

Senior\$afe

PREVENTING FINANCIAL EXPLOITATION OF THE ELDERLY:

The Role Of Broker-Dealers and Investment Advisers

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NEBRASKA

Good Life. Great Opportunity.

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WHAT IS EXPLOITATION



What is exploitation?

- Financial Exploitation (Neb. Rev. Stat. § 28-358)
 - Wrongful, unauthorized, unlawful taking of the assets or property of a *vulnerable adult* or *senior adult*
- Senior Adult (Neb. Rev. Stat. § 28-366.01)
 - Age 65+
- Vulnerable Adult (Neb. Rev. Stat. § 28-371)
 - Age 18+ with substantial mental or functional impairment or a guardian or conservator is appointed
- Criminal penalties for knowing and intentional financial exploitation (Neb. Rev. Stat. § 28-386)

**BAD FINANCIAL DECISIONS MAY NOT BE FINANCIAL
EXPLOITATION**





WHY REPORT



Community Benefits:

- Improved safety
- Promote goodwill
- Preserve client financial independence
- Promote cooperation between firms, APS, and law enforcement

Business Benefits:

- Demonstrate concern over client's well-being
- Preserve reputation
- Increased community recognition
- Empower employees
- Build office morale
- Good customer service



Regular contact puts you in a unique position to detect behavior changes and to assist in protecting clients before assets have been disbursed



It can happen to anyone



Mickey Rooney, Testimony to Senate Special Committee on Aging,
March 2, 2011

Brooke Astor and grandson, Philip Marshal



Why Addressing this Issue is Important

- Vulnerable population is large and growing.
- Financial health affects overall health.
- Even older adults with savings in the low millions can't afford to lose substantial amounts, as they don't have the time to make it up.
- Older adults are more willing to take financial risks and are often more trusting.
- Often one spouse handles the finances, potentially leaving a surviving spouse ill-equipped to manage financial affairs and vulnerable to exploitation.





WHAT CAN YOU DO?

- 1) Learn common red flags
- 2) Offer safer alternatives
- 3) Follow firm procedures
- 4) Report possible exploitation




What Can You Do?

1. LEARN TO IDENTIFY COMMON **RED FLAGS** THAT COULD INDICATE FRAUD, EXPLOITATION, OR ABUSE

This section will describe common RED FLAGS. This list will include the activity that can trigger a Suspicious Activity Report (SARs)*, as well as other common RED FLAGS that have been identified by Adult Protective Services (APS), and the Financial Services Roundtable (BITS).

* Federal- and state-registered investment advisers are not currently subject to SARs filing requirements. Information regarding SARs red flags and filing requirements is provided on an informational basis to investment advisers. Investment advisers should keep themselves informed regarding whether SARs obligations may extend to them in the future.



RED FLAGS

Suspicious
BEHAVIOR
That Could
Indicate
Cognitive
Challenges
and Be
Susceptible to
Fraud,
Exploitation, or
Abuse

- Difficulty communicating with or understanding you (APS)
- Challenging behavior such as agitation, delusions, or inappropriate comments (APS)
- Wandering into your office or becoming lost in the building (APS)
- Frequent loss of financial records, checkbooks, credit/debit/ATM cards (APS)
- Difficulty expressing needs or desires regarding his/her affairs (APS)



RED FLAGS

Suspicious
BEHAVIOR
That Could
Indicate Fraud,
Exploitation, or
Abuse

- Person accompanying elder shows excessive interest in elder's finances or accounts, does not allow elder to speak, or is reluctant to leave the elder's side during conversation (SARs Red Flag)
- Elder shows an unusual degree of fear, anxiety, submissiveness, or deference towards person accompanying him or her (SARs Red Flag)
- Elder lacks knowledge about his or her financial status or shows reluctance to discuss financial matter (SARs Red Flag)
- Elder moves away from existing relationships and toward new associations with other "friends" or strangers (SARs Red Flag)



RED FLAGS

Suspicious
BEHAVIOR
That Could
Indicate Fraud,
Exploitation, or
Abuse

- You are unable to speak directly with the elder despite repeated attempts to contact him or her (SARS Red Flag)
- Elder displays unexplained or unusual excitement over financial windfall or prize check; may be reluctant to discuss details (BITS)
- Noticeable neglect or decline in appearance, grooming, or hygiene (APS)
- Sudden appearance of previously uninvolved relatives claiming their rights to the elder's affairs and possessions (BITS)



RED FLAGS

Suspicious
**ACCOUNT
ACTIVITY**
That Could
Indicate Fraud,
Exploitation, or
Abuse

- A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of an elder without proper documentation (SARs Red Flag)
- Abrupt changes to financial documents, such as power of attorney, account beneficiaries, wills and trusts, property title, and deeds (SARs Red Flag)
- Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds (SARs Red Flag)
- Closing of accounts without regard to penalties (SARs Red Flag)



RED FLAGS

Suspicious
**ACCOUNT
ACTIVITY**
That Could
Indicate Fraud,
Exploitation, or
Abuse

- Noticeable change in elder's established banking or financial management habits or patterns, including:
 - Frequent large withdrawals (SARs Red Flag)
 - Sudden NSF activity (SARs Red Flag)
 - Inconsistent transactions or uncharacteristic attempts to wire large sums of money (SARs Red Flag)
- Change of address on accounts to new recipient's address, especially when distant from elder's home (BITS)
- Large withdrawals from a previously inactive account or a new joint account or sudden appearance of credit card balances (BITS)
- Suspicious signatures (APS)
- Unexplained disappearance of funds or valuable possessions, such as safety deposit box items reported missing by elder (BITS)



What Can You Do?

2. OFFER SAFER ALTERNATIVES

For example:

- Suggest alternatives to large cash withdrawals and discourage wire transfers
- Make clients aware of ways to limit the risk of joint accounts
- Discuss lower-risk alternatives




What Can You Do?

3. FOLLOW YOUR FIRM'S INTERNAL PROTOCOL

Your firm should have written supervisory procedures, which should include reporting requirements.

- A clear internal protocol ensures timely, efficient, and effective management of reports of suspicious behaviors.

REMEMBER:

- A reasonable belief of elder financial exploitation is adequate for reporting; proof is not required.
 - No dollar amount is too small to report.
- 

Follow internal procedures

- Your firm should establish supervisory procedures, which include reporting requirements
- FINRA Rule 2165 (Financial Exploitation of Specified Adults) (effective 2/5/18)
 - Reasonable belief that financial exploitation has occurred, is occurring, has been attempted or will be attempted
 - Permits the temporary hold on distribution of funds or securities up to 15 business days on a specified adult
- A reasonable belief of elder financial exploitation is adequate for reporting; proof is not required.
- No dollar amount is too small to report.





HOW TO REPORT

Develop a proper internal protocol and action steps for reporting



Reporting Elder Abuse and Financial Exploitation

- Factors to consider:
 - What federal and state confidentiality laws apply?
 - Are you required to make a report?
 - What can you report without your client's permission?
 - When do you need to have your client's permission to make a report?

Disclaimer: The following slides provide an overview of confidentiality laws and their exceptions. The materials do not provide, and should not be considered, legal advice.




Confidentiality Laws

- Prohibitions against sharing non-public personal information to non-affiliated third parties without client consent
 - Gramm Leach Bliley, 15 U.S.C. § 6802
 - SEC Regulation S-P
 - Investment adviser rule under the Securities of Act of Nebraska, 48 NAC 12.006.13




Confidentiality laws

GLBA **does not** require consumer authorization:

- To comply with federal, state, or local laws, rules, and other applicable legal requirements, such as laws that require reporting of suspected abuse
 - To respond to a properly authorized civil, criminal, or regulatory investigation, subpoena, or summons
 - To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. This exception generally allows a financial institution to disclose non-public personal information in order to:
 - Report incidents that result in taking an older adult's funds without actual consent, or
 - Report incidents of obtaining an older adult's consent to sign over assets through misrepresentation of the intent of the transaction.
 - To the extent specifically permitted or required under other provisions of law...to law enforcement agencies...or for an investigation on a matter related to public safety.
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Confidentiality Laws

- Federal Agencies, including the Federal Reserve, CFTC, CFPB, FDIC, FTC, NCUA, OCC, and SEC issued reporting guidance known as the *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults*. (9/24/13)
 - Acknowledges the importance of reporting
 - Clarifies that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate GLBA
 - Disclosure always permissible with consumer consent
 - FINRA Rule 4512 (Customer Account Information) (effective 2/5/18)
 - Reasonable efforts to obtain the name and contact information of a trusted contact
 - Senior\$afe Act (S. 2155, Section 303) (enacted 5/24/18)
 - Immunity from liability to certain financial institutions and certain employees who in good faith and reasonable care, disclose suspected exploitation of a senior citizen to a regulatory or law enforcement agency. The act addresses training requirements and provides guidance.
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Nebraska APS reporting

- Financial professionals are not mandatory reporters to APS in Nebraska
- No rule of evidence or other provision of law concerning confidential communications shall apply to prevent reports made pursuant to the Adult Protective Services Act unless otherwise specifically mentioned in the act (Neb. Rev. Stat. § 28-382)
- Reports made to APS will be kept confidential (Neb. Rev. Stat. § 28-385)
- Persons who report or assist in an investigation are immune from liability (Neb. Rev. Stat. § 28-375)



Federal Reporting

- Suspicious Activity Reports
 - Mandatory reporting requirement for financial institutions
 - Includes instances of “elder financial exploitation”
 - Narrative needs to include sufficient information to establish that the person is a vulnerable adult and describe what happened
- **SARs filings are not a substitute for local reporting and investigation**
 - Continue to report all forms of elder abuse according to your firm’s policies, as well as requirements of state and federal law



Adult Protect Services


- Nebraska Department of Health and Human Services - Adult Protective Services

Phone: (402) 471-9272

dhhs.childrenandfamilyservices@nebraska.gov


www.dhhs.ne.gov

Nebraska Adult and Child Abuse and Neglect Hotline: 1-800-652-1999

- A reasonable belief is enough to report financial exploitation.
 - **If you are in doubt, call APS!** APS will determine whether the senior needs assistance, and if not, APS may refer the senior to the appropriate local resources.
 - Report **every time** there is suspected exploitation or abuse, regardless of whether the customer has refused help in the past
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Reporting to Adult Protective Services

The APS Process and Timetables

1. A concerned citizen contacts his/her local APS office to report concerns about the welfare of a senior or adult with disabilities.
 2. The details provided in the report will be screened by a trained professional to evaluate if it meets the statutory requirements for APS services in the state and/or municipality receiving the report.
 3. If the situation meets criteria for abuse, neglect or exploitation, an APS worker will initiate face-to-face contact with the adult needing assistance.
 4. The APS worker will assess the adult's safety, need for assistance, and determine what services, if any, would be beneficial to maintain his/her well-being and independence.
 5. While APS workers help thousands of vulnerable adults every day, individuals always have the right to decline services.
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Repeat Reporting

Even if the suspicious behavior is reported, victimization can continue. Why?

- Complex underlying relationships.
- Seniors may refuse to admit that they are being abused.
- Agencies cannot take action due to lack of evidence.
- Repeat victimization.

Report *every time* there is suspected exploitation or abuse, regardless of whether the customer has refused help in the past.



Law Enforcement

- **Call 911 if you believe that someone is in immediate danger**
- Local police, sheriff, or other law enforcement
- Non-emergency reports should be limited to very basic information:
 - Name, age (estimate), address, and telephone number of the victim.
 - Full description of the suspect (if known).
 - Description of the incident.
 - Location of the incident.
 - Description of suspect's car and license plate number (if known).



Securities Regulator

- Nebraska Department of Banking and Finance, Bureau of Securities
 - (402) 471-3445
 - (877) 471-3445
 - www.ndbf.nebraska.gov
- Securities and Exchange Commission
- FINRA
- If it doesn't involve a security – refer to appropriate agency and/or community-based resources
- If it does involve a security
 - Conduct an investigation
 - Pursue administrative, civil, or criminal remedies under the Securities Act of Nebraska
 - Possibly refer to community-based support or resources



Community-Based Services

- **A referral to these services requires your client's consent.** (As required by GLBA)
- Ways to still provide the information:
 - Provide contact information of service
 - Contact service provider jointly with the senior
 - Contact service provide and get information to pass on (without providing specific details)



Legal Aid Services

- Elderly victims often need assistance with civil legal issues.
 - Powers of attorney
 - Health care advance directives
 - Referrals for wills and estates
 - Consumer debt
 - Eviction and foreclosure
 - Public benefit appeals
- Legal Aid of Nebraska
www.legalaidofnebraska.org
(877) 250-216



Area Agency on Aging

- Your local Area Agency on Aging has a wide variety of supports and services available to assist elders.
 - Transportation
 - Heating services
 - Food assistance
 - Respite care for caregivers
- Area Agency on Aging
 - Depends on the location
 - Nebraska agency information available through DHHS (dhhs.ne.gov/Documents/aaa.pdf)



Domestic Violence and Sexual Assault

- Contact law enforcement if you suspect someone is the victim of sexual abuse or domestic violence.
- Contact a support center (**with consent**):
 - National Domestic Violence Hotline: 1-800-799-SAFE (7233)
 - National Sexual Assault Hotline: 1-800-656-HOPE (4673)
 - Nebraska's Network of Domestic Violence/Sexual Assault Programs
dhhs.ne.gov/children_family_services/Pages/nea_domesticprograms.aspx
ndvsac.org/get-help/



Reporting and Referral Contacts

Any adult in immediate danger: 911

With or without consent (Reporting):

- Adult Protective Services
1-800-652-1999
- Local Law Enforcement
- Nebraska Department of Banking and Finance
402-471-3445
877-471-3445
- Securities Regulators
FINRA, SEC, NASAA

With consent (Referring):

- Legal Aid of Nebraska
www.legalaidofnebraska.org
877-250-2016
- Nebraska Area Agency on Aging
dhhs.ne.gov/Documents/aaa.pdf
- Domestic Violence Hotline
1-800-799-SAFE (7233)
- Sexual Assault Hotline
1-800-656-HOPE (4673)
- Nebraska Network of Violence/Sexual Assault programs
dhhs.ne.gov/children_family_services/Pages/nea_domesticprograms.aspx

Resources

ServeOurSeniors.org

Where to Turn for Help

Click on your state, province or territory to find contact information for helpful resources.



Questions?

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