman farmer, who had lived in his home with his wife for over thirty years. It was a lovely house with extensive and beautiful landscaping. However, he had accumulated $300,000 in farming debt over the years. A slick representative from a financial institution convinced Mr. B to unwisely transform his unsecured farming debt into collateralized debt, with the house put up as collateral. The collateralized debt was in the form of an option pay ARM, with the interest rate listed as ***monthly*** at 1½%, which translates into 18% per year. Understandably my client assumed the interest rate he saw on the paperwork was per ***year,*** since that is what is required by law. As the interest rate adjusted upwards under the ARM, from about $1000 per month to about $3000 per month in three years, not surprisingly Mr. B was ultimately no longer able to make his house payments. Foreclosure was the result. Yet had Mr. B sought legal advice before he agreed to such a bad bargain, he would have realized the $300,000 debt could have been discharged in bankruptcy, with his residence left intact. No matter how many agencies I contacted, not one seemed particularly interested in the fact that the bank had illegally listed the interest rate per month, instead of per year as required.

Suggested prevention strategies:

- A financial institution should not be permitted to cozen clients into collateralizing unsecured debt, without offering some sort of independent counseling first.
- Any financial institution caught listing interest rates improperly should have to pay a hefty fine, and the misleading contract should be declared null and void.

Case III. – Magazine Companies An elderly Mr. C had always taken care of the finances in the family, but began suffering from dementia. As magazine subscription renewals came in, he would automatically write out a check to cover it, even though he had already paid the month prior. The magazine companies caught on to the fact that they had a sucker on the hook - and began sending the man renewal notices every single month, along with books he never ordered demanding payment. Before his wife caught on to the scheme, Mr. C had been cheated out of approximately $800 in one year as a result of this type of scamming. He had about 10 magazine subscriptions each paid up for the next twenty years. Books were paid for that he never ordered, because the companies threatened to turn his accounts over to a collection agency. As their legal representative and advocate, it took me over a year to convince this couple the wife needed to assume responsibility for the finances on behalf of her husband and herself. The misguided woman insisted she didn't want to rob her husband of his dignity. "But how dignified was it to keep allowing him to be conned out of his and your money?" was the question I posed to her, reminding the older woman their estate was being decimated by unscrupulous businesses. At long last she began taking my advice and sorted through the mail to weed out magazine renewal notices and unordered books before giving it to her husband, and paying all the bills herself.

Suggested prevention strategies:

- Make it against the law for magazine companies to send out renewal notices more than three months in advance of the expiration date.
- Educate the public through the postal service that any unordered books should be left unopened in their package and returned to the post office as "delivery refused".

Case IV. – Car Rental Companies The elderly Ms. D received what she thought was a "rebate" check in the mail for $15. She could not remember having purchased anything that would have resulted in a rebate check being sent to her. Ready to cash it, she wisely decided to look at the check more closely, turning it over and reading anything that appeared on the reverse side. Sure enough, in tiny print on the back of the check was a single paragraph. The language made it clear that if the check were cashed, the endorser of the check would have agreed to belong to some sort of travel club - and be automatically charged a fee every month on their credit card. The credit card information had apparently been obtained through a rental car company Ms. D had used some months ago, when she had to take her own automobile into the shop for repairs. To opt out of the travel club, once the check was cashed, the endorser had to use a telephone number only found on the back of the check. Worse yet, the monthly fee was subject to increase at any time and for any amount. Fortunately Ms. D never cashed the check – nor did she ever use that rental car company again.

Suggested prevention strategies:

- A rental car company or any other type of business should never be able to give out credit card information to any other individual or businesses.
- Any "club" where membership is being obtained through the lure of cashing a check, should be "opt – in" only. If someone cashes the check, s/he must affirmatively check off a box to agree to take the service.
- Never should a consumer contract be permitted, to join a club indefinitely through the cashing of an enticement check, where the price of something can go up without the consumer's permission for any reason at any time once the consumer endorses the check.

Case V. – Tax Accountants and Attorneys Mr. and Mrs. E, an elderly couple living in California, received an alarming notice through an attorney, referred to them by their tax accountant. It stated the Mr. and Mrs. E were involved in a criminal Ponzi scheme, that had once been a legitimate oil well investment in Oklahoma 25 years ago. Supposedly the married pair now owed $15,000 to a federal bankruptcy court involved in the case, even though they had lost $25,000 on their original investment. It made no sense. I started investigating the case. To my surprise, I discovered that indeed if an investment eventually turns out to be a Ponzi scheme, an investor may very well be on the hook and owe the company's bankruptcy trustee, depending on state law, even if the investor lost money in the deal. However, with a little further digging, I discovered the tax accountant and attorney were partners in crime, inflating the amount owed from only $5000 to triple that. I assume my clients would have been expected to pay the $15,000 to the attorney, the attorney would have sent on $5,000 to the bankruptcy trustee, and split the other $10,000 with the tax accountant. From my research it appeared these two con artists were bilking about 60 investors in the same fashion. I immediately notified the attorney handling the bankruptcy, and the federal official in charge of the federal bankruptcy court. Neither were the least bit interested in the fraud being perpetrated on the other investors. The Securities and Exchange Commission wasn't particularly interested either. My clients paid only the $5000 they owed, directly to the attorney handling the bankruptcy. I suspect the other investors were duped into paying triple what they owed.

Suggested prevention strategies:

- Federal and state officials should pay attention to any reports of investment fraud; and be required to investigate; and disbar any attorney/revoke the license of any accountant found to have perpetrated fraud on a bankruptcy court.
- A bankruptcy attorney that learns of potential fraud in a bankruptcy case should be required to immediately notify federal and state officials, or be disbarred.

Case VI. – Health Insurance Agencies Mr. F, a Spanish speaking elderly gentleman, was cold-called by a Russian speaking salesman selling prescription drug insurance targeted towards dual eligibles (those eligible for both Medicare and Medicaid). The promise was that there would be no health insurance premiums to pay, and the prescription drugs would be cheaper under the new policy. The insurance agent was actually foolish enough to put his sham promises in writing. Mr. F bought the bogus claim of no insurance premiums hook, line and sinker, changing his Medicare Part D plan to the one falsely advertised by the Russian speaking salesman. As it turned out, my client did have to pay a monthly health insurance premium higher than the original one with his previous plan. His prescription drugs were, in fact, far greater in expense under the new policy. His insulin actually cost more than if he had purchased it over the counter without any health insurance! It was at this point Mr. F contacted me in desperation for assistance.

By this time my client had run out of money to pay for his medications, having gone without his drugs for three days. In a wheelchair, the frail elder was diabetic with Parkinson's Disease. He had been placed in a life threatening situation by an unscrupulous insurance agent who had telephoned him out of the clear blue and told him a load of lies, exploiting the language difference between the two. I immediately contacted the insurance company as well as Medicare. Mr. F was permitted to change back to his original Medicare Part D insurance coverage - because it was determined by Medicare that my client had been scammed by the Russian speaking insurance agent. However it took nearly six months to completely straighten out the mess, with tons of bureaucratic red tape to be dealt with, to achieve a satisfactory outcome. As far as I know, the insurance company in question is still in business.

Suggested prevention strategies:

- It is my understanding the federal government is addressing the issue of dual eligibles being targeted by health insurance companies acting in bad faith, who try to get the dual eligibles to switch health insurance plans not in their best interests, with fake promises of cheaper premiums and prescriptions.

Case VII. – Time Share Companies A time share company contacted an elderly Mr. G, suffering from Alzheimer's Disease, via telephone in the middle of the night. He was talked into purchasing a time share, his wife completely unaware of what had transpired. Mrs. G ultimately decided to accept the purchase, not fully understanding what she was letting herself or her husband in for. The couple used the time share for a short amount of time, about two years. It was not long before they realized their health would not permit them to travel any distance to take advantage of the time share purchase. Nor could they afford the ever rising monthly fees, which were becoming prohibitively expensive on their limited fixed incomes.

When the couple tried to sell their time share, they had no luck. A questionable company was hired to market the time share, to the tune of about $6000, but not unsurprisingly there were no takers. Yet the two were still responsible for paying the monthly fees until sale of the time share to a purchaser. I tried to assist the couple, but to no avail. My research showed time shares are almost impossible to sell. Companies that promise to market a time share charge enormous fees knowing full well there is almost no chance of success. Because the couple had actually chosen to use the time share for a couple of years, I could not use a lack of capacity defense in regard to Mr. G's affliction with Alzheimer's Disease. It appeared the couple was stuck with their purchase and on the hook for monthly fees for eternity.

Suggested prevention strategies:

- The abuses in the time share industry are widely known by both federal and state officials. Yet there doesn't seem to be any serious attempt to clean up a corrupt industry.
- Every time share purchaser should be given a warning sheet to sign, listing all the potential problems with time shares, <u>prior to purchase</u>.

<u>Case VIII. – Antiques Dealers</u> Mr. H, an elderly gentleman with a heart condition, took some valuable antiques to a dealer for sale on consignment in an antiques mall. After a time, when he heard not a word, the worried man contacted the dealer. She kept putting him off, saying nothing had sold yet, but assured him it would be bought soon. After approximately three months had elapsed, Mr. H telephoned the dealer again, making it clear he was going to take back his furniture and sell it elsewhere since it was not being purchased. When the frustrated Mr. H went to pick up his merchandise, they were loading some of the pieces on a truck. He demanded to know what was going on. The dealer told Mr. H that part of his consignment had been sold, but far below the agreed upon price. When Mr. H raised a justified objection, the dealer handed him a small amount of cash, telling him there was nothing he could do about the sale or the low price – insisting it was a "done deal". Unfortunately Mr. H could feel a potential heart attack coming on, because of the severe stress he was being placed under. So he departed out of necessity, returning home nearly empty-handed.

Once I became involved in the case in my capacity as a volunteer attorney at a senior legal hotline, I took careful notes, obtaining written statements from all concerned. To his surprise and chagrin, my client spotted one of his pieces of furniture for sale in another antiques store, at a highly inflated price. He knew he had been flim-flammed by an unscrupulous antiques dealer. I urged him to take the matter to small claims court, where attorneys are not permitted and he could argue his own case. He was advised to ask for the full jurisdictional amount in recompense. My client did just that, and won his case hands down. The other side appealed. So the matter was kicked up to the Superior Court, necessitating my client to hire an attorney. I found him a lawyer willing to take his case for a nominal fee. I drove two hours in the rain to testify on his behalf. Mr. H again won his case, and was eventually able to collect the full amount of his judgment. Very shortly thereafter and not surprisingly, the dealer went out of business – the entire antiques mall closed down.

Suggested prevention strategies:

- If a plaintiff wins a case in small claims court, the opposing side should only be able to appeal to a different small claims judge. It is not fair to allow an appeal that kicks the matter up to a

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higher court, where attorneys can get involved. The plaintiff may not have the funds to pay for a lawyer, if the other side decides to obtain legal counsel to argue their case in the higher court.

Case IX. - Landlords A slumlord of low income housing refused to make appropriate repairs to the elderly Mr. I's duplex, despite constant complaints to the landlord and to Housing and Urban Development (HUD), the federal housing agency. Water seeped up from the foundation, soaking the rug, and came in underneath the window sills. Rats scampered throughout the building. The heat did not work properly, so that Mr. I spent many nights sleeping in his small truck or at a friend's house. One day he smelled natural gas, and contacted me in a panic for assistance, to determine what he should do. I instructed him to immediately contact the utility company and have them come out. Mr. I made the call, but was told since he was behind on his monthly gas and electric bills, the company would not send anyone. Because Mr. I lived in a duplex, I told him to have his neighbor ask the utility company to send someone out to check for gas leaks.

The utility company did send a representative later that day, who found a hole the size of a golf ball in the gas heater. The representative said that the entire duplex could have gone up in an explosion at any time. Repairs to the gas heater were made posthaste, right there on the spot. At that point, I contacted Housing and Urban Development, to lodge a strong complaint against the landlord. Meanwhile, my client was given permission to find other low income housing to live in. Eventually the landlord was forced to clean up all her low income properties, but only after months of persistent objections on my part.

Suggested prevention strategies:

- Tenant complaints in low income housing need to be taken seriously, and there should be a requirement that any such complaints be investigated, and acted upon if well founded.
- The landlord should be made to make necessary repairs to ensure low income housing is habitable, or have their ability to provide low income housing revoked, punishable with severe penalties.

Case X. – Management Companies and Attorneys for Homeowner Associations Mrs. J, an elderly widow with multiple health problems, called the management company of her homeowner association, when she smelled smoke coming from a malfunctioning light in the common area. She was fined $200 for having called management instead of the local fire department. When she refused to pay the outrageous fine at my direction, the homeowner association began fining her for having a wilted plant on her front porch; a vine growing through her fence; for speaking out against the board to a neighbor, as a board member walked by. Once the penalties mounted ever higher, and Mrs. J refused to pay the unreasonable fines upon my advice, the homeowners association spitefully and illegally instructed the management company to conger up an utterly bogus bill for past assessments due of $16,000.

Immediately, the management company proceeded to turn the matter over to the attorney representing the homeowner association. Suddenly my client's home was foreclosed on, by a collection agency that was a subsidiary of the homeowner association attorney's law firm. The two entities, the law firm and the collection agency, were essentially one and the same, collecting late fees and collection charges that mushroomed dramatically in a few short months. The management company also charged its own fees in the foreclosure process. I strongly advised my client to take the matter to mediation. A few weeks before I was able to arrange for dispute resolution, my client died of a massive heart attack -

brought on by the extreme stress she had been placed under by the untoward behavior of the homeowners association. I tried very hard to get her estate to file a lawsuit against the homeowners association for their bad faith conduct, but my strong suggestion was not acted upon. However, the homeowners association was never able to collect on the phony assessments, late fees or collection charges from the estate.

I appeared on KTVU Oakland television, which exposed this foreclosure scam. It highlighted the unsavory practice of the attorney for the homeowners association and the collection agency being essentially one in the same, making large amounts of money off the foreclosure process in a clear conflict of interest. In many cases, the monthly assessment check is put in a drawer, a claim of nonpayment made, and the foreclosure process begun - to amass ever escalating late fees and collection charges. In another case involving the very same management company and law firm, but for a different homeowners association, another client of mine was foreclosed on. Her check had been placed in a drawer, a claim of nonpayment made, and late fees and collection charges piled on. A supposed debt of approximately $500 mounted to over $6000 in two short months. My client took the matter to arbitration, which cost her a total of $12,000, but she ran out of money to be able to continue the fight into the courtroom. Sadly the unfortunate woman had to make the hard decision to pay all that was asked, rather than risk foreclosure on her home - no matter how unjust the late fees and collection charges were.

Suggested prevention strategies:

- All assessments must be fair and reasonable. Every small claims court should have jurisdiction to determine whether assessments imposed by a homeowners association are fair and reasonable.
- Collection agencies hired by homeowners associations to carry out foreclosures should not be permitted to be in any way affiliated with the attorneys representing homeowners associations.
- Late fees and collection costs in foreclosure should be fair and reasonable, and limited to no more than 20% of what is owed. Every small claims court should have jurisdiction to determine whether late fees and collection costs in foreclosure imposed by a homeowners association are fair and reasonable.
- A management company should not be able to collect any fees on the foreclosure process.
- Freedom of speech should prevail in homeowner associations, so that fines for speaking out against the board are prohibited.
- Any fines imposed in a homeowners association for failing to follow governing documents must be fair and reasonable and not frivolous. Every small claims court should have jurisdiction to determine whether a fine imposed by a homeowners association is fair and reasonable.
- Any homeowner association board member who acts in bad faith and permits unfair or unreasonable assessments, fines, late fees or collection charges should be held personally liable to the homeowner for any amount deemed by the courts to be unreasonable.
- A homeowner should be able to make monthly payments directly to the homeowners association if management is not receiving payment for whatever reason.

In Yolo County, California, some years ago we formed the Triad Task Force, an action arm of the Yolo County Commission on Aging & Adult Services. I decided to set it up after listening to a talk on financial elder abuse given by a member of your panel Paul Greenwood, Deputy District Attorney, Head of the Elder Abuse Unit, Family Protective Services, San Diego, CA. The Yolo County Triad Task Force has developed two fraud DVDs, in partnership with the Yolo County District Attorney's Office and University of CA Davis Media and Computer Lab. The DVDs are used as an adjunct to seminars on consumer and cyber fraud we give throughout the county. The idea is to reach out to senior citizens before they are scammed, educating them on what red flags to look for, in an effort to prevent financial elder abuse. This sort of critical education needs to take place at the local level in particular, where seniors reside within their communities.

I was heartened to see there is a recognition that an effort to improve the financial literacy of senior citizens needs to be made, according to the GAO Report: *"Coordination among federal agencies is also a feature of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which established CFPB, requiring it to coordinate its consumer protection efforts of older adults with other federal agencies. CFPB's Office for Older Americans is charged with facilitating the financial literacy of seniors on protection from unfair, deceptive, and abusive practices and on current and future financial choices."*

Nevertheless District Attorneys, Adult Protective Services and law enforcement require the necessary funding to carry out this educational function, a point also noted in the GAO Report: *"Experts and federal, state, and local officials told us that older adults need more information about what constitutes elder financial exploitation in order to know how to avoid it. However, APS and law enforcement officials told us that it is difficult for them to reach many older adults with this message and that they have little funding to promote public awareness. For example, in one California county officials reported that due to budget cuts, they had lost many positions that involved educating the public about elder financial exploitation."*

Another crucial point noted in the GAO Report is that financial elder abuse is often treated as a civil matter rather than a criminal one: *"In addition, we were told that some prosecutors and judges are reluctant to take on cases of suspected elder financial exploitation because of competing priorities and limited resources, a continuing belief that elder financial exploitation is primarily a civil issue, or a view of older adult victims as unreliable witnesses".* **Financial elder abuse needs to be treated as a criminal matter if there is any hope of putting a stop to it.** Civil court is too expensive and too traumatic an option for most senior citizens to avail themselves of. They need the assistance as well as the full force and effect of the criminal justice system to protect them.

In Yolo County, representatives from the various agencies meet in a multidisciplinary team format to address the issues of seniors in crisis. It is the perfect venue to discuss financial elder abuse. But law enforcement is so over-extended, the appropriate representatives from the District Attorney and police cannot get permission to attend these meetings. This problem was noted in the GAO Report: *"Although multidisciplinary groups responding to elder financial exploitation already exist in each of the four states we visited and elsewhere, forming and sustaining these groups continues to be challenging, according to law enforcement officials in one state we visited and experts. Busy schedules and competing priorities make it difficult for some participants to attend meetings regularly, and a group's focus influences how extensively members are willing to participate. For example, in one location officials told us that when the primary focus of their group shifted from prosecuting cases to providing services, participation by law enforcement officials declined."* **The federal government needs to support these multidisciplinary team efforts in every way possible.**

However, federal agencies also need to be more responsive to state and local law enforcement and legal advocates that seek assistance, as noted in the GAO Report: *"For example, a law enforcement official* *from California described a case of widespread interstate check fraud, expressing frustration with federal agencies that would not provide any support when he requested it. Federal officials, on the other hand, told us that they cannot take all cases referred to them by state and local law enforcement and that they must prioritize their caseload to make the best use of their limited resources. Justice and FTC officials said they tend to focus on larger cases in which many victims were affected or a significant amount of money was lost, and Justice's U.S. Attorneys also apply regional priorities, such as the vulnerability (including age) of the victim, when determining which cases to take."*

Banks themselves are certainly an important partner in combating financial elder abuse, as indicated in the GAO Report: *"According to state and local officials, banks are important partners in combating elder financial exploitation because they are well-positioned to recognize, report, and provide evidence in these cases. Indeed, frontline bank staff are able to observe elder financial exploitation firsthand. For example, a bank teller who sees an older adult regularly is likely to notice if that individual is accompanied by someone new and seems pressured to withdraw money or if the older adult suddenly begins to wire large sums of money internationally."* **In California, we have a mandatory reporting law for financial elder abuse, that includes banks as mandated reporters.** Banks have been instrumental and crucial in providing training on financial elder abuse and spotting the financial abuse when it is occurring.

And lastly I wholeheartedly concur with the GAO Report's final conclusion: *"Elder financial exploitation is a multi-faceted problem spanning social service, criminal justice and consumer protection systems of government. As a result, combating it is challenging and requires action on the part of not only many state and local agencies, but also multiple agencies at the federal level. Each of the seven federal agencies we reviewed is working to solve this problem in ways that are consistent with its own mission. However, the problem is large and growing. It calls for a more cohesive and deliberate approach government wide that, at a minimum, identifies gaps in efforts nationwide, ensures that federal resources are effectively allocated, establishes federal agency responsibilities, and holds agencies accountable for meeting them."*

I commend the Special Committee on Aging and its Chairman, Senator Herb Kohl (D-WI), for taking on the difficult task of financial elder abuse prevention. Financial elder abuse is an epidemic of criminal activity that is sweeping our nation. If we don't do something about this spreading scourge now, it will wreak irreparable havoc on our elder citizens' health and financial well being and on our nation's economy. I hope I have helped in highlighting another facet of financial elder abuse – legitimate businesses that may stoop to scamming senior citizens. If I can be of any further assistance or should you have any questions or concerns, please do not hesitate to contact me.

WRITTEN TESTIMONY OF
DEPUTY CHIEF POSTAL INSPECTOR SHAWN S. TILLER
SUBMITTED TO THE SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
HEARING ON
PREVENTING ELDER FINANCIAL ABUSE
NOVEMBER 15, 2012

I want to thank the Senate Special Committee on Aging for the opportunity to provide written testimony on the financial exploitation of older Americans. The U.S. Postal Inspection Service has developed a strategy to combat elder fraud committed through the mail. These are scams perpetrated mostly by strangers, versus the kinds of frauds committed by family members or caregivers. In many cases, the perpetrators are in other countries. Our strategy has three main components: (1) building partnerships; (2) training law enforcement on the state and local level; and (3) raising public awareness.

The U.S. Postal Inspection Service, the law enforcement and security arm of the U.S. Postal Service, is committed to protecting all Americans from fraud, but especially the elderly who are targeted or disproportionately victimized by schemes such as lottery fraud. Our investigations show that most lottery fraud victims are between 60 and 80 years old, many even older.[1] No legitimate lottery requires the payment of fees or customs duties upfront to collect your winnings. So, why are the elderly so easily duped? In 2009, the AARP Foundation sponsored a study that sent trained geriatric social workers into the homes of elderly lottery fraud victims. The average age of these subjects was 77. Nearly three-quarters of the victims interviewed were assessed as having mild or moderate cognitive impairment.[2] Given the older age of the victims, one might assume the rates of cognitive impairment in this study are normal. Recent national studies of elderly Americans, however, found that only 21 percent of individuals between 71 and 79 years of age and 53 percent of those between 80 and 89 have cognitive impairment.[3] Victims of lottery fraud have more cognitive impairment than other individuals in their age range.

Scientists have recently pinpointed the part of the brain associated with gullibility and found that people with age-related damage to that area tend to believe misleading ads.[4] In short, they lose the ability to detect deceit. So, when they receive a solicitation through the mail or over the phone that says, "You've won!" they believe it. They just don't get the lie. In fact, the ability to spot a lie is *one of the first things to go.* Even in the early stages of mental impairment, a person could function normally in all other areas: live independently, pay their bills, drive to the grocery store, and meet with friends. Meanwhile, their vulnerability to con artists is quietly growing. Unobserved, unnoticed, except by the scammers.

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[1] Based on a survey of USPIS fraud team leaders and investigators, May 5, 2012.
[2] AARP Foundation, 2009, pilot study to determine potential levels of cognitive impairment among lottery victims.
[3] B. Plassman et al, "Prevalence of Cognitive Impairment without Dementia in the United States," *Annals of Internal Medicine*, 148 (2008), No. 6:427-434

[4] University of Iowa research, published 2012 in a special issue of *Frontiers of Neuroscience;* authors: Daniel Tranel, Erik Asp, Kenneth Manzel, Bryan Koestner, Catherine Cole. Contact Richard Lewis, University Communication and Marketing, 319-384-0012.

University of California, Dept of Neurology: *Comprehension of insincere communication in neurodegenerative disease: lies, sarcasm and theory of mind.* Authors: Shany-Ur, T; Poorzand, P; Grossman, SN; Growdon, ME; Jang, JY; Ketelle, RS; Miller, BL; Rankin, KP. 2011.

Despite efforts to date, the threat of elder fraud remains very real, whether it takes place through the mail, on the phone or over the Internet, and whether it is carried out by scam artists operating within the U.S. or elsewhere. Victims, however, are often reluctant to come forward and the suspects operate, more and more, from outside the United States.

In 2009, Postal Inspectors initiated an investigation into a lottery fraud. All the victims in this ongoing case are older Americans (70 years or older). Postal Inspectors found that the operators of the fraud illegally purchased a list containing the names and addresses of older Americans.[5] They then contacted persons on the list by phone or mail, saying they had won a lottery and instructing them to wire transfer or mail a processing fee so the prize money could be released. The victims' payments went to co-conspirators operating within the U.S. or, in some cases, directly to the main suspects in Jamaica.

In this case, the scheme was first reported to USPIS by local police in New Jersey. As the investigation progressed, Postal Inspectors teamed with two other federal agencies, the IRS and DHS, and authorities in Jamaica to help conduct surveillance and execute search warrants. To date, some suspects have been identified and charged; a few are cooperating. We learned, for example, that the same lead list purchased by the Jamaican operatives was also purchased by criminals in Costa Rica, Canada, Panama and Russia. Even though we are a federal law enforcement agency, and even with the cooperation of other agencies and international authorities, we just can't arrest our way out of the problem.

Our strategy, by necessity, includes other means to stop these crimes. We rely on our counterparts here and abroad to identify and intercept fraudulent solicitations before they enter the U.S. mail stream and ultimately reach the mailboxes of our aging parents, grandparents and other loved ones. We've enlisted the help of postal employees who deliver mail and work at retail counters to look for the tell-tale signs of scams targeting the elderly through the mail. We work with fraud practitioners throughout all levels of government and within non-governmental organizations to raise awareness and change the behaviors that give rise to victimization. Our success depends heavily on a team effort. We are reaching out now to AARP and other stakeholders, especially the Department of Justice, who participate in the HHS-led Elder Justice Coordinating Council, and invite them to work alongside us.

Prevention that works

The U.S. Postal Inspection Service, upon consultation with Dr. Doug Shadel, Director AARP Washington State,[6] offers these tips to older Americans: 1) learn to identify the tactics fraudsters use; 2) verify the registration status of investment brokers, lottery operators and charities before you do business with them or send money; and 3) reduce your exposure to sales pitches.

Learn the Tactics Fraudsters Use: Studies conducted by Stanford University (2010)[7] and the Department of Justice and AARP (2003)[8] found that peer-to-peer counseling, even counseling provided through a call-center, resulted in a significant reduction in a person's tendency to fall for a fraudulent sales pitch. In a similar study, older Americans participating in an investment fraud workshop (developed by AARP and the FINRA Investor Education Foundation) were better

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[5] Postal Inspectors have yet to determine the source of the list purchased by the fraud operators.

[6] Doug Shadel is the state director for AARP Washington and previously served as a fraud investigator and special assistant to the attorney general for the Washington State Attorney General's office. He is a nationally recognized expert on financial fraud and the author of *Outsmarting the Scam Artist*, published 2012, by John Wiley and Sons Inc., Hoboken, NJ.

[7] Menkin, Scheibe, Shadel, Ross, Deevy and Carstensen, "Forewarned, forearmed? Effects of warning messages on rejection of fraudulent telemarketing pitches." Poster presentation at Gerontological Society of America Annual Meeting, New Orleans LA. (November 2010).

[8] AARP, "Off the hook: Reducing participation in telemarketing fraud."

equipped to resist fraudulent offers after completing the workshop.[9] In both models, participants learned how to spot fraud from a safe distance. Hyped-up offers, using fear to induce a quick decision, asking lots of personal questions, and offers of free gifts or lunches are all warning signs. Knowing the warning signs in advance increases resistance to shady offers.

Verify Whom You're Dealing With: Never make a decision at the time of the sales pitch and get everything in writing. Check the complaint history of the organization with the Better Business Bureau, attorney general's office for your state or another relevant government agency. Ask for and verify registration and licensing information before proceeding. It does not guarantee that you will avoid all problems, but it will greatly reduce the chance the offer is a scam.

Reduce Exposure to Sales Pitches: Persons who expose themselves to sales situations, even legitimate ones, are more likely to be victimized by fraud. Sign up for the Do Not Call Registry by calling 1-888-5-OPTOUT (1-800-567-8688) or online at www.donotcall.gov. It can help reduce telemarketing calls to your home. Exceptions are businesses with which you have a relationship, charities and political organizations. Get a non-published number and install an answering machine and caller ID to screen calls. Record an outgoing message that informs callers you do not accept solicitations and to place this number on their do-not-call list. And finally, develop a one- or two-sentence refusal script and put it by the phone. An example would be: "I'm sorry. This is not a good time. Thank you for calling."

Opt out of unsolicited commercial mail offers by contacting the Direct Marketing Association's (DMA) Mail Preference Service online by visiting www.the-dma.org, or send a letter to the Direct Marketing Association, Mail Preference Service, P.O. Box 643, Carmel, New York 10512.

And finally, limit the free prize and sweepstakes drawings you enter and your attendance at free lunch seminars. Free lunches often place you in a situation where you can be pressured to make a purchase you might later regret. Never make a buying decision for at least 24 hours.

By taking a few simple steps, older Americans can better spot and resist malicious solicitations, and reduce the risk of being defrauded. For more information, visit www.DeliveringTrust.org to get the facts on fraud and learn where to direct victims, and the people who care for them, for help.

[9] D. Shadel, K. Pak and J. Gannon, "The effects of Investment Fraud Workshops on Future Investor Resistance," presentation at National Academy of Sciences meting on Elder Mistreatment and Abuse and Financial Fraud, Washington DC, June 22, 2010.

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November 28, 2012

Senator Herb Kohl, Chairman
Senate Special Committee on Aging
G31 Dirksen Senate Office Building
Washington, DC 20510

Senator Bob Corker, Ranking Member
Senate Special Committee on Aging
628 Hart Senate Office Building
Washington, DC 20510

Dear Senators Kohl & Corker,

The Center for Aging with Dignity at the University of Cincinnati is devoted to keeping people "SAFE After 60". We are researchers and educators focused on developing and advancing best-practice programs on promoting safety and preventing elder financial abuse. Based on our research and professional experience, we wish to raise two specific concerns in response to the recent testimony given regarding *"America's Invisible Epidemic: Preventing Elder Financial Abuse."*

Knowledge Base Lacking – An increase in reported cases of elder financial abuse (EFA), whether due to the rapidly growing age 60+ population, or additional education/ awareness, is a recipe for disaster for a system that is fragmented, outdated and already operating at capacity. We have serious concerns that little is known about the effectiveness of the existing investigative processes. Based on our work with Adult Protective Service (APS) from Ohio, Kentucky, Indiana, and Illinois, we know there are significant differences in administrative and investigative procedures. APS representatives we have spoken with indicate a desire to do more but lack the time and expertise needed to objectively evaluate current processes. To help maximize protective and senior services' (P&SS) resources and processes, research is needed to identify barriers and gaps in order to improve systems, build capacity, and enhance collaboration.

While we agree that EFA is a crime commonly committed through fraudulent actions including coercion, deception, and false pretenses, cases under a certain dollar threshold (e.g., >$100K, >$250K), are unlikely to be prosecuted. Whether or not an alleged case of EFA is *unlawful*, our protective system must also address the many *awful* acts and repeated indignities that many older people encounter. The awful acts of EFA entail situations that are horrific and which are often overlooked due to insufficient evidence or a lack of help-seeking behavior.

Multifactorial Approach – Despite the testimony suggesting education is the single most important aspect in fighting EFA, we strongly disagree. Rather, we believe that a multifactorial approach, in which education is one element, is necessary. Education does not guarantee knowledge transfer or that the intended outcome will be achieved (e.g., personal responsibility, preventative measures). Additionally, older people are unlikely to take interest in learning about EFA if they do not perceive EFA as being pertinent to them. Findings from research indicate that while education often leads to greater knowledge, it is insufficient to change people's behaviors and practices.[1,2]

Having great concern that the voice of older people is often overlooked, we are conducting research regarding their perceptions, needs, and preferences specific to EFA. It is critically important to find out from older people what they would want and how they might best respond should they find themselves a victim of EFA. We call it "asking the experts." Additionally, various P&SS agencies in Southwestern Ohio have asked for our help as they recognize their limitations and inability to address needed system change. As the case load is certain to increase in the coming years, the more we can do to improve the effectiveness and efficiency of P&SS agency operations. Our research agenda also includes studies assessing the response to EFA by APS, law enforcement, and banks.

At the University of Cincinnati, we promote and follow a scientific/systematic process in order to make evidence-based decisions that support process improvement and program development. We welcome the opportunity to participate in discussions and contribute to body of EFA research.

Respectfully submitted,

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References

1 Sedlak, C.A., & Doheny, M. O., Jones, S. L. (2000). Osteoporosis Education Programs: Changing Knowledge and Behaviors. *Public Health Nursing, (17)*5, 398-402. Available at: http://onlinelibrary.wiley.com/doi/10.1046/j.1525-1446.2000.00398.x/abstract;jsessionid=840E4341841131F0BC72DF44CCDB6EB1.d01t01

2 McLarry, S. (2006). Journey to Healthy Aging: Impact of Community Based Education Programs on Knowledge and Health Behavior in Older Adults. *The Forum on Public Policy*. Available at: http://forumonpublicpolicy.com/archive07/mclarry.pdf