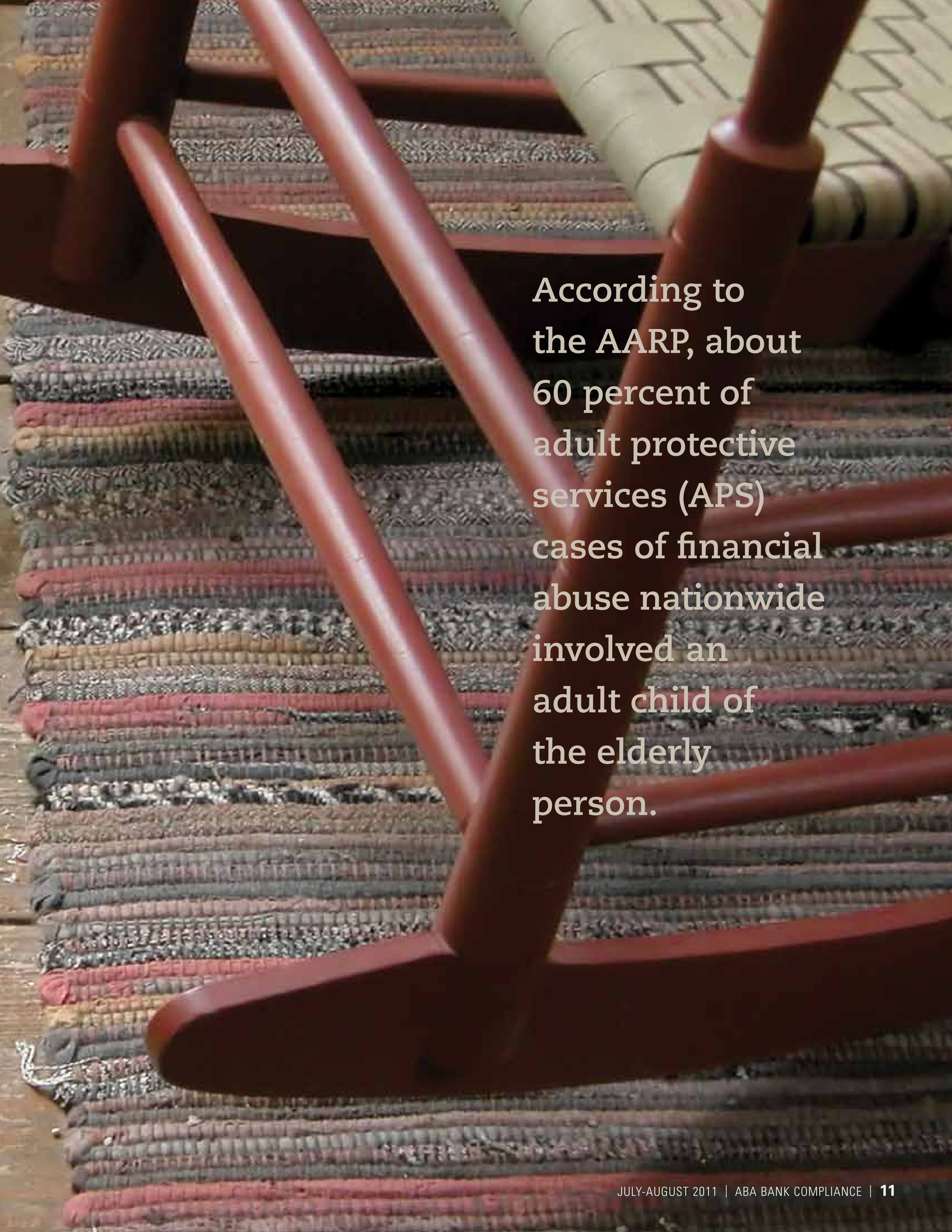
Stopping the Financial Abuse of Seniors

BY LESLIE CALLAWAY, CRCM, CAMS, AND JERRY BECKER

RODNEY K. BROWN, president and CEO of the California Bankers Association, wrote the following in a recent article for the *San Jose Mercury News*:

> **Recently a Bay Area bank received a call from an 84-year-old client. She was confused and hesitant as she described a charge at a discount store she did not think she had made. She also said she had had a stroke and was in a care facility.**
>
> **After talking a while, she asked the bank to disregard her call. But bank representatives reviewed her account and found suspicious debit card purchases from a gas station, several women's clothing stores and a casino. In response, the bank placed a call to the county ombudsman, whose job it is to protect the elderly, and to whom bank officials may report suspected cases of financial abuse if the elder is in a care facility. The county ombudsman referred the case to adult protective services for further investigation.**



According to the AARP, about 60 percent of adult protective services (APS) cases of financial abuse nationwide involved an adult child of the elderly person.

According to Mr. Brown's article, "As bankers, we have a strong commitment to our clients and the protection of their financial assets. Part of that commitment includes watching out for our elderly customers."[1]

The National Center on Elder Abuse (NCEA), which is supported by the U.S. Administration on Aging, defines elder financial exploitation as "the illegal or improper use of an elder's funds, property or assets." The NCEA has identified financial and material exploitation as one type of elder abuse.[2] Anyone can commit the crime—a family member, a caregiver, a court-appointed guardian, or "an outside scam artist," experts say. Financial elder abuse can happen to anyone, and it has. According to the AARP, about 60 percent of adult protective services (APS) cases of financial abuse nationwide involved an adult child of the elderly person, compared with 47 percent for all other forms of elder abuse.[3] Although anyone can commit fraud against senior citizens, the Los Angeles branch of adult protective services reports that about 90 percent of its cases involve allegations that a family member has financially abused an elder.[4]

Jenefer Duane, founder of the Elder Financial Protection Network, a nonprofit group trying to prevent financial abuse of the elderly, warns, "Among family members, there's an enormous sense of entitlement by people who feel like, 'I'm going to get the money anyway [after mom or dad dies]'. So they see themselves as 'borrowing' from their future inheritance."[5]

Web-based exploitation has grown as baby boomers, who are more comfortable with computer technology than earlier generations, age. In 2002, the National Fraud Information Center received reports of Internet fraud totaling $14, 674,933, and Internet fraud complaints in 2008 were up 33.1 percent over 2007.[6] Through technology alone, senior adults are becoming more and more susceptible to exploitation.

The statistics are frightening. In 2004 nearly 33 percent of the complaints for telemarketing fraud were made by individuals age 60 and older, up from 27 percent in 2002. The proportion of individuals losing $5,000 or more through Internet fraud is higher for victims 60 years and older than for any other age group. Estimates indicate that only one in 25 cases of elder financial abuse is reported. As many as 5 million senior citizens may be victimized by financial exploitation each year.[7]

Case Study: California

California's SB 1018, the Financial Abuse Reporting Act, effective January 1, 2007, requires employees of banks and credit unions to report suspected financial elder abuse to adult protective services or law enforcement. The act requires bank tellers to undergo training to help them recognize elder abuse and understand the reporting process. SB 1018 states that "suspected financial abuse" occurs when a bank employee observes behavior or transactions that would lead a person with similar training to form a reasonable belief that an elder is the victim of financial abuse. The bill includes protections from liability for bank employees reporting such abuse. Bank employees must report suspected financial abuse by telephone immediately, or as soon as possible, and file a written report within two working days with the local adult protective services or law enforcement agency. Banks are subject to a fine of up to $5,000 for failure to report an incident. Fines are paid by the institution.

Why Are Senior Citizens Victims of Financial Abuse?

The answer to this question is perhaps found by examining characteristics common among victims. "A 'typical' victim is between 70 to 89, white, female, frail, cognitively impaired, trusting, and often lonely or isolated," according to one private-sector study.[8] In August 2009, the U.S. Administration on Aging reported to Congress four possible scenarios by which one can become a victim:

- The elderly person is essentially a "financial prisoner." The victim is "physically, and perhaps psychologically, dependent on the primary caregiver, who isolates the older person and handles their assets." The victim "typically loses the ability to say 'no' to the caregiver and may even ratify suspicious transactions after the fact."

- Older individuals are "losing their ability to handle their financial affairs due to physical or cognitive impairments. Someone else, possibly a 'new best friend' or 'sweetheart,' gradually assumes responsibility for handling the older person's financial affairs and subsequently engages in financial abuse."
- A widow or widower has lost the spouse who "handled the couple's financial affairs, and the surviving spouse does not know how to do so. Typically, elders in this situation are relieved when someone offers assistance with their finances and are unaware that they are subsequently being exploited [and] generally are unable to determine whether the person is trustworthy."
- The older person adamantly refuses help and financial advice from reliable, responsible individuals who may or may not be relatives, and ends up placing control of his or her assets in the hands of a stranger.[9]

The Arizona Elder Abuse Coalition reports that the most prevalent type of abuse referred to law enforcement is financial exploitation and fraud. "The most common characteristics of victims of fraud and exploitation are that they are gregarious (need interaction), compulsive (cannot pass up a good deal), have a sense of machismo (believe they cannot be fooled), vulnerable (have experienced a recent trauma) and naïve (they want to believe everything they have been told is true)."[10] The Arizona coalition adds the following reasons for senior exploitation:

1. **Significant assets:** You've heard the old joke, "Why do criminals rob banks? Because that's where the money is." Seniors are victims of financial abuse because they are most likely to have significant savings, own their homes, and have excellent credit, all of which make the senior an attractive target for criminals. In addition, seniors are often unaware of the value of their assets.
2. **Reluctance to report:** Senior citizens are more susceptible to financial abuse than other segments of the population due to isolation, loneliness, mental and physical disabilities, family members who are substance abusers or unemployed, and an overall lack of familiarity with financial matters. However, elderly people are less likely to report incidents of financial exploitation than any other category of abuse. This is due in part to shame, humiliation, intimidation by the abuser, or even unawareness that the financial abuse is taking place. Seniors are also fearful that if family members discover that they have been scammed then those well-meaning relatives may decide that the senior is unable or no longer has the mental capacity to care for his or her own financial affairs.
3. **Memory problems**: Senior citizens make poor witnesses. It may be months before a person is even aware he or she has been victimized, and by then he or she may not be able to provide law enforcement or adult protective services with sufficient information to prosecute or even investigate the crime. Financial abusers of the elderly also assume that even if the victim does report the fraud, the senior won't live long enough to see the matter through to trial. Finally, elderly people with memory problems may write their ATM PINs on the backs of their debit cards or on slips of paper they keep with their cards, making it easy for unscrupulous individuals to take funds from their accounts.
4. **Predictability:** Seniors have predicable patters. They generally go to the bank and the grocery store on the same day, walk their dogs at the same time each day, receive their Social Security or pension funds at the same time each month, and keep their wallets, ATM cards, and personal information in the same place. This makes life easier for the individual, but it also makes them more vulnerable to financial fraud.
5. **Lack of technical ability:** Some seniors are less sophisticated than younger adults about advances in technology such as online banking and find managing their own finances difficult and confusing. They may sign up for online statements at the urging of the bank and to avoid the fee for paper statements, and then be unable to access their financial information without assistance.
6. **Fear:** Finally, because elder financial abuse is often perpetrated by a trusted confidant, caregiver, or family member, seniors are understandably reluctant to come forward for fear of being abandoned or creating family strife.

According to the Oregon State Bar Association,[11] financial abuse encompasses a whole array of wrongdoing:

- **Identity theft scams:** using another's name and information to obtain credit
- **Power of attorney scams:** the misuse of power of attorney to remove money from someone else's bank account or to take out a mortgage on someone else's home
- **Caregiver scams:** moving into another person's home by promising services or companionship and then pressuring the person to give presents or favors, or refusing to return money or property to the rightful owner after holding it in trust for that person
- **Investment scams:** targeting elderly or disabled people for sweepstakes promotions and telephone fraud or persuading someone to "invest" in a bogus business opportunity
- **Medication scams:** improperly hiding or taking another person's prescription medications

Missouri's MOSAFE (Missourians Stopping Adult Financial Exploitation) Program[12] states that the financial exploitation of elders can generally be classified in two broad categories:

1. Exploitation by a person known to the victim, such as a family member, acquaintance, caregiver, person acting with power of attorney, or court-appointed fiduciary. Examples include the following:
   - Obtaining money or property by undue influence, misrepresentation, or fraud: The perpetrator coerces the elder into signing over investments, real estate, or other assets through the use of manipulation, intimidation, or threats.
   - Improper or fraudulent use of the power of attorney or fiduciary authority: The perpetrator improperly or fraudulently

uses the power of attorney or fiduciary authority to alter an individual's will, to borrow money using the person's name, or to dispose of an individual's assets or income.
  - Misappropriation of income or assets: The perpetrator obtains access to Social Security checks, pension payments, checking or savings accounts, credit cards, or ATM cards, or withholds portions of checks cashed for an elder.
  - Charging excessive rent or fees for services: The perpetrator charges an excessive rent or unreasonable fees for basic care services such as transportation, food, or medicine.
2. Exploitation by a stranger, including a con artist, an unscrupulous salesman or contractor, or a person representing a bogus charity. Examples include the following:
  - Bank examiner scam: The perpetrator presents himself or herself as a bank examiner and convinces an elderly consumer to make a large withdrawal to help catch a dishonest bank employee.
  - Pigeon drop: The perpetrator claims to have found a sum of money and offers to split it with an elderly person provided the victim first withdraws an amount equal to his or her share as a sign of good faith.
  - Fake-accident ploy: The perpetrator convinces an elder that the elder's adult child has been seriously injured or is in jail and needs money for medical treatment or bail.
  - Telemarketing and mail fraud: The perpetrator persuades an elderly person to buy a value lessor nonexistent product, donate to a bogus charity, or invest in a fictitious enterprise.
  - "You've just won a prize!": The perpetrator tells an elder that he or she has won a nonexistent prize or foreign lottery and obtains the elder's credit card or checking account number to pay for shipping and handling charges or to verify the elder's identity, or asks the elder to wire money to cover the customs fees or taxes on the prize.
  - Unsolicited work: The perpetrator arrives unexpectedly at an elder's residence and offers to perform work for a reasonable fee; after starting the work, the perpetrator insists that the elder pay more than originally agreed before the work will be completed.

Banks Play a Vital Role

Consider the following case study of an incident of financial elder abuse:

Phyllis began having memory problems even before her husband of 65 years, Arthur, died. Arthur always managed the couple's finances, and after his death Phyllis was having problems even remembering to open the bank statement, much less balance the accounts. She would misplace her monthly pension check and often left bills unpaid. When her grandson, Peter, offered to help manage her accounts and pay her bills, Phyllis was delighted! Peter had been helping her with grocery shopping and taking her to doctor's appointments and the bank, so it seemed like the perfect solution to her dilemma.

After a few months, Peter suggested that it would be much easier if Phyllis granted him power of attorney so that he could pay her bills electronically using online banking. This way, he explained, she could have the billing address on her accounts changed to his address, and she would not have to worry about bills getting misplaced and going unpaid. Because he had been so helpful for so many months, Phyllis was relieved to sign a power of attorney giving Peter the ability to manage her financial affairs and thought nothing of signing her Social Security and pension checks over to her grandson for deposit into her account.

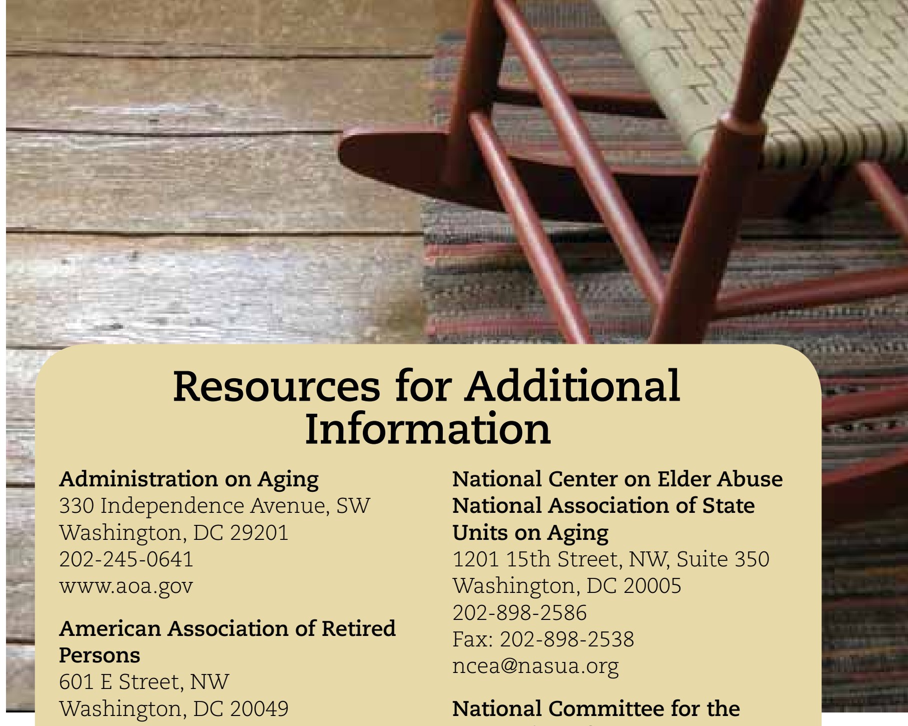
Peter began systematically using his power of attorney and bill payment authority to make checks payable to himself and transfer sums of money from Phyllis' savings account to his account. One day Sophie, an astute customer service representative at Phyllis' bank, noticed that Phyllis was on the overdraft report, which had never happened before. Sophie also noticed that Phyllis' Social Security and pension checks, which Phyllis had been depositing into her account on the fifth day of each month for years, had not been deposited for several months. Concerned that Phyllis could be ill, Sophie contacted Phyllis and learned that she had turned her financial affairs over to her "wonderful" grandson, who was so helpful! Further investigation by the bank resulted in a report to adult protective services, which investigated. Peter was ultimately arrested and sentenced to 38 years for financial abuse and fraud.

Phyllis was one of the lucky ones: The bank identified the crime and reported it to the appropriate authorities before her assets were completely depleted. Too often, by the time the financial abuse is discovered, the elderly victim is destitute. Not only can this affect the elderly person's living standards and ability to obtain needed care in later years, but when the crime is perpetrated by someone loved and trusted by the victim, the feelings of betrayal and abandonment are often insurmountable.

Banks have the potential to play a critical role in preventing the financial abuse of older people by reporting suspicious activity to protective services agencies and local law enforcement. A bank teller, for example, who sees and interacts with bank customers on a regular basis, is in a position to spot the signs of financial elder abuse. The key is to train bank personnel to look for changes in a person's established financial patterns—a sudden change in finances and accounts.

Evidence of financial abuse and exploitation can show up as signs of theft, fraud, misuse of a person's assets or credit, or use of undue influence to gain control of an older person's money or property. Other important signs include

- unusual activity in an older person's bank accounts, including large, frequent, or unexplained withdrawals
- ATM withdrawals by an older person who has never used a debit or ATM card
- changing from a basic account to one that offers more complicated services the older customer does not fully understand or need
- withdrawals from bank accounts or transfers between accounts that the customer cannot explain
- new "best friends" accompanying the older person to the bank



Resources for Additional Information

Administration on Aging
330 Independence Avenue, SW
Washington, DC 29201
202-245-0641
www.aoa.gov

American Association of Retired Persons
601 E Street, NW
Washington, DC 20049
202-434-2277
www.aarp.org/money

Commission on Legal Problems of the Elderly
American Bar Association
1800 M Street, NW
Washington, DC 20036
202-331-2297
www.americanbar.org/groups/law_aging.html

National Center on Elder Abuse
University of Delaware
297 Graham Hall
Newark, DE 19716
302-831-3525
Fax: 302-831-4225
Email: ncea-info@aoa.hhs.gov
www.ncea.aoa.gov

National Center on Elder Abuse
National Association of State Units on Aging
1201 15th Street, NW, Suite 350
Washington, DC 20005
202-898-2586
Fax: 202-898-2538
ncea@nasua.org

National Committee for the Prevention of Elder Abuse
c/o Institute on Aging
119 Belmont Street
Worcester, MA 01605
508-793-6166
www.preventelderabuse.org

National Council on Aging
409 3rd Street, NW
Second Floor
Washington, DC 20024
202-479-6688
www.ncoa.org

National Association of State Units on Aging
1225 I Street, NW
Room 725
Washington, DC 20005
202-898-2578
www.nasuad.org
Your state's attorney general or local law enforcement

- sudden nonsufficient fund activity or unpaid bills
- closing of CDs or accounts without regard to penalties
- uncharacteristic attempts to wire large sums of money
- suspicious signatures on checks, or outright forgery
- confusion, fear, or lack of awareness on the part of an older customer
- refusal to make eye contact, shame, or reluctance to talk
- checks written as "loans" or "gifts"
- bank statements that no longer go to the customer's home
- new powers of attorney the older person does not understand
- altered wills and trusts
- loss of property

The Law

Federal law defines "older individuals" as those aged 60 years and over, but the federal government does not require reporting of elder abuse. The passage of the federal Older Americans Act of 1965 (OAA)[13] and the creation of the Vulnerable Elder Rights Protection Program[14] in 1992 were instrumental in promoting state laws to address the needs and concerns of the elderly.

Mandatory and voluntary reporting of elder abuse is governed by the laws of individual states, rather than federal legislation. While a thorough analysis of the laws in all 50 states cannot be addressed in this article,[15] several states leading the battle against financial exploitation and abuse deserve particular attention. (For a comprehensive list of state requirements, see ncea.aoa.gov, which provides information on state laws and reporting requirements.) California, Oregon, Florida, and Arizona have determined to fight elder abuse and exploitation with specific civil causes of action for financial exploitation and specific criminal statutes that include civil remedies.[16]

The vast majority of states now require certain classes of professionals to report suspected abuse and neglect. And whereas most statutes establish penalties for those who fail to report, many, such as California, provide immunity from civil suits or prosecution to those who make reports in good faith—even if those reports cannot be substantiated.[17]

Some states are including banks in their efforts to combat elder financial abuse, recognizing that banks are usually the first line of defense against elder abuse because they are in the best position to spot the signs of such abuse. Oregon and California, in particular, in conjunction with the respective state bankers associations and with funding from the U.S. Department of Justice's Office for the Victims of Crime, have developed training materials to educate bank personnel on recognizing the warning signs of elder financial abuse and exploitation. The laws in both states grant immunity to banks and their staff when reporting suspicions of elder financial abuse. An excellent video posted to YouTube, "Preventing Elder Financial Exploitation: How Banks Can Help," illustrating elder abuse and how banks can intercede, can be found on the California Bankers Association website.

Despite the obvious potential benefits to their customers, however, banks have often resisted efforts to require or encourage their personnel to report suspected financial abuse. Banks and other depository institutions have habitually resisted enactment of statutes requiring or encouraging reporting and participation in both voluntary and mandatory reporting programs, expressing concern that disclosure of confidential information regarding a customer may result in liability.[18] Bank personnel are often "urged" or "permitted" to report, so the objection most commonly voiced by the banking industry is that disclosure of confidential information relating to a customer may result in liability.

The biggest concern voiced by banks in reporting financial abuse is based on the strong privacy and information-sharing provisions of the Gramm-Leach-Bliley Act and its implementing regulations. Nevertheless, exceptions to the privacy rules allow a financial institution to disclose nonpublic personal information (1) with the consent or at the direction of the consumer; (2) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (3) 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; and (4) to comply with federal, state, or local laws, rules, and other applicable legal requirements. This would appear to allow disclosures in connection with an APS investigation. In addition, in 2002, the seven federal banking agencies issued an opinion letter regarding the legality of Michigan's bank reporting procedures, stating that reporting suspected financial abuse falls within the exceptions discussed above.[19] Banks must determine, based on the state statutes where they are located, whether the reporting of perceived or suspected elder abuse would provide the government or the consumer any legal basis for claiming that the disclosure violated state or federal privacy laws.[20]

On February 22, 2011, the Financial Crimes Enforcement Network (FinCEN) issued 2011-A003, "Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation."

In addition, banks are encouraged to report elder abuse using SARs. On February 22, 2011, the Financial Crimes Enforcement Network (FinCEN) issued 2011-A003, "Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation." In this advisory, FinCEN stated,

> Financial institutions can play a key role in addressing elder financial exploitation due to the nature of the client relationship. Often, financial institutions are quick to suspect elder financial exploitation based on bank personnel familiarity with their elderly customers. The valuable role financial institutions can play in alerting appropriate authorities to suspected elder financial exploitation has received increased attention at the state level; this focus is consistent with an upward trend at the federal level in Suspicious Activity Reports (SARs) describing instances of suspected elder financial exploitation. Analysis of SARs reporting elder financial exploitation can provide critical information about specific frauds and potential trends, and can highlight abuses perpetrated against the elderly.
>
> Elder abuse, including financial exploitation, is generally reported and investigated at the local level, with Adult Protective Services, District Attorney's offices, sheriff's offices, and police departments taking key roles. We emphasize that filers should continue to report all forms of elder abuse according to institutional policies and the requirements of state and local laws and regulations, where applicable. Financial institutions may wish to consider how their AML programs can complement their policies on reporting elder financial exploitation at the local and state level.[21]

FinCEN requests that financial institutions select the appropriate characterization of suspicious activity in the suspicious activity information section of the SAR form and include the term "elder financial exploitation" in the narrative portion of all relevant SARs filed. FinCEN also provides a listing of "red flags" that includes activity that may come to bank personnel's attention both through monitoring transaction activity and through interactions with customers or their caregivers. "This reporting," according to the advisory, "is meant to complement financial institutions' existing policies and procedures on reporting suspected elder financial exploitation to local and state authorities, to aid in the detection and deterrence by appropriate government authorities of criminal activities."

According to the American Bar Association's Law and Aging website,[22] questions about state reporting requirements and who is required to report suspected abuse are among the most frequently asked in the elder abuse field. Knowledge of the reporting provisions in APS laws about which states have mandatory reporting and who is required to report suspicions about elder abuse to APS is critical for individuals who are mandated to report or who wish to report suspected elder abuse, members of professions and disciplines that collaborate with APS, and victims or people who are concerned about them.

Of all the states with mandatory reporting laws, only a handful identify banks as mandatory reporters. An individual who either is required to report or voluntarily reports suspected elder abuse may fear retaliation from an employer or another person for having made the report. Many states prohibit such retaliation and indicate that employers or others who retaliate against a reporter may be subject to civil liability or criminal penalties.

How Can Seniors Protect Themselves?

Banks are also in a unique position to educate seniors on how to protect themselves from becoming victims. Older Americans can protect themselves with a healthy dose of suspicion. They should be warned to never give out account numbers or PINs to anyone on the phone. (A bank would never ask for that information from an account holder. It already has it.) And never give a debit or credit card, or a PIN, to anyone.

ABA has created a statement stuffer that can be provided to seniors or to those who care for a senior person regarding what to do to protect themselves or their loved ones from financial exploitation and abuse. This statement stuffer recommends the following actions:

- Plan ahead to protect your assets and to ensure your wishes are followed. Talk to someone at your financial institution, an attorney, or a financial advisor about the best options for you.
- Never give personal information to anyone who phones you.
- Never pay a fee or taxes to collect sweepstakes or lottery "winnings."
- Never rush into a financial decision. Ask for details in writing and get a second opinion.
- Consult with a financial adviser or attorney before signing any document you don't understand.

- Get to know your banker and build a relationship with the people who handle your finances. They can look out for any suspicious activity related to your account.
- Check references and credentials before hiring anyone. Don't allow workers to have access to information about your finances.
- Pay with checks and credit cards instead of cash to establish a paper trail.
- Feel free to say "no." After all, it's your money.
- You have the right not to be threatened or intimidated. If you think someone close to you is trying to take control of your finances, call your local adult protective services.
- Trust your instincts. Exploiters and abusers often are very skilled. They can be charming and forceful in their efforts to convince you to give up control of your finances. Don't be fooled; if something doesn't feel right, it may not be right, and if it sounds too good to be true, it probably is.[23]

Conclusion

Elder abuse is real. And it's growing as the population ages—it's been called the "fastest growing crime of the 21st century." In the battle against elder financial exploitation, banks are the Marines—the first line of defense against financial abuse of older Americans.

NCEA warns that most cases of elder abuse go unreported. Its advice: "Don't assume that someone has already reported a suspicious situation." In accordance with the laws of your state and in cooperation with FinCEN's SAR filing advisory, train your tellers and other frontline employees to be aware and be vigilant. If necessary, call your local adult protective services agency. If the situation may be life-threatening, or someone is in immediate danger, call 911 for the local police or sheriff.

The cost of financial exploitation can be measured in "human suffering … in stolen and squandered savings; the strain on the court system from abusive guardianships; the cost to Medicare and Medicaid from fraud; and from the care of fleeced victims who end up destitute in nursing homes," *The New York Times* declared.[24] Don't let it happen to you, your customers, or someone you love.

ABOUT THE AUTHORS

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Endnotes

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8 Id., Broken Trust.

9 "Financial Exploitation of Older Persons: Report to Congress." U.S. Administration on Aging, August 2009.

10 www.azag.gov/seniors/FinancialExploitationoftheElderly.pdf

11 www.osbar.org/public/legalinfo/1195_FinancialAbuse.htm

12 health.mo.gov/seniors/mosafe/

13 42 U.S.C. ° 3001, et seq.

14 42 U.S.C. ° 3058, et seq.

15 For a list of state resources, see www.ncea.aoa.gov/NCEAroot/Main_Site/Find_Help/State_Resources.aspx.

16 Fant, Brian H. "Litigation Responses to Financial Exploitation," Lexis.

17 New York City alliance Against Sexual Assault: Elder Abuse and the Law Fact Sheet. www.svfreenyc.org/survivors_factsheet_74.html

18 Hughes, Sandra L., J.D. "Legal Issues Related to Bank Reporting of Suspected Elder Financial Abuse." American Bar Association, 2003. www.ncea.aoa.gov/ncearoot/main_site/pdf/publication/bank_reporting_summary_final_52703.pdf

19 www.ncea.aoa.gov/ncearoot/main_site/pdf/publication/nceaabaletter030701.pdf. National Center on Elder Abuse,www.ncea.aoa.gov/ncearoot/Main_Site/index.aspx

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