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Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors

NASAA-SEC-FINRA Training

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Disclaimer



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Goals of Training

- Help securities firms (“financial institutions” or “firms”) and their associated persons protect senior and vulnerable adult investors from financial exploitation.
- Explain how to detect and address financial exploitation of senior and vulnerable adult investors.
- Provide a high-level overview of the regulatory framework around senior and vulnerable adult investor protection and reporting requirements.
- Serve as a resource for firms that are implementing the requirements of the “Senior Safe Act” (Section 303 of the “Economic Growth, Regulatory Relief, and Consumer Protection Act”, signed into law on May 24, 2018).
 - Note: This training is intended to assist firms in implementing the Senior Safe Act training requirements. As the required training must be specific to organizations and roles, this training by itself is not sufficient to satisfy the training requirements.

Overview



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- The Senior Safe Act and how it can help you address financial exploitation of senior investors
- Identifying potential financial exploitation of senior and vulnerable adult investors
- Escalating within your firm, as applicable, suspected financial exploitation, following your firm's policies and procedures
- Reporting potential financial exploitation
- Federal and state rules and laws relating to senior and vulnerable adult investor protection
- Privacy concerns
- Resources



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1

The Senior Safe Act and How it Can Help You Address Financial Exploitation



What is the Senior Safe Act?

- Section 303 of the “Economic Growth, Regulatory Relief, and Consumer Protection Act” referred to as “The Senior Safe Act” became federal law on May 24, 2018.
- The Senior Safe Act incentivizes reporting, but it does not mandate any action.
- It provides certain individuals and financial institutions with immunity from liability in any civil or administrative proceeding for reporting potential exploitation of a senior citizen (65+) to certain entities if certain conditions are met.
- Please refer to the [Senior Safe Act](#) and the NASAA-SEC-FINRA Senior Safe Act [Fact Sheet](#) for details about the Senior Safe Act and its requirements.
- Whereas the [Gramm-Leach-Bliley Act](#), [Regulation S-P](#), and federal [guidance](#) have long permitted certain reports of fraud to governmental and regulatory entities (among others), the Senior Safe Act provides explicit immunity from liability in any civil or administrative proceeding for reporting financial exploitation.



What is Financial Exploitation?

- The Senior Safe Act defines “exploitation” as “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or a fiduciary, that—
 - (i) uses the resources of a senior citizen for monetary or personal benefit, profit, or gain; or
 - (ii) results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings, or assets[.]”



How to qualify for immunity?

- **Employees must receive training on how to identify and report financial exploitation of seniors, in order to receive immunity.**
 - This training is intended to *assist* financial institutions in implementing the training requirements. To receive immunity, financial institutions must also provide training specific to their organizations, procedures, and employees' roles; and comply with other requirements of the Senior Safe Act.
- **Employees must report suspected financial exploitation of seniors in good faith and with reasonable care.**
- **Employees must make the report to a covered agency, which includes a state securities regulator, state insurance regulator, adult protective services agency, law enforcement, the SEC, other federal agencies, and FINRA.**



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Who is eligible for immunity?

- A financial institution employee who serves as a supervisor or in a compliance or legal function, and who has completed the appropriate training.
- A registered representative, investment adviser representative, or insurance producer affiliated or associated with a financial institution, and who has completed the appropriate training.

Quiz #1



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- **The Senior Safe Act:**
 1. Mandates reporting of suspected financial exploitation.
 2. Permits the sharing of customer information with the customer's family members or friends.
 3. Provides legal protection when reporting financial exploitation to covered agencies.
 4. All of the above.
- **If proper training has been provided, which of these registered representatives would not qualify for immunity under the Senior Safe Act?**
 1. They reported suspected financial exploitation of a senior in good faith and with reasonable care to a state securities regulator.
 2. They reported suspected financial exploitation of a senior in good faith and with reasonable care to an adult protective services agency.
 3. They contacted FINRA's Securities Helpline for Seniors to get assistance with a situation that they reasonably believed involved suspected financial exploitation of a senior.
 4. They contacted the SEC to get assistance with a situation that they reasonably believed involved suspected financial exploitation of a senior.
 5. They reported suspected financial exploitation of a senior in good faith and with reasonable care to the senior's daughter.



Answers to Quiz #1

- **The Senior Safe Act:**
 3. Provides legal protection when reporting financial exploitation to covered agencies.
- **If proper training has been provided, which of these registered representatives would not qualify for immunity under the Senior Safe Act?**
 5. They reported suspected financial exploitation of a senior in good faith and with reasonable care to the senior's daughter.



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Identifying Potential Financial Exploitation of Senior and Vulnerable Adult Investors



How to detect financial exploitation of senior and vulnerable adult investors?

- Learn to identify common RED FLAGS that could indicate fraud, exploitation, or abuse.
- The NASAA [Guide](#) for Developing Practices and Procedures for Protecting Senior Investors and Vulnerable Adults from Financial Exploitation includes a list of red flags.

Red flags of potential financial exploitation



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- Uncharacteristic and repeated cash withdrawals or wire transfers.
- Appearing with new and unknown associates, friends, or relatives.
- Uncharacteristic nervousness or anxiety when visiting the office or conducting telephonic transactions.
- Lacking knowledge about his, her, or their financial status.
- Having difficulty speaking directly with the client or customer without interference by others.
- Unexplained or unusual excitement about an unexplained or “too good to be true” windfall; reluctance to discuss details.
- Sudden changes to financial documents such as powers of attorney, account beneficiaries, wills, or trusts.
- Large, atypical withdrawals or closing of accounts without regard to penalties.
- Frequent password reset requests or new online account access requests.

Quiz #2



- Which of the following scenarios include red flags of potential senior exploitation?
 1. Jane, 75, almost never withdraws money from her account. Jane's husband of 50 years passed away a year ago. For the past few months, she has asked her broker to withdraw \$5,000-10,000 per month. She explained that she is buying new furniture for her house.
 2. At Jane's September meeting with her broker, Jane brings a new friend. The new friend sits with Jane but does not say anything.
 3. At Jane's March meeting with her broker, Jane again brings her friend. This time the friend does all of the talking for Jane. Jane is uncharacteristically quiet and seems nervous.
 4. All of the above.

Answer to Quiz #2



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- Which of the following scenarios include red flags of potential senior exploitation?
 4. All of the above.



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3 | Escalating Within Your Firm and Reporting



What should you do if you believe senior or vulnerable adult financial exploitation might be occurring?

Note that for all of these steps, you must follow your firm's policies and procedures, which may require that you escalate to supervision, compliance, or legal as soon as you see red flags of senior or vulnerable adult financial exploitation.

- Immediately escalate within your firm concerns of possible financial exploitation. An internal investigation may be needed.
- Discuss the concerns with the customer, if in line with your firm's policies and procedures.
- Discuss the adverse consequences of a disbursement, transaction, or wire transfer.
 - Once the funds leave the firm, it may be impossible to get the funds back.
 - Cashing out investments may have adverse tax consequences that cannot be offset or unwound.
- Consider providing the customer materials about financial exploitation (resources are listed at the end of this training).
- If the client has identified a trusted contact person, consider notifying that person.

Call 911 if you believe that anyone is in immediate physical danger!



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Holding disbursements or securities transactions

- FINRA Rule 2165 provides a safe harbor that permits member firms to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation.
- Some states also provide a safe harbor and may allow for a delay in holding a securities transaction in addition to a disbursement, but currently there is no similar provision under federal law or under FINRA rules.



Reporting requirements

- Many states mandate reporting of potential financial exploitation. This reporting may alert state and local authorities to potential exploitation in a way that best enables them to act quickly when needed.
- Some states mandate reporting to the state securities commissioner, Adult Protective Services, or law enforcement.
 - Discuss reporting with supervision, legal, or compliance. They should know the requirements regarding when, where, and how to report.
 - The agency's review of your report may determine whether it will investigate, so providing a detailed report is critical.
- Federal law may require a Suspicious Activity Report ("SAR") to be filed. This federal requirement is entirely separate from the requirement to report senior or vulnerable adult financial exploitation to states.



Tips for reporting

- Follow your firm's policies and procedures.
- Report with good faith and reasonable care.
- A reasonable belief of financial exploitation is adequate for reporting; proof is not required.
- Under many reporting requirements, no dollar amount is too small to report.
- Customers may benefit from community-based resources that can provide support services. Become familiar with available options including legal services, housing supports, transportation and meal supports, and domestic violence and sexual assault resources.

Quiz #3



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- **If a firm has reviewed a situation and suspects financial exploitation of a senior client:**
 1. The firm may, if appropriate, raise the concern to a previously designated third party contact/trusted contact person.
 2. The firm shall follow its escalation procedures.
 3. The firm shall report the concern to any government agency to which a law/rule requires reporting.
 4. All of the above.
- **When determining whether there is a reasonable belief of financial exploitation:**
 1. Any one of the red flags could be sufficient.
 2. The mere presence of one or more red flags does not necessarily mean financial exploitation is occurring, there could be valid explanations.
 3. Both of the above are true.



Answers to Quiz #3

- **If a firm has reviewed a situation and suspects financial exploitation of a senior client:**
 - 4. All of the above.
- **When determining whether there is a reasonable belief of financial exploitation:**
 - 3. Both of the above are true.



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Overview of Rules and Laws Relating to Senior and Vulnerable Adult Investor Protection

Adult Protective Services (“APS”) Statutes



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- **All states have laws related to how and when to report elder abuse in their APS statutes.**
 - The requirement of state APS laws may differ from the requirements of state securities laws, and yet APS laws may be applicable to financial firms and their representatives.
 - It is critical that firms understand and comply with their obligations both under applicable state APS laws and under applicable state securities laws.
- **Some state APS laws require reporting by some or all persons.**
- **Other state APS laws permit reporting by some or all persons.**



State “Report and Hold” Statutes

In addition to requirements relating to elder abuse in state APS laws, many states have provisions addressing senior and vulnerable adult financial exploitation in their securities laws:

- **Required or permissive reporting to the state securities administrator, in addition to APS, and/or other agencies.**
 - *Good faith* reporting based on reasonable belief that exploitation has occurred or is occurring triggers immunity from civil and administrative liability.
- **Requirements governing temporary holds of suspicious disbursements or transactions.**
- **Requirements governing third-party disclosures.**
- **Required training provisions.**
- **Holds are allowed only when the firm confronts:**
 - A senior or vulnerable adult investor and
 - Exploitation.
- **These statutes do not provide immunity for placing a hold due to concerns about diminished capacity, when there is no concern about financial exploitation.**

NASAA Model Legislation and State Laws



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- The NASAA [Model](#) Legislation to Protect Vulnerable Adults from Financial Exploitation (“NASAA Model Act”) was adopted on January 22, 2016.
- The majority of states have enacted or adopted a senior and/or vulnerable adult investor protection law similar to the NASAA Model Act.
- All state laws based on the NASAA Model Act are listed on [serveourseniors.org](https://www.serveourseniors.org) and are also addressed in NASAA’s legislative [commentary](#).
- There are additional state laws pertaining to senior and vulnerable adult investor protection and reporting potential exploitation that are not related to the NASAA Model Act.

NASAA Model Act



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Note that not all states enacted all aspects of the NASAA Model Act as written. A firm should always consult the relevant state law.

- The NASAA Model Act has five core features that apply when there is a reasonable belief of financial exploitation of an eligible adult (a senior or vulnerable adult):
 - Mandatory reporting to the state securities commissioner and adult protective services;
 - Authority to notify certain identified third-parties;
 - Authority to temporarily delay disbursement of funds;
 - Immunity from civil and administrative liability for reporting, notifications, and delays; and
 - Mandatory record-sharing with law enforcement and state adult protective services agencies in cases of exploitation.

FINRA Rule 4512: Trusted Contact Person



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- Requires firms to make reasonable efforts to obtain a trusted contact person upon the opening of a non-institutional customer's account or when updating account information.
 - Applies to all customers, not just senior investors.
 - To be used in certain circumstances, such as:
 - If the firm believes the customer may be a victim of fraud/exploitation;
 - If the customer cannot be reached; or
 - If the firm has concerns about the health status or well being of the customer.
 - Allows firms to share non-public personal information, consistent with privacy requirements.

FINRA Rule 2165: Disbursement Holds



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- Provides a safe harbor from FINRA Rules 2010, 2150, and 11870 when firms temporarily hold disbursements in situations involving a reasonable belief of financial exploitation of a “specified adult” customer.
- Specified adults include a person age 65+ or a person age 18+ who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his/her interests.
- **Requirements:**
 - Notify within two business days all parties authorized to transact on the account and the Trusted Contact.
 - Immediately initiate an internal review.
 - Expires in 15 business days, though firm can extend another 10 days, and further if requested by a court or state agency.
 - Other requirements relating to recordkeeping and compliance.

SEC Division of Investment Management No Action Letter



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- SEC Division of Investment Management, [Response](#) of the Chief Counsel's Office to the Investment Company Institute (June 1, 2018).
- The SEC would not recommend enforcement action against a mutual fund or its SEC-registered transfer agent under Section 22(e) of the Investment Company Act of 1940 if, in accordance with the terms and conditions of the letter (which are intended to mirror FINRA Rule 2165), the transfer agent, acting on behalf of the mutual fund, temporarily delays for more than seven days the disbursement of redemption proceeds from the mutual fund account of a Specified Adult (which includes a natural person age 65+ or a natural person age 18+ who the transfer agent reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests) based on a reasonable belief of financial exploitation.



Suspicious Activity Reports (“SARs”)

- Broker-Dealers must file SARs whenever they encounter certain suspicious activity.
- When filing a SAR for that purpose, remember to check the Elder Exploitation Box on the form (FIN-2011-A003).
- SAR filings are not a substitute for local reporting and investigation.

Quiz #4



- **When making a report of financial exploitation to a government agency:**
 1. The report should always be made to Adult Protective Services.
 2. One should wait until an internal investigation is completed before making a report.
 3. The report must always be filed within two hours of notifying your supervisor.
 4. The correct recipient and timing of the report is governed by state law and may be different in each state.

- **Holding a disbursement to prevent financial exploitation is permitted by FINRA Rule 2165 and some state laws and rules:**
 1. Always.
 2. Only if one complies with the requirements set forth in the rules/laws.
 3. Never.



Answers to Quiz #4

- **When making a report of financial exploitation to a government agency :**
 4. The correct recipient and timing of the report is governed by state law and may be different in each state.
- **Holding a disbursement to prevent financial exploitation is permitted by FINRA Rule 2165 and some state laws and rules:**
 2. Only if one complies with the requirements set forth in the rules/laws.



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5 | Privacy Concerns



Privacy requirements

- Federal and state privacy and public records laws govern the disclosure of customers' personal and financial information. They are an important consideration when addressing potential financial exploitation.
- While the federal [Gramm-Leach-Bliley Act](#) and SEC [Regulation S-P](#) generally restrict the disclosure of non-public personal information, as discussed in this federal [guidance](#), both permit certain reports of fraud to governmental and regulatory entities (among others).
- Where these laws provide fraud-related exceptions from the broad restriction on sharing non-public personal information, the Senior Safe Act provides immunity from liability in any civil or administrative proceeding for reporting potential financial exploitation of a senior citizen.



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6 | Resources



Resources for Licensees in States with State-Specific Training Requirements (1 of 2)

- [Connecticut](#), [Florida](#), [Nevada](#), [New Mexico](#), [Puerto Rico](#), and [Washington](#) require training relating to senior investor protection. Connecticut, New Mexico, and Washington require that the training provide the following additional information.
- Connecticut provides [materials](#), including training videos and other items available through the Connecticut Commission on Women, Children and Seniors, that representatives may also choose to review.
- If you [suspect financial exploitation](#) in Washington State, you can:
 - Contact [APS](#) using their [online form](#) or by calling 1-866-363-4276 or 1-866-END-HARM.
 - Report instances of elder financial abuse to local police. If fraud is involved, they should investigate.
 - If you suspect investment fraud, you can contact the [Washington State Department of Financial Institutions](#) at 1-877-746-4334.



Resources for Licensees in States with State-Specific Training Requirements (2 of 2)

- The New Mexico “Protecting Vulnerable Adults from Exploitation Act” contains [definitions](#) for several key terms, including:
 - Eligible adult;
 - Financial exploitation;
 - Incapacitated person; and
 - Qualified individual.
- The New Mexico [law](#) requires securities professionals to report suspected financial exploitation on accounts belonging to eligible adults to:
 - The [Securities Division](#) of the Regulation and Licensing Department (which can investigate issues of financial exploitation related to securities) using this [form](#); and
 - The Adult Protective Services Division of the Aging and Long-Term Services Department (which can investigate suspicions that any adult is being abused, neglected, or exploited). Reports can be made to APS by calling 1-866-654-3219 or 1-505-476-4912.
- New Mexico provides for immunity from civil and administrative liability for delays of a disbursement or transaction done in accordance with [NMSA 1978, Section 58-13D-5](#).

NASAA Resources



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- Serve Our Seniors [Webpage](#)
- NASAA [Guide](#) for Developing Practices and Procedures for Protecting Senior Investors and Vulnerable Adults from Financial Exploitation (September 2016)
- NASAA [Model Act](#) to Protect Vulnerable Adults from Financial Exploitation
- NASAA, [Guarding the Guardians](#): The Red Flags of Guardian Financial Abuse
- NASAA, FINRA, and SEC Office of Investor Education and Advocacy, Social Isolation and the [Risk of Investment Fraud](#)



SEC Resources

- SEC's Seniors [Topic Page](#)
- SEC Division of Investment Management, [Response of the Chief Counsel's Office to the Investment Company Institute](#) (June 1, 2018)
- SEC Office of the Investor Advocate, [How the SEC Works to Protect Senior Investors](#) (May 2019)
- [Interagency](#) Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults (September 24, 2013)
- [Seniors | Investor.gov](#)
 - [Protecting Services \(APS\) Workers Encountering Senior Investor Fraud](#) (May 9, 2017)
 - [Five Red Flags of Investment Fraud](#) (July 18, 2016)
 - [Ponzi Schemes Targeting Seniors](#) (April 9, 2018)
- **Brochures**
 - [Guide for Seniors: Protect Yourself Against Investment Fraud](#)
 - [Stopping Affinity Fraud in Your Community](#)



FINRA Resources

- Senior Investors [Topic Page](#)
- FINRA Securities [Helpline for Seniors](#)
- [Protecting](#) Senior Investors 2015-2020 (April 2020)
- NASAA-SEC-FINRA [Senior Safe Act Fact Sheet](#) (May 23, 2019)
- Regulatory Notice [17-11](#) (SEC Approves Rules Relating to Financial Exploitation of Seniors) (March 2017)
- FINRA [FAQs](#) on Rules 4512 and 2165
- FINRA and SEC Office of Investor Education and Advocacy, [Please Consider Adding a Trusted Contact to Your Account](#) (March 4, 2020)
- [Protecting](#) Seniors From Financial Exploitation (April 25, 2018)

Financial Crimes Enforcement Network Resources (“FinCEN”)



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- [Advisory](#) to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation (February 2011)
- FinCEN [Advisory](#) Warns of Elder Financial Exploitation (February 2011)
- [Memorandum](#) on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation (August 2017)