Suspicious Activity Reports and Their Role in Investigations of Elder Financial Exploitation

NOVEMBER 2, 2017
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Today’s session will be recorded and made available on the training website.
ELDER JUSTICE INITIATIVE

The **mission** is to support and coordinate the Department of Justice’s enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.

The Initiative does so by—

- Promoting justice for older adults.
- Helping older victims and their families.
- Enhancing state and local efforts through training and resources.
- Supporting research to improve elder abuse policy and practice.
ELDER JUSTICE INITIATIVE (EJI)

REPORT ABUSE OR FIND HELP

New on ElderJustice.gov

EJI launches the MDT Toolkit and Guide for elder abuse case review MDTs

Elder abuse is a complex issue that intersects with many disciplines.

Elder abuse can happen to anyone. It affects people of every ethnic background, gender, and financial status.
PRESENTERS

Naomi Karp, Senior Policy Analyst, Office for Older Americans, CFPB

John M. Williams, Chief, Training and Outreach, FinCEN, U.S. Department of the Treasury

Peter Gallagher, Deputy Attorney General - Prosecutor, New Jersey Division of Criminal Justice, Financial and Computer Crimes Bureau

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PART I: MEMORANDUM ON FINANCIAL INSTITUTION AND LAW ENFORCEMENT EFFORTS TO COMBAT ELDER FINANCIAL EXPLOITATION

November 2, 2017
Naomi Karp, Senior Policy Analyst, Office for Older Americans, CFPB
Disclaimer

This presentation is being made by a Consumer Financial Protection Bureau representative on behalf of the Bureau. It does not constitute legal interpretation, guidance, or advice of the Bureau.
About the CFPB

- The CFPB works to make consumer financial markets work for consumers, responsible providers, and the economy as a whole.
CFPB’s work

- Empower
- Enforce
- Educate
Office for Older Americans

We help older consumers:

Prevent unfair, deceptive, and abusive practices aimed at seniors

Make sound financial decisions as they age

Learn more about us at consumerfinance.gov/older-americans
The number of older consumers 62+ is expected to grow from 60.5 million in 2016 to 96.7 million in 2050.

Source: Census Bureau, National Population Projections
Elder Financial Exploitation

- **Definition:** Illegal or improper use of an older adult’s funds, property, or assets

- **Frequency:** Most common form of elder abuse (only a small fraction of incidents are reported)

- **Perpetrators:** Anyone; can include family, caregivers, scammers, financial advisers, home repair contractors, fiduciaries, etc.

- **Attractive targets:** Significant assets or home equity

- **Vulnerabilities:** Isolation, cognitive decline, physical disability, health problems, or recent loss
Red Flags for Elder Financial Exploitation

- Interactions with older adults or caregivers, e.g.,
  - Caregiver or third party does not allow older consumer to speak for him or herself
  - Older consumer associates with new “friends” or strangers
  - Older person expresses excitement over financial opportunity, prize, or windfall

- Account activity, e.g.,
  - Large increases in account activity
  - Uncharacteristic debit transactions (including unusual ATM use)
  - Abrupt changes to financial documents such as POA, joint account
  - Uncharacteristic requests to wire money
Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults

- Issued September 24, 2013, by CFPB and seven other federal regulators with jurisdiction over Gramm-Leach-Bliley Act (GLBA) privacy provisions
- Clarifies that reporting financial abuse of older adults to appropriate authorities does not, in general, violate the privacy provisions of GLBA
- Specific exceptions to the notice and opt-out requirement that may permit information sharing with local, state, or federal agencies to report suspected elder financial exploitation
The Advisory and Report to Financial Institutions on Preventing and Responding to Elder Financial Exploitation


- Office for Older Americans identified best practices to enable financial institutions to prevent elder financial abuse and intervene effectively when it occurs—financial institutions can consider recommendations as they assess their own current practices.

- Advisory does not impose any responsibilities or duties on financial institutions.

- Although the advisory and the report emphasize the importance of compliance with appropriate federal and state laws, they are not intended to interpret federal consumer financial law or any other statute or rule.
The Advisory and Recommendations: Key points

- Protocols
- Training
- Detection
- Reporting
- Protection
- Collaboration
Joint Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation

- Highlights key role of financial institutions in detecting, responding to, and preventing elder financial exploitation:
  - Filing Suspicious Activity Reports (SAR)
  - Reporting to law enforcement and Adult Protective Services
- Encourages collaboration among financial institutions, law enforcement, and Adult Protective Services.
- Explains law enforcement use of SARs in elder financial exploitation cases:
  - SARs can trigger investigation, support ongoing investigation
  - Explains the restrictions on access and use of SARs
  - Tells law enforcement how to make a SAR-related inquiry
John M. Williams
Chief, Training and Outreach
FinCEN, U.S. Department of the Treasury
OVERVIEW OF BSA/SARS

Bank Secrecy Act (BSA) was enacted by Congress in 1970 to fight money laundering and other financial crimes.

BSA requires many financial institutions to create “paper trails” by keeping records and filing reports on certain transactions.
OVERVIEW OF BSA/SARS

Nation’s first and most comprehensive anti-money laundering statute.

A series of reporting and recordkeeping requirements to document suspicious or large cash transactions.

Powerful tool for preventing corruption of the United States’ financial system.
WHAT IS A SUSPICIOUS ACTIVITY REPORT (SAR)?

A mandatory filing by a financial institution to report suspicious transactions.

In 2013, FinCEN implemented an electronic reporting form that contains a “checkbox” so filers can specify that a suspicious transaction concerns elder financial exploitation.
TRENDS IN ELDER FINANCIAL EXPLOITATION SARS

Number of Elder Financial Exploitation SARs by year (all filers)

* Partial year data
Source: FinCEN, SAR Stats (as of September 2017)
WHO FILES SARS

- Depository institutions
- Money Service Businesses (MSB)
- Securities, brokers/dealers, mutual funds & futures
- Insurance companies
- Casinos
- Other:
  - Mortgage companies
  - Loan or finance companies (e.g., payday lenders)
  - Dealers in precious metals, stones, or jewels
BSA COMPLIANCE

SAR filings are mandatory according to the following filing thresholds:

- **$2,500 MSBs**
- **$5,000 (all filers) for a known subject**
- **$25,000 (all filers) for an unknown subject**

All filers also may file SARs voluntarily for a suspicious transaction of any dollar amount.
LAW ENFORCEMENT USE OF SARS

A user may use FinCEN data obtained via a SAR consistent with the agency’s legal authority and for the purposes of identification, investigation, or prosecution of possible or actual violations of criminal law that fall within the agency’s jurisdiction.

Casual browsing of the Portal to run a query on anyone not related to an investigation is not permitted.
Law enforcement personnel may use information obtained from a SAR in connection with an official investigation.

FinCEN has agreements with law enforcement in every state as well as most federal law enforcement agencies.

State and Agency Coordinators
SARs may not be:

- Used in an affidavit to support a warrant
- Given to anyone outside of the investigation
- Disclosed in discovery or in press releases

Generally, cannot be used in open court.

Safeguarding the confidentiality of SARs is especially important because they describe suspected, not proven, illegal activity.
CONFIDENTIALITY OF SARS

Unauthorized Disclosure of SARs is a Violation of Federal Law

31 U. S. C. Section 5321 – Civil Penalties

31 U.S. C. Section 5322 – Criminal Penalties
SARS AS AN INVESTIGATIVE TOOL

- Supporting documentation may be referenced in a SAR.
- Supporting documents can be requested without a subpoena.
- Potential to “connect the dots” between subjects and victims.
- Can be a proactive tool for early intervention/loss prevention.
CONTACT FINCEN

If a law enforcement investigator has a question on the use and disclosure of a SAR, contact the FinCEN Resource Center.

FRC@fincen.gov
Peter Gallagher  
Deputy Attorney General - Prosecutor  
New Jersey Division of Criminal Justice, Financial and Computer Crimes Bureau
HOW IS A SAR CREATED?

Financial institutions in certain industries are required to file a SAR when they detect a known or suspected violation of federal law or regulation or a suspicious activity related to money laundering, terrorist financing, or other criminal activity.
PRACTICAL CONSIDERATIONS FOR LAW ENFORCEMENT USE OF SARS IN CRIMINAL INVESTIGATION AND PROSECUTION

How law enforcement obtains a SAR
Confidentiality of SARs
Fact patterns and “Let the SARs Be With You”
SARs as an investigative roadmap
Subpoena power
Charge your case
HOW DOES LAW ENFORCEMENT OBTAIN A SAR?

Reactively – Financial institution contacts a law enforcement agency with SAR notification.

Proactively –

‣ Law enforcement agency initiates FinCEN query after a criminal investigation is opened.

‣ SAR Review Team or law enforcement investigator initiates opening of an investigation based on intel obtained from query.
UNAUTHORIZED DISCLOSURE OF SARS

Violation of Federal Law

Contact FinCEN or your state or agency coordinator for guidance.
FACT PATTERNS & “LET THE SARS BE WITH YOU”

Patterns in Elder Financial Exploitation (EFE) cases:

- Tell the story
- Erratic or unusual banking transactions
- Frequent large withdrawals, including from ATMs
- Debit transactions in an inconsistent pattern for the elder
- Wire transfers in large sums of money
SARS – AN INVESTIGATIVE ROADMAP – CONNECTING THE DOTS

- Who
- What
- When
- Where
SUBPOENA POWER

Issue subpoena for bank records for the elder and any suspects

Issue subpoenas for any related entities

Follow the money
Investigative results will determine the proper charges. EFE cases often result in the following charges:

- Theft
- Fraud
- Identity theft
- Theft by deception
- Misapplication of entrusted property
- Money laundering
FINCEN SAR DATA BY COUNTY

https://www.fincen.gov/reports/sar-stats
Search criteria can be selected and narrowed down.
Jenefer Duane
Senior Program Analyst
Office for Older Americans, CFPB
Released on August 23, 2016

Report and Recommendations

What is a network?

A sustained, and largely voluntary, collaborative effort or partnership that works to prevent, detect, and/or respond to elder financial exploitation.
Network Benefits

- For seniors, professionals, and communities
- Improve response to cases of financial exploitation
- Increase reporting of cases
- Enhance members’ skills and capacity to address financial exploitation
- Improve coordination, including the use of community resources
Multidisciplinary Teams (MDT)

- Provide resources, consultation, and advice regarding elder abuse cases
- Bring together experts from multiple disciplines
- Provide education or training to members and the public
Financial Abuse Specialist Teams (FAST)

- A type of specialized MDT focused on financial exploitation
- Provide consultation and support to agencies that investigate cases of elder financial exploitation
- Members are composed of public agencies, but may include private sector experts
Other Types of Networks

- Often known as task forces or coalitions
- Focus on elder abuse and elder financial exploitation
- Engage in a variety of activities ranging from education to advocacy, and include case consultation and review
- May focus on abuse of vulnerable adults of all ages
Resource Guide for Networks

Tips and resources on:

- Steps for starting a network
- Funding and sustainability
- Traits of successful network coordinators
- Organizing effective meetings
- Education and case review
Money Smart for Older Adults

- An awareness program developed in collaboration with the FDIC
- Content on common issues facing seniors, including how to identify a potential fraud or scam or other forms of exploitation
- Curriculum for trainers
- Resource Guide available in bulk at no charge
- Available in Spanish
Money Smart for Older Adults Module Topics

- Common Types of Elder Financial Exploitation
- Identity Theft
- Medical Identity Theft
- Scams Targeting Homeowners
- Scams Targeting Veterans’ Benefits
- Planning for Unexpected Life Events
- How to Be Financially Prepared for Disasters
Money Smart for Older Adults

- Instructor Guide and Presentation slides available at Fdic.gov/moneysmart
- Order copies of the Resource Guide at https://go.usa.gov/xXCvA
Contact

Link to Memorandum


To find a local network:
Contact your Area Agency on Aging
www.eldercare.gov
Office for Older Americans

Email us: Olderamericans@cfpb.gov

Find resources and join the mailing list: consumerfinance.gov/practitioner-resources/resources-for-older-adults/
THANK YOU!
QUESTIONS & SUGGESTIONS

can be emailed to

elder.justice@usdoj.gov