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Elderly Americans Now Have New Protections to Help Combat Financial Fraud

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admin

Elder abuse, including forms of financial fraud, is a widespread problem that many of us don't give much thought about—until it happens to one of our loved ones, or even ourselves. Gail Buckner, CFP, our personal retirement and financial planning strategist, explores the subject of elder financial abuse and new protections that will soon be in place to help thwart it.

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This year, your financial advisor may be getting a little nosy—and that's a *good* thing. Elder abuse is attracting more attention these days for a number of reasons, the main one being the sheer increase in the over-65 population throughout the world.

In 2015, adults age 65 and older represented 15% of the US population.[1] In seven years, that percentage is expected to increase to more than 19%.[2] By 2060, one out of every *four* Americans (25%) will be a "senior."[3] So, the issue of elder abuse is likely to affect even more people going forward—particularly as new technologies may make it easier to commit fraud.

The National Center on Elder Abuse (NCEA) estimates that each year, 10% percent of Americans age 60 or older are victims of abuse—some of them multiple times.[4] That's seven million seniors. The actual number is likely much higher because, for a number of reasons, it's estimated that more than 80% of cases are not reported to authorities.[5]

Fear is the primary reason elder abuse is not reported. According to a Financial Services Roundtable report: "Older adults are afraid of being left alone or being placed into a nursing home. The physical and mental impairments of aging make the elderly dependent on others for care, which allows the abuser to isolate and control the victim both physically and emotionally."[6]

Elder abuse can occur anywhere—from grandma's house to a nursing home—and comes in many forms, such as physical, psychological, verbal, sexual, financial and even abandonment. It is not unusual for a victim to experience more than one type of abuse. Fame and fortune are not shields against it, as illustrated by the cases of the late actor Mickey Rooney and philanthropist Brooke Astor.

And, according to the National Council on Aging, more than 90% of all reported elder abuse is committed by an older person's own family members, most often their adult children, followed by grandchildren, nieces and nephews and others.[7]

Follow the Money

The Financial Industry Regulatory Authority (FINRA), a self-regulatory organization that focuses on investor protection and market integrity through effective and efficient regulation of the broker-dealer industry, examined a subset of America's senior population (just those aged 65-74) and concluded that in 2014 this group controlled *$3.5 trillion* in retirement assets alone.[8] That number does not include the value of any pensions or Social Security benefits those individuals might have also been entitled to.

FINRA defines elder *financial* abuse or "exploitation" as including:

"(A) The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; or (B) any act or omission taken by a person, including through the use of a power of attorney, guardianship or any other authority, regarding a specified adult, to: (i) obtain control, through deception, intimidation or undue influence, over the specified adult's money, assets or property; or (ii) convert the specified adult's money, assets or property."[9]

The fact is, throughout much of our adult lives, we usually have *more debts than assets.* College loans, car loans, a mortgage, etc. dominate our financial scorecard. It's generally not until many individuals approach retirement that they have much of a net worth.

It's obvious why seniors are targeted. Researchers have estimated that the *median* net worth of Americans age 65 and older was $210,500, as of 2013.[10] Among married couples it was $319,800.[11] If one or more members of a couple had some college education, this rose to $387,000.[12]

FINRA Rules to Help Thwart Elder Financial Abuse

A financial advisor can be a strong ally in detecting and preventing financial exploitation of seniors. In February, a new FINRA rule takes effect, and an amendment to another will be implemented, to give advisors and their firms the ability intervene if they suspect a client is or may be a victim of exploitation. FINRA believes a financial advisor may be in a unique position to notice a change in the behavior or demeanor of a senior client that might indicate something is amiss. And FINRA isn't the only federal or state regulatory body to recognize and call attention to this. Perhaps your advisor hasn't been able to reach you or you seemed confused at your last meeting. Or, you brought a new "friend" to your appointment and want to add their name to your account. Maybe the firm's back office notices that you have uncharacteristically made a series of large withdrawals.

New FINRA rule (2165)—Financial Exploitation of Specified Adults—creates a new category of individuals. These "Specified Adults" are defined as clients who are 65 or older, or who are 18 or older and believed to have a mental or physical impairment rendering them unable to protect their own interests. This rule allows—but does not require—advisors and their firms to place a temporary hold of up to 25 business days on disbursements from the account of the Specified Adult if the advisor and/or firm "reasonably believes" that the Specified Adult could be the victim of financial exploitation. This rule requires firms to adopt procedures and to maintain appropriate records supporting placement of any such temporary holds on disbursements, and generally to notify parties on the impacted account(s) of the temporary hold and the rationale for placing it on the account(s).

An amendment to existing FINRA rule (4512)—Customer Account Information—requires firms to request that account owners designate a "Trusted Contact Person" at the time of account opening, and from time to time in the ordinary course of updating information on existing accounts. While no account owner may be required to designate a Trusted Contact Person as a condition of opening or maintaining an account, FINRA generally expects advisors and firms to reach out to Trusted Contact Persons first, in the event that the advisor and/or firm reasonably believes the client may be the victim of financial exploitation. Rule 4512 requires FINRA member firms to notify customers that the firm is authorized to contact the designated Trusted Contact Person and disclose information about the customer's account to address possible financial exploitation, confirm specifics of the customer's current contact information, health status, or identity of any legal representative or guardian.

Easier Access

Back when my parents retired in the late 1970s, they knew that they would have to budget carefully because, for the rest of their lives, their only sources of income were Dad's pension from his former employer and the Social Security benefits they had each earned. My parents lived well within their means and well into their 90s.

Today, it is much less common for someone to retire with a defined benefit pension like my dad did. Instead, defined *contribution* plans—401(k), 457, 403(b) plans and Individual Retirement Accounts—are much more widely used. While these "self-directed" accounts have certain advantages, they also impose a greater responsibility on the individual to keep track of their own retirement assets. In contrast, retirees with pension plans receive a monthly check, but have no access to their pool of assets.

As the number of defined benefit plans continues to dwindle, an *unprecedented number of seniors* now own an *unprecedented amount of assets* in accounts that they can easily access.

You can see why if the infamous criminal Willie Sutton were alive today, he'd probably be robbing retirement communities, not banks.

Abuse Is Often Close to Home

While there may be plenty of strangers trying to separate senior citizens from their money, as noted above, the most prevalent form of elder financial abuse is the homegrown variety. And, the victim may be unaware that the abuse is occurring.

For instance, say 16-year-old Tommy stops by Grandpa's apartment every day after school and asks if he can "borrow" $20. Grandpa, who has a mild form of dementia, happily gives his beloved grandson the $20. The problem is, Grandpa doesn't remember that Tommy visited him the day before. And the day before that. In fact, by Friday, Tommy is $100 richer and Grandpa can't understand why he never seems to have enough money to buy groceries.

How about John, the adult son who convinces his parents to add his name to their bank and brokerage accounts so that he can more easily help them manage their finances and pay their bills. They don't notice that their accounts are dwindling because their statements are sent to John. Conveniently, when Mom and Dad die, John becomes the sole owner of these assets, cutting his siblings out of their inheritance.

Then there's Wanda, who has a drug habit but tells her parents she needs $20,000 so she can buy a car to get to work and provide for her children. She convinces them to take out a home equity loan, promising to pay them back at a higher rate than what the bank is charging on the loan. To Mom and Dad, it seems like a win-win: They receive an additional source of income and their daughter can borrow the money at a fraction of what a personal loan would cost her. The only problem is that Wanda is unreliable, spends most of the money to support her habit, and her repayments end up being few and far between. Mom and Dad, however, are on the hook to pay the lender every month, something they did not factor into their retirement budget.

Matters of the Mind

The way our brains change as we age can compound the situation of elder abuse. The elderly tend to be the most vulnerable when it comes to financial fraud, as research has shown the effects of Alzheimer's Disease, related dementias and even normal cognitive aging can take a toll on our ability to make decisions—including financial ones.

Abuse of seniors is not unique to the United States. Elder abuse is really a global "dirty little secret" that is found on every continent, with the exception of Antarctica. In some societies, it is culturally expected and shockingly, *accepted*,[13] prompting the United Nations in 2006 to declare June 15 "World Elder Abuse Awareness Day." Throughout the world, events are held to educate people, promote resources available to help victims and hold abusers accountable.

These new FINRA rules in the United States will hopefully help prevent at least some forms of financial abuse among some of the most vulnerable members of our society. The vast majority of financial advisors chose their career because they truly *care* about helping people. For many, their clients are like an extended family. *Every single advisor* I have told about these FINRA rule changes is thrilled that “finally” there is something they can do to help a client from becoming a victim.

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1. Source: US Census Bureau, “US Population Aging Slower Than Other Countries,” March 28, 2016.

2. Ibid.

3. Ibid.

4. Source: National Center on Elder Abuse (NCEA), “Elder Abuse and Its Impact: What You Must Know,” 2015.

5. Source: Federal Trade Commission, “Observing Elder Abuse Awareness Day,” June 14, 2013.

6. Source: Financial Services Roundtable, “Protecting the Elderly from Financial Fraud and Exploitation,” November 2, 2012.

7. Source: National Council on Aging website, “Top 10 Financial Scams Targeting Seniors.”

8. Source: FINRA. “Report on the FINRA Securities Helpline for Seniors,” December 2015.

9. Source: FINRA Rule 2165, “Financial Exploitation of Specified Adults.”

10. Source: Federal Inter-Agency Forum on Aging-Related Statistics. “Older Americans 2016: Key Indicators of Well-Being;” 2013 data referenced.

11. Ibid.

12. Ibid.

[13] Xin Qi Dong, M.D. “Elder Abuse: Systematic Review and Implications for Practice,” Journal of the American Geriatrics Society, June 2015, pp.1214-1238