

NATIONAL GUIDELINES FOR FINANCIAL INSTITUTIONS:

Working Together to Protect Older Persons from Financial Abuse

Based on federal privacy laws and federal guidance



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SIFMA (Securities Industry and Financial Markets Association)

FINRA (Financial Industry Regulatory Authority)

NAASA (North American Securities Administrators Assn.)

Organizations represented by our steering committee members (see following page)

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National Guidelines to Implement Federal Privacy Laws *and* Guidance on Reporting Suspected Financial Exploitation of Older Adults

BACKGROUND

Elder financial exploitation is a substantial and complex social, justice and health problem. According to recent research*:

- Ten percent, or about 5 million older persons, are abused, neglected and/or exploited each year, many of them in multiple ways.¹ Most abusers are relatives.
- The 2019 Consumer Financial Protection Bureau report, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends*, found that SAR filings on elder financial exploitation quadrupled between 2013 and 2017. One third of victims who lost money were over age 80, adults ages 70 to 79 had the highest average monetary loss, and losses were greater when the older adult knew the suspect.²
- Elder abuse increases the likelihood of early mortality. Of the five types of elder abuse (caregiver neglect, financial exploitation, physical abuse, emotional abuse and polyvictimization), elder financial exploitation ranked second highest in the link to early mortality, ahead of physical abuse.³
- In one study, almost one in ten financial exploitation victims had to turn to Medicaid as a direct result of their own monies being stolen.⁴
- Only one in 44 elder financial exploitation case is ever reported.⁵

Financial exploitation causes economic losses for Medicare, Medicaid, the financial services industry, caregivers, and families as well as older people themselves. It can and does lead to impoverishment, homelessness, increased use of publicly-funded services, and death. As older persons are the fastest growing population, elder abuse is expected to increase in the coming years.⁶

To further encourage financial institutions to work with Adult Protective Services (APS) and government regulators to protect the safety and assets of older adults, on May 24, 2018, the President signed into law the *Senior Safe Act*,⁷ which provides immunity from liability to financial services professionals who report suspected financial exploitation of a senior citizen to government officials or law enforcement authorities, so long as they have been trained to identify and report the suspected exploitation.

* References can be found in the endnotes on page 6.

Adult Protective Services

Adult Protective Services, or APS, is statutorily authorized under state and tribal law to receive and investigate reports of elder abuse, including financial exploitation, and to protect victims. In almost all states, APS serves all adults with significant disabilities age 18 and above; in a few states, any older person may be served based on advanced age alone (i.e., it is not necessary for a person over age 60 or 65 to have a disability); and in a few states APS serves older persons only.

APS' responsibilities include investigating, validating and stopping any abuse, as well as improving the victim's safety and well-being. APS conducts "civil investigations," as authorized in the privacy law exceptions of the Gramm-Leach-Bliley Act.

In order to carry out a civil investigation, *APS must have access to current and accurate information about the client's financial situation.*

Financial Institutions

Financial institutions include *banks, credit unions, broker-dealers, investment advisors and insurance companies*. Because each of these entities has different federal laws they must comply with, it is helpful for APS to know which type of company it is dealing with in a particular case. In most cases, APS deals with banks, credit unions and/or broker-dealers (securities firms).

Financial institutions play an important role in preventing and stopping financial exploitation, as they are often in a position to first spot suspicious activities in an older person's account; are required to report suspected financial exploitation to APS in over half the states; and want to protect their customers and their assets. Partnering with APS creates significant opportunities to prevent and reduce elder financial exploitation.

As mentioned previously, the **Senior Safe Act**, signed into law in 2018, provides immunity from liability for good faith reports of suspected financial exploitation of senior citizens when financial professionals have been trained to identify and report the suspected exploitation. In addition, financial professionals who report suspected elder financial exploitation, in good faith, have immunity for their disclosures in all states.

Goals of the Guidelines

1. Clarify that a financial institution's report of elder financial exploitation to APS is most effective when the institution promptly provides complete and accurate records.
2. Promote standardization of practice by both financial institutions and APS in responding to, and cooperating on, financial exploitation cases.
3. Promote standardization of APS requests for client records through the creation and dissemination of a standard form to be used by financial institutions nationwide.
4. Promote knowledge of the federal/state laws on reporting elder financial exploitation, these national guidelines and the standard APS form to request client records.
5. Encourage the submission of Suspicious Activity Reports (SARs) on elder financial exploitation cases, as required by the U.S. Bank Secrecy Act as amended.
6. Facilitate productive working relationships between APS and financial institutions.
7. ***Most importantly, protect the financial, physical and emotional well-being of older customers.***

Guidelines for APS

The state or local APS Program recognizes:

1. *The responsibility to carry out thorough and timely investigations of reported elder abuse, neglect and exploitation and to intervene to protect victims and their assets;*
2. The benefits of using a standardized request for records form in order to promote consistency of practice and to increase financial institutions' understanding of the role and authority of APS;
3. The need to be courteous and respectful of the financial institutions' time constraints and learning their roles and responsibilities;
4. The willingness to release information about a case, to the extent permissible by law and regulation, to the financial institution which reported the case .
5. Contacting the financial institution to request it extend a hold on disbursements which was placed on the account due to suspected exploitation (see sample letter on p. 11).
6. The desirability of forming positive working relationships with financial institutions' personnel and educating the industry about APS and its roles and responsibilities.

Guidelines for Financial Institutions

The financial institution recognizes:

1. The serious problem of elder financial exploitation;
2. The financial institution's responsibility and authority to report suspected elder abuse, neglect and exploitation to APS;
3. The need to provide detailed information and complete records, including informing APS of the identity and location of the person who initially raised the concerns;
4. APS' responsibility and authority to investigate reports of elder abuse, neglect and exploitation;
5. The Gramm-Leach Bliley Act provisions that authorize financial institutions to share records with APS pursuant to an authorized civil investigation by a government authority;
6. The Senior Safe Act provisions that provide immunity to financial institutions for sharing information and records in order to prevent fraud and elder financial exploitation;
7. *The institution's responsibility to cooperate with APS in the investigation by providing all relevant account records of the alleged victim' in a timely manner;*
8. The need to appreciate APS' time constraints in conducting its civil investigation;
9. The desirability of forming positive working relationships with APS, which may include appointing a liaison to work with APS.

SAMPLE FORMS

The sample documents on the following pages include a template form which can be modified/adapted to include each state's statutory language authorizing APS investigations.

Also included are sample letters that APS can use to:

- a) accompany the form requesting records;
- b) respond to a financial institution that does not comply with a records request;
- c) request an extension to a hold on a client's account put in place by a financial institution or professional.

ENDNOTES

- ¹ Acierno, R.E. (2010). Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health*, 100 (2):292-297.
- ² Consumer Finance.gov. Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends. Accessed on 3/29/2019 at: https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation-report.pdf
- ³ Burnett J, Jackson SL, Sinha A, Aschenbrenner AR, Xia R, Murphy KP & Diamond PM. Differential Mortality across Five Types of Substantiated Elder Abuse. *Journal of Elder Abuse and Neglect*, 2016; 28:2, 59-75.
- ⁴ Gunther, J., The Utah Cost of Financial Exploitation. Utah Division of Aging and Adult Services. March, 2011.
- ⁵ Lifespan of Greater Rochester, Weill Cornell Medical Center of Cornell University, New York City Department for the Aging. (2011). Under the Radar: New York State Elder Abuse Prevalence Study, Final Report. Lifespan of Greater Rochester, Inc.
- ⁶ Vincent, G. &. (2010). The Next Four Decades: The Older Population in the United States: 2010 to 2050. Washington DC: US Census Bureau
- ⁷ The Senior Safe Act (Title III, Sec. 303 of the Economic Growth, Regulatory Relief, and Consumer Protection Act) was signed into law on May 24, 2018 <https://www.congress.gov/bill/115th-congress/senate-bill/2155/text#toc-id45B692A3CB264F64BDE568E071AA2CFD>

THIS IS A SAMPLE FORM

(2 pages to be printed front and back)

**APS AGENCY LETTERHEAD
OFFICIAL REQUEST FOR CUSTOMER RECORDS**

Pursuant to Gramm-Leach-Bliley Act (GLBA)(15U.S.C.§6802(e)(8); and 15 U.S.C. §6802(e)(3)(B))
and State Law_____.

I, _____, an Adult Protective Services (APS) Investigator,
operating under the laws of _____, am conducting an authorized investigation of
alleged financial exploitation of an older person (vulnerable/dependent adult).

I hereby request records, **to be sent securely**, for all accounts relating to: _____

[Full name; last four digits of Social Security number, date of birth; account owner, account number or
other unique identifier], including but not limited to:

- Statements for ALL accounts, including but not limited to, checking, savings, money market, certificates of deposit, investments, insurance, other holdings.
- Copies of all deposits and withdrawals from the account(s), including, but not limited to, checks [front and back] and any offsets, ACHs, wires, transfers, instructions, securities/certificates and transaction requests.
- Account Opening and closing documentation, including but not limited to, New Account Forms for all accounts, including view/read only accounts, insurance applications, any Trusted Contact Person(s),¹ all Power of Attorney documents and signature cards.
- Statements for any loans, lines of credit, credit cards, pledged assets and copies of any cash advances or cash advance recalls.
- Other (if not included in the above): _____.

To facilitate a timely investigation, please provide these records on or before_____.

I pledge to securely safeguard all client and related financial institution information provided in order to protect the customer's and institution's privacy.

Signature

Phone

Printed Name

Email

Title

Address

Agency

Address

¹ Pursuant to the Financial Industry Regulatory Authority (FINRA) Rule 4512

Gramm-Leach-Bliley Act

15 U.S.C. §6802 - Obligations with respect to disclosures of personal information

(e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(3)(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

Adult Protective Services (APS) is properly authorized, under the state statute cited below, to carry out civil investigations of elder/vulnerable adult abuse, neglect and financial exploitation.

SAMPLE STATE STATUTORY LANGUAGE

Note: You may want to insert your state's authorizing statute language here if helpful. Include the actual statutory language and citation.

NOTE TO APS: This letter should accompany the template form to the financial institution. If you are sending the request to a national organization's central subpoena processing unit just send the form without the letter.

Agency Letterhead

Date

Financial Institution's Name and Address

Dear [Financial Institution Fraud Dept. / Professional]:

I would like to introduce myself and my agency, Adult Protective Services (APS) [full name and location – e.g., if in a regional office, indicate that information].

APS is a state [county/other] agency which is authorized under [state statute XXX, provide full citation] to carry out investigations of reported elder and vulnerable [dependent/at-risk] abuse, neglect and financial exploitation.

When investigating financial exploitation, the investigator must review the client's financial records in a timely manner, with or without the client's consent. Whenever possible, APS obtains the client's consent. However, even without client consent, APS is authorized under the Gramm-Leach-Bliley Act to obtain a customer's financial records because APS has authority to conduct civil investigations, which include reviewing records, in order to prevent actual or potential frauds such as elder financial exploitation.

To further encourage financial institutions to work with APS and government regulators, in order to protect the safety and assets of older adults, in 2018 the *Senior Safe Act* was enacted into law, which provides immunity from liability to financial services professionals who provide information to government officials or law enforcement authorities, provided they have been trained to detect and report suspected elder exploitation.

Please see the attached standard form created for APS to request a client's financial records. On the reverse side is the Gramm-Leach-Bliley Act language setting forth the exceptions cited above, and also the [your state] APS statutory language regarding APS' authority to conduct civil investigations of elder/vulnerable adult financial exploitation.

Upon receipt of this form from an APS investigator, we hope that you or your staff will promptly provide the requested records so that a full investigation can be conducted within the program's deadlines. This will help to stop the financial losses to the client and financial institution, and will help APS take other measures to protect the client's overall well-being.

We look forward to working with you and your staff to protect the assets and well-being of your customers who have been referred to APS for alleged financial exploitation. If you have any questions or would like to discuss this further, please contact me at _____.

Sincerely,

[Signature]

[Your name]

[Title]

NOTE TO APS: This letter is to reply to a financial institution or professional who has refused to release records.

Agency letterhead

Date

Financial Institution's Name and Address

RE: Denial of the attached APS Request for Client Records

Dear [Financial Services Professional]:

In response to your recent communication, please note that a careful reading of the Gramm-Leach-Bliley Act makes clear that financial institutions are indeed permitted to release client records without the client's permission and without a subpoena under the following conditions:

15 U.S.C. §6802 - Obligations with respect to disclosures of personal information

(e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(3)(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law *(emphasis added)*.

Even without client consent, Adult Protective Services (APS) is authorized under these provisions to obtain a customer's financial records in the course of investigating financial exploitation of an older or vulnerable adult, because APS falls under the law's exceptions in that:

1. Its purpose in viewing the records is to "*protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability*"; and
2. APS is authorized under state law to carry out civil investigations of elder/vulnerable [dependent, at-risk] adult abuse, neglect and financial exploitation [insert state statute citation and language from back of form].
3. The requirement for a subpoena is an alternative and not a requirement when complying with a properly authorized civil investigation, to wit: "*to comply with a properly authorized civil . . . investigation OR subpoena OR summons*" (emphasis added).

In light of the clear language in GLBA and APS's statutory authority to conduct a "properly authorized civil . . . investigation", as well as the immunity provided under the federal Senior Safe Act signed into law in 2018, please comply with the attached request for records in the timeframe specified.

Thank you. Working together we can better protect the assets and well-being of our mutual client.

Sincerely,

[Signature]
[Your name]
[Title]

Attach denied Request for Records form.

NOTE TO APS: This letter is to request an extension on a hold on a client's account put into place by a financial institution or professional.

Agency letterhead

Date

Financial Institution Professional's Name and Address

RE: Request to continue disbursement/transaction hold while investigation continues for customer _____[Name]

Dear [Financial Institution Professional]:

Thank you for your cooperation regarding the above referenced matter. As you are aware, APS has been investigating suspected financial exploitation regarding this customer and *we are requesting more time to continue our investigation*. We understand that the disbursement/transaction hold that you have placed on this account during our investigation is set to expire on _____ pursuant to applicable rules, laws, regulations or regulatory guidance.

We need more time to conduct a thorough and complete investigation, so we respectfully request that you extend the disbursement/transaction hold to allow us to investigate further and best protect your customer. I will contact you again no later than [date] to provide further instructions.

Thank you again for your continued cooperation with this matter. Working together we can better protect the assets and well-being of your customer. If you have any questions or concerns or would like to discuss this matter further, please contact me at (_____).

Sincerely,

[Signature]

[Your name]

[Title]