PREVENTING EXPLOITATION OF OLDER INVESTORS

2016 NCSL LEGISLATIVE SUMMIT
Communications, Financial Services and Interstate Commerce Committee
Financial Exploitation of the Elderly

Paul Richman
Vice President Government Affairs
Insured Retirement Institute
Why are we here?

- 10,000 Americans turn 65 each day.
- The population of older Americans is expected to double in size to nearly 84 million Americans by 2050.
- About 70% of personal wealth in the US is held by seniors.
- Every year an estimated 5 million older Americans are victims of elder abuse, neglect, or exploitation, costing retirees at least $2.9 billion per year.
- The average loss per incident of financial exploitation is estimated to be $120,000, which is the average amount of retirement savings for an American aged 50 and older.
- Experts believe that for every case of elder abuse or neglect reported, as many as 23 cases go unreported.
Regulatory and Legislative Initiatives

- North American Securities Administrators Association ("NASAA")
- Individual State Initiatives
- Financial Industry Regulatory Authority ("FINRA")
- U.S. Congress
NASAA Model Act

  

- Requires reporting to a state securities regulator and state adult protective services agency.

- Report must be made by a qualified individual who has a reasonable belief that the financial exploitation of an eligible adult has been attempted or has occurred.

- Disclosure is permitted to previously designated third parties only if a qualified individual suspects the third party of financial exploitation.
Disbursements of funds from an eligible adult’s account may be delayed for up to 15 business days.

The broker-dealer or investment adviser must reasonably believe that a disbursement would result in financial exploitation of the eligible adult.

Notification is required to people authorized to transact business on the account (unless they are suspected of the financial exploitation), the state securities regulator and adult protective services.

Internal review must be undertaken of the suspected exploitation.

Extension: additional 10 business days without court order.
NASAA Model Act – Immunity

- Immunity provided from administrative and civil liability for qualified individuals, broker-dealers and investment advisers who, in good faith and exercising reasonable care, comply with the provisions of the act.

- Protection provided for reporting suspected financial abuse to governmental agencies, disclosing information to designated third parties and deciding to delay disbursements exploitation.
Individual State Laws

Prior to NASAA Model:

Washington - Chapter 74.34 RCW - http://apps.leg.wa.gov/rcw/default.aspx?cite=74.34&full=true

NASAA Model – 2016 – Effective July 1, 2016

Indiana – Act No. 221 - https://iga.in.gov/legislative/2016/bills/senate/221#document-72ee118f

Effective – January 1, 2017


- Proposed amendments to FINRA Rule 4512 (Customer Account Information) to require firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person for each customer’s account; and

- Proposed new Rule 2165 (Financial Exploitation of Specified Adults) creates a safe harbor to permit (but not require) qualified persons of a member firm to place temporary holds on disbursements of funds or securities from the account of a specified adult customer (65+ years) who has a mental or physical impairment resulting in the individual’s inability to protect his or own interests and there is a reasonable belief of financial exploitation of the customer.
Senior$afe Act

- S2216 - Introduced in the Senate by Senators Claire McCaskill (D-MO) and Susan Collins (R-ME) in 2015 and was referred to Senate Committee on Banking, Housing and Urban Development – No action to date. [Link](https://www.congress.gov/bill/114th-congress/senate-bill/2216/text)

- H4538 - Introduced in the House by Representatives Krysten Sinema (D-AZ), Patrick Murphy (D-FL), Bruce Poliquin (R-ME) and Mick Mulvaney (R-SC) in 2016 and an amended version passed the House unanimously by voice vote on July 5, 2016. [Link](https://www.congress.gov/bill/114th-congress/house-bill/4538/text?q=%7B%22search%22%3A%5B%22H4538+senior+safe+act%22%5D%7D&resultIndex=1)
Senior$afe Act

- Help combat financial abuse of older Americans by increasing protections for older investors to preserve senior’s hard-earned retirement savings.
- Provide immunity from federal privacy laws to encourage exercising reasonable care in making good faith reports of suspicious activity.
- Protect banks, credit unions, insurance companies (House bill) investment advisers and broker-dealers and their employees from civil or administration liability.
- Foster better communications between advisors and their firms and with appropriate governmental and law enforcement agencies when financial exploitation of a client is suspected.
- Encourage firms to train employees in how to spot and report predatory and abusive activity.
- Does not preempt or limit any state law that provides a similar or greater level of protection against liability.
Concerns - Regulatory and Legislative Initiatives

- **Voluntary Reporting** – Reporting of suspicious activity to governmental agencies should be voluntary versus mandated to allow firms the time necessary to conduct meaningful internal investigations of suspected abuse and report on factual findings rather than reporting on suspicions.

  - Follow approach taken in the three states where laws similar to the NASAA Model have already been enacted (Delaware, Missouri and Washington).

- **Authority to Delay Disbursements** – Should be extended beyond disbursements when suspicious activity suspected or detected to include all transactions i.e. investment re-allocations, beneficiary changes, transfers to a joint account, execution of other brokerage instructions and other account activities.
Concerns - Regulatory and Legislative Initiatives

- **Extend Reporting and Disbursement Delay Time Frames** – NASAA model and FINRA Rule time frames are insufficient and impractical to conduct appropriate and meaningful investigations of suspicious activity.

  - Two days to conduct an investigation is impractical and time frame for reporting delays should be extended to at least seven business days to allow firms adequate time to conduct internal investigations before involving regulators.

  - The ten business day limit on account freezes should be extended to 30 business days to provide sufficient time for the regulators to complete their investigations and a longer period win the judicial order.

- **Feedback on Investigations** - Governmental agencies should be required to provide feedback to firms about the results of their investigations. Sharing the results of the agency investigations could provide guidance for firms about how to identify and handle such cases in the future as well as help firms enhance their compliance and supervisory policies and procedures with respect to financial abuse and potential exploitation.
Concerns - Regulatory and Legislative Initiatives

- **Immunity from Liability** – Must be provided to protect firms from lawsuits for withholding disbursements and other transactions where there is a reasonable belief of financial exploitation, as well as protect firms from lawsuits that do not withhold disbursements or other transactions when there is a reasonable belief of financial exploitation. Firms already face legal risks if they make or withhold disbursements based on judgments regarding financial exploitation.

- **Cohesive Regulatory Framework** - Must be developed among state and federal regulators that extends from product manufacturers (insurance companies) to distribution (broker-dealers, investment advisers, insurance agencies and producers), and aligns with related issues (privacy, anti-money laundering) to ensure that all consumers have the same level of protection, regardless of the type of product they buy, avoid imposing potentially conflicting rules on firms that operate in multiple lines of business, and provide a means by which to ensure that all financial industry participants have the means by which to protect their clients against those seeking to take advantage of them.
Industry Initiatives in Developing Senior Protection Practices
Compliance Considerations in Developing Senior Protection Practices

- Establish a trusted contact at account opening.
- Adopt and implement policies and procedures related to a financial advisor serving as a power of attorney, trustee or in a similar capacity, including disclosure of relationships or arrangements.
- Appoint a senior issues assistance point of contact.
- Supervise the use of senior-specific designations.
- Develop procedures for terminating client relationships.
Compliance Considerations in Developing Senior Protection Practices

- Work with financial advisors on handling capacity concerns.

- Ensure that clients’ desired estate account distributions are carried out.

- Consider use of “senior-related” customer complaint codes.

- Develop escalation procedures.
Compliance Considerations in Developing Senior Protection Practices

- Develop procedures to ensure that financial advisor do not recommend unsuitable investments to senior.
- Consider requiring firm representatives to memorialize conversations.
- Establish strict product concentration guidelines for senior investors.
- SAR/FINCEN
Train Client-Facing Personnel on Senior Issues

- Evaluating client comprehension of products.
- Confirming requirements to complete mandatory acknowledgement forms and disclosures.
- Understanding how investment needs change as investors age.
- Escalating issues when suspicious activity detected.
- Understanding tax consequences of transferring assets from qualified accounts.
- Identifying client incapacity and warning signs of elder abuse.
Technology Can Protect Against Elder Fraud and Identity Theft

- **Financial Institutions**
  - Suspicious activity reports.
  - Enhanced algorithms.
  - Behavioral fraud detection.

- **Consumers**
  - Monitoring across institutions with advocate.
  - Call monitoring.
  - Pre-paid debit/credit cards.
IRI Resources for Seniors

- **Protecting Older Investors Resource Center**
  

- An interactive map to find local resources to protect older consumers who may be the victim of financial elder abuse.

- Information for consumers to help prevent becoming the victim of financial fraud.

- Tip sheets for financial advisors on spotting signs of diminished capacity and financial elder abuse.

- Regulatory notices, guidance and reports for financial services firms on interacting with older clients.
Questions

Paul Richman
Vice President Government Affairs
prichman@irionline.org
(202) 494-3004