

The Ultimate Betrayal” Elder Abuse & Financial Exploitation of Elderly Members

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Knowing how.

Introduction: As our population ages, so does the membership of many CUs. Ageing members may become cognitively impaired, isolated, baffled by computer-driven banking practices and increasingly dependent on caretakers and family members. At the same time, they can cling to 20th-century conventions of personal privacy and a fierce desire to maintain their independence.

Result: too many seniors become vulnerable to too-frequent financial exploitation. Estimates are that only 1 in 44 incidents of financial abuse are officially documented. Fully 90% of financial abusers of the elderly are not strangers; they are family members or “trusted others”.

JUST WHAT IS IT? “Financial exploitation” of the elderly, in the eyes of law has a broad definition in federal statutes, but state statutes may define it more narrowly.

One broadly useful definition of financial exploitation is found in the federal “Elder Justice Act of 2009”, 42 USC § 1397j(8). It is:

“the fraudulent or otherwise illegal, unauthorized, or improper act or process of and individual, *including a caregiver or fiduciary*, that uses the resources of an elder for monetary or personal benefit, profit or gain, or that results in depriving an elder of benefits, resources, belongings or assets.”

[Emphasis added].

In contrast to federal law, state laws may define elders and the disabled somewhat differently, *e.g.*, age 65 or older (NCGS § 108A-112 *et seq.*, S.C. Code § 43-35-10(11)). Get your own local counsel to provide your state's statutory definition.

Who qualifies as an “elder”? Under the same federal statute, anyone over age 60 (42 USC § 1397j(5)).

Some common forms of financial exploitation, usually by family and caregivers:

Outright theft of property – *e.g.*, “in anticipation of inheritance.”

Misuse of a victim’s income or assets or both, frequently in violation of some existing fiduciary duty. Greed can overcome guilt.

Forging checks and withdrawals without consent.

Fraudulent acquisition and/or use of powers of attorney (“POAs”).

Changes in access to accounts, access to safe deposit boxes or ownership of certificates of deposit (“CDs”).

Uncharacteristic *banking behavior* by a new or existing member:

Sudden appearance of a *new* member who is elderly or disabled, accompanied by 3rd person or represented via POA, with significant assets, complex financial structures, or requests for unusual services (*e.,g.*, out-of-US wire transfers.) Is the exploiter shifting a victim's accounts from a suspicious CU to a new institution?

Large withdrawals or balance transfers from recently-opened joint accounts or previously inactive accounts;

Increased and frequent ATM withdrawals when the member is isolated or home-bound AND has not accessed an ATM recently

Sophisticated usage of web-based functions and services by elderly members who own rotary-dial phones or who have never demonstrated such computer skills in the past.

Increases in overdraft fees, unpaid statements, unpaid bills specially when someone else has been designated to make payments.

Suspicious signatures on checks, endorsements, withdrawal slips, loan applications, etc., indicating a possible forgery, signature of blank documents or inconsistent handwriting (for those CUs whose members still engage in paper-based transactions.)

Sudden secured debt increases, especially if associated with a mortgage on previously un-mortgaged property, or a second mortgage.

Unusual increase in credit card transactions, especially for electronics, music, website “memberships” & similar products that an elder or disabled person would not need.

Request for unusual banking services by an existing member (*e.g.*, wire transfers, foreign currency exchange into USD, authorization for auto-withdrawals by non-US entities)

Suspicious or anomalous *personal behavior* by the elder, the disabled person, or associated third parties, including for example:

Branch visits accompanied by a stranger, caregiver, or family member, especially when that 3rd party demonstrates an inappropriate interest in the depositor's financial matters, or the depositor appears nervous, afraid, intimidated, or reluctant to speak for themselves, or;

Unwillingness or reluctance of the 3rd party to allow the depositor to speak separately or in private with your employees, or other similar isolation of the depositor from direct contacts by phone or in person

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Inability of the depositor to answer substantive questions about the financial transaction, to sign required paperwork or to understand the consequences of their requests.

Excessively large “reimbursements” or “gifts” to caregivers or new friends, especially when requested remotely or in writing rather than in person

Suspicious or unusual documents or financial arrangements with or by 3rd parties, including:

POAs recently signed or re-issued, or attorney-in-fact re-designation, by depositors who appear confused or befuddled.

New loans by third parties using POAs or using the depositor as a co-signer, where there is no obvious benefit to the elderly or disabled depositor;

New caregivers, or relatives or “friends” suddenly try to conduct financial transactions on the depositor’s behalf, without proper documentation, or without ID.

Any other act, omission or practice that just “smells wrong”. If it seems SAR-worthy, it is worthy of scrutiny for exploitation.

IS YOUR INSTITUTION LIABLE FOR ACCEPTANCE OF AN EXPLOITIVE OR MISUSED POWER OF ATTORNEY?

One of the most commonly-available devices to financially exploit elders and the disabled is the POA. Easily found on Internet websites for free download, all an exploiter needs is a cooperative Notary Public, and (s)he can easily secure *carte blanche* access to the victim's entire financial portfolio and existence.

Require all POAs first to be read by qualified persons (at least management and at best your counsel) to verify the grant of banking authority and the proper form.

No presenter of a POA can initially expect immediate cooperation or assent by your CU. All POAs are subject to verification.

All attorneys-in-fact are subject to ID and OFAC check at the outset

Except with military POAs, require the POA first be filed in the appropriate county courthouse as a condition precedent to honoring it. Local counsel can advise you on the correct filing point(s).

Except with military POAs, seek a signed “Affidavit of Attorney-in-Fact” from the presenter, to be signed in the CU and notarized. *See attached example.*

Provided the CU has no independent knowledge the POA was fraudulently obtained, or that the grantor has since died, or that the grantor has revoked the POA or changed designated attorneys-in-fact, it can usually be confident it will not be liable for relying in good faith on the POA

PREPARE NOW FOR FINANCIAL EXPLOITATION YOU WILL DISCOVER LATER

Adopt a Board-approved policy to offer to protect all senior and disabled depositors from the risk of financial exploitation by 3rd parties, family members, and care-givers while maintaining their financial privacy.

Provide a letter allowing the depositor's designation of at least one (and preferably two) other individuals you may alert in the future, if you find or suspect financial exploitation of the elderly or disabled depositor is occurring, or has occurred.

Letter should be provided in paper format, so signatures can be verified *i.e.* signed in-person or signed remotely and notarized.) If it is completed electronically, require electronic notarization, to reduce the risk of a connivance by an exploiter.

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Sacrifice of speed of service for sureness of result. Slow down the transaction, and refer the applicant(s) up the chain of command. If they become angry or abusive, suspicion should be increased.

Abundant nosey questions. Require direct, specific answers. Implausible explanations or reasons by depositors and especially from 3rd parties are unacceptable.

For complete account closures, early redemption of CDs, etc., especially remotely, require written management authority in advance.

The vast majority of states (46 of 50) *require* rather than simply allow such reports to authorities, and sometimes to designated trusted persons. Regardless of your location, assume some sort of report to police authority(ies) is required. Get your local counsel to tell you when, how where.

See www.eldercare.gov to locate easily APS offices by ZIP Code nationally. The APS office where the depositor lives is the correct one, not the one closest to your offices.

FINANCIAL EXPLOITATION IS FOUND OR SUSPECTED. NOW WHAT?

Take comfort in the (somewhat qualified) words of CFPB Director Richard Cordray:

“Reporting suspected elder financial abuse to the appropriate authorities is typically the right thing to do and generally will not violate the Gramm-Leach-Bliley Act”.

No privacy requirement of Gramm-Leach-Bliley (GLB) applies to restrict reporting to correct authorities or to Adult Protective Services

GLB also permits disclosure of NPI to protect against or to prevent actual or potential fraud, unauthorized transactions, claims or other liability. Simply put, *GLB allows reports of real or suspected financial exploitation as an exception to privacy restrictions.*

Even if the suspicion proves *incorrect*, a person who, acting “in good faith,” reports should be immune from civil or criminal liability in an action related to the report, under states’ laws.

Expect to make at least a triple report, and possibly a 4-way report:

Report to local law enforcement or the local District Attorney

Report to local Adult Protective Services

File a SAR

Beware that 46 states have *mandatory* reporting requirements, which carry specific criminal or administrative penalties for an intentional failure to report

Can a CU flatly refuse services to an abuser or exploiter?
YES, if it has the courage of its convictions. In addition, it can notify the suspect and/or the member that it intends to make a report to local authorities and to APS (but must NOT disclose any SAR filing).

PRUDENT PRACTICE, PROPER REGARD FOR THE SAFETY OF DEPOSITORS, A UNIFORM POLICY AND UNIFORM APPLICATION ARE THE WISEST COURSE TO MINIMIZE EXPOSURE OF VULNERABLE MEMBERS TO FINANCIAL EXPLOITATION.

Thank you.



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