U.S. SECURITIES AND EXCHANGE COMMISSION

Office of the Investor Advocate

Elder Financial Exploitation

Why it is a concern, what regulators are doing about it, and looking ahead

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EXECUTIVE SUMMARY

Why are the elderly in particular vulnerable to financial exploitation? And why is this problem likely to get worse?

Three interrelated sets of factors are at work: health-related effects of aging; financial and retirement trends; and demographic trends.

Cognitive decline is a key factor, whether brought on by disease or other changes in the aging brain even without the presence of disease. When cognitive decline begins, financial impairment is often one of the earliest signs for patients, families, and doctors. Physical decline and dependency are also risk factors for elder financial exploitation.

So, too, is the wealth of older generations, which makes them targets for financial exploitation. Paradoxically, though, the elderly poor are at even greater risk of financial exploitation.

Financial and pension trends further compound the problem. The shift from defined benefit to defined contribution plans has placed responsibility onto the elderly themselves to manage their retirement savings—ironically, just at a time in their lives when their ability to do so may become impaired.

Retirees are also taking on more student debt (often for their children's or grandchildren's benefit). When that trend collides with elder financial exploitation, what will be the impact on victims, lenders, and the economy at large?

Now add in demographic trends, with dramatic increases in the elderly population threatening to spur parallel growth in elderly financial exploitation.

Quantifying the Scope of the Problem

A mosaic of research studies shows the dimensions of elderly financial exploitation:

- The previous-year prevalence of elder financial exploitation ranges from 2.7 percent to 6.6 percent, according to various studies, though this most likely underestimates the true number.
- The overwhelming majority of incidents of elder financial exploitation go unreported to authorities. For every documented case of elder financial exploitation, 44 went unreported according to a New York state study.
- Elder financial exploitation is emerging as the most prevalent form of elder abuse, according to some but not all studies.
- We do not have a good estimate of total national financial costs to the victims. In the state of New York, a rigorous study estimates victims' annual losses at $109 million. The harm to victims, however, goes well beyond monetary loss.
- There are also substantial public costs in investigating and intervening in cases of elder financial exploitation. In New York State alone, those costs are estimated at more than $14.5 million.

The magnitude of these numbers has led some prominent experts to call elder financial exploitation "a burgeoning public health crisis"[2] and "a virtual epidemic."[3]

That said, there are large gaps in data and empirical research, leaving key questions unanswered. It is easier to say why elder financial exploitation is expected to grow than to quantify how big the problem is right now.

Given the significance of the problem, what are regulators doing about it?

Recent legal and regulatory developments have given financial professionals more tools to combat elder financial exploitation. These include two Financial Industry Regulatory Authority (FINRA) rule changes that took effect in February 2018, as well as adoption in 13 states of new laws based on a Model Act. These measures include provisions allowing designated financial firms to place a temporary hold on disbursements from the accounts of certain clients when financial exploitation is suspected.

These developments are significant in several ways. They demonstrate momentum in combatting elder financial exploitation. They recognize the critical role of financial firms and professionals who find themselves on the front lines. And, they suggest difficult policy choices when the need to protect the elderly appears to come into conflict with their rights to privacy and autonomy.

(This paper focuses on policies and rule-making, but describes other SEC and FINRA activities, including public education, exams, and enforcement, in Appendix Three: SEC and FINRA Actions to Protect Senior Investors.)

Looking Ahead

Advances in information technology hold both positive and negative potential implications for combatting elder financial exploitation. Online or electronic financial services and products may offer new platforms for perpetrators of elder exploitation. But financial innovations and emerging technologies, such as artificial intelligence (AI), also present opportunities to detect, prevent, and even predict the risks of elder financial exploitation.

Have we as a society done enough to address elder financial exploitation? Some thought leaders are advocating much deeper reforms that would allow us to treat elder financial exploitation in a far more comprehensive, integrated and systemic way. The new system would foster communication among firms within the financial industry to build an early-warning system of elder financial exploitation. The system also would build bridges of cross-communication between the financial services and health services industries to protect the health and the wealth of the elderly. The conclusion to this paper explores the formidable challenges to building such a system as well as the major benefits it would promise.

INTRODUCTION: WHAT IS ELDER FINANCIAL EXPLOITATION

Elder financial exploitation touches all of us. We may have aging parents or other relatives who could become victims. We also may have relatives, colleagues, customers, friends or neighbors who show signs of diminished capacity or financial exploitation. And all of us could become at risk as we grow older.

Elder financial exploitation is a significant problem now and is expected to become worse with the aging of America. It has gained increasing attention from financial regulators, firms and professionals, with new measures introduced over the past year at both the national and state levels.

There are multiple definitions of elder financial exploitation. A helpful, simple one defines it as the "*illegal or improper use of an older adult's funds, property, or assets.*"[4]

A more detailed definition refers to "*financial exploitation of an older person by another person or entity, that occurs in any setting (e.g. home, community, or facility), either in a relationship where there is an expectation of trust and/or when an older person is targeted based on age or disability.*"[5]

Some definitions distinguish between two types of elder financial exploitation: financial abuse, in which a relationship of trust has been violated by family members, friends, or others; and elder fraud, such as scams perpetrated by strangers.[6]

Examples of elder financial exploitation include stealing an older adult's cash, withdrawing money from the victim's bank account, cashing the victim's checks or using his credit cards without authorization. Other forms of exploitation include transferring property deeds, misusing a power of attorney, and identity theft.[7]

Elder financial abuse was one of the top-ten consumer scams targeting seniors in 2017, according to the U.S. Senate Special Committee on Aging.[8] The committee maintains a Fraud Hotline as a resource for seniors and others affected by scams, and it tracks consumer frauds reported to it. Other top-ten scams included IRS impersonation scams (impersonating an IRS agent and falsely accusing seniors of owing back taxes and penalties in order to scam them); sweepstakes scams, including a Jamaican lottery scam; computer scams; romance scams; and grandparent scams (impersonating a grandchild who claims to need money for an emergency). The toll-free Fraud Hotline number is 1-855-303-9470.[9] As the list indicates, the elderly are targeted for a wide variety of scams. A number of the scams involve deceptive "promises of goods, services or financial benefits that do not exist."[10]

Financial exploitation is recognized as one of five forms of elder abuse. The others are psychological abuse, physical abuse, sexual abuse, and neglect.[11] It is not uncommon for more than one type of elder abuse to occur at the same time. This is one reason that elder abuse is a complex phenomenon that often demands a comprehensive and multidisciplinary approach to prevent or treat it:

> [Elder abuse is] a complex cluster of distinct but related phenomena involving health, legal, social service, financial, public safety, aging, disability, protective services, and victim services, aging services, policy, research, education, and human rights issues. It therefore requires a coordinated multidisciplinary, multi-agency, and multi-system response.[12]

WHY THE ELDERLY?

Why are the elderly in particular vulnerable to financial exploitation, and why is this problem likely to get worse? Three interrelated sets of factors are at work. The first set is health-related. The aging process can bring about cognitive and physical changes that elevate the risks of elder financial exploitation. The changes can include cognitive impairment, poor physical health, functional impairment, and dependency on others, all of which are associated with elder financial exploitation as well as other forms of elder abuse.

The second set of factors are related to financial and retirement trends. The wealth or assets that the elderly have accumulated through life can make them a target of financial exploitation. Moreover, pension trends increasingly have shifted responsibility to the elderly themselves to manage their retirement savings and investments.

Both of the first two sets of factors are linked to the third: the demographic trends that are propelling steep rises in the elderly population (box 1). The aging trend lends a special urgency to the problems of elder financial exploitation as well as the other forms of elder abuse.

BOX 1. **Aging and Demographic Trends: The Surging Elderly Population**

The number of elderly (ages 65 and older) already has increased dramatically and is projected to continue to grow at a steep pace. By the 2010 Census, the elderly population had reached new records, both in terms of numbers (40.3 million) and their share of the overall population (13 percent).[13] In 2014, the elderly population had grown by 10 million in 10 years.[14]

With the aging of the baby boomers, an average of 10,000 Americans has been turning 65 every day and will continue at that rate until the year 2030. By then, one in five persons in the U.S. is projected to be 65 or older and their numbers are projected to reach 74 million.[15] By 2050, the elderly population in America is expected to reach 88 million; [16] by 2060, more than 98 million.[17]

In a telling sign of our expanding longevity, we no longer speak of the elderly solely as a single segment of the population, but distinguish between the "young-old," comprising those between 65 and 85 years old, and the "oldest-old," those age 85 and up. The "oldest-old" are the fastest growing segment of our overall population. Between 2012 and 2050, the "oldest-old" segment is expected to increase by 12 million, with its share of the total elderly U.S. population (ages 65 and older) projected to rise from 14 percent to 22 percent.[18]

That trend has particular significance for elder financial exploitation: individuals in the "oldest-old" age group are at the highest risk for developing Alzheimer's dementia; and dementia, in turn, is a documented risk for elder financial exploitation.

Cognition

Cognitive decline is a key factor that makes the elderly more susceptible to financial exploitation.[19] Sometimes, diseases of the brain cause the cognitive decline. Yet the decline can occur even in the absence of disease. The aging brain is associated with a decline in something called fluid intelligence. Fluid intelligence enables us to hold multiple distinct pieces of information in our mind and to apply rules or logic to them to reach a decision. These skills are used, for example, to learn a new card game. These are also the very skills needed to take in various bits of financial information; analyze that information based on such things as principles, risk tolerance, or rules of thumb; and make financial decisions. Thus, a decline in fluid intelligence can make it more difficult to manage money and make financial decisions.[20] This explains why the elderly are at risk of making financial mistakes, reaching unsound financial decisions, and falling prey to financial exploitation.

Not all forms of intelligence decline in the aging brain. Even while fluid intelligence declines, something called crystalline intelligence remains intact or increases. This refers to a person's store of knowledge, and it would be reflected in the growth of an elderly person's vocabulary or knowledge of a particular topic, including financial topics. In one research study, older participants significantly outperformed younger participants on a multiple-choice test of Acquired Financial Knowledge, a finding that the researchers suggested could be due in part to the experience conferred by age.

A distinguished committee of the Institute of Medicine explains the impact of the aging brain on financial decision-making as follows:

> It reflects a balance between fluid and crystallized intelligences. In financial terms, fluid intelligence refers to the abilities to manipulate and transform financial data, while crystallized intelligence involves knowledge and experience with financial products. Older adults with declines in their fluid intelligence are more likely to experience declines in financial capacity, but these declines may be offset by greater degrees of crystallized intelligence, particularly financial knowledge and experience.[21]

Despite enhanced knowledge, however, older persons can fall prey to deception and scams if they experience a decline in their ability to judge trustworthiness and riskiness.[22] Imagine you're walking home late at night and can choose between two paths: the main street or a dark alley that would be a shortcut. You will probably instinctively avoid the dark alley. Or imagine watching an advertisement with dubious or far-fetched claims. You may instantly distrust the ad. It is as if a personal antenna goes up to keep you on guard against people and things that seem too risky, deceptive or suspicious.

Now imagine that you had lost that antenna, that ability to sense that something is just not right. That may be a good way to understand research findings that older persons may become too trusting and fail to recognize false claims, suspicious intentions and signs of riskiness.[23]

"[R]esearch has found that older adults are disproportionally credulous," according to one research paper, which continued, "This finding has obvious and direct implications for older persons' vulnerability to financial fraud."[24]

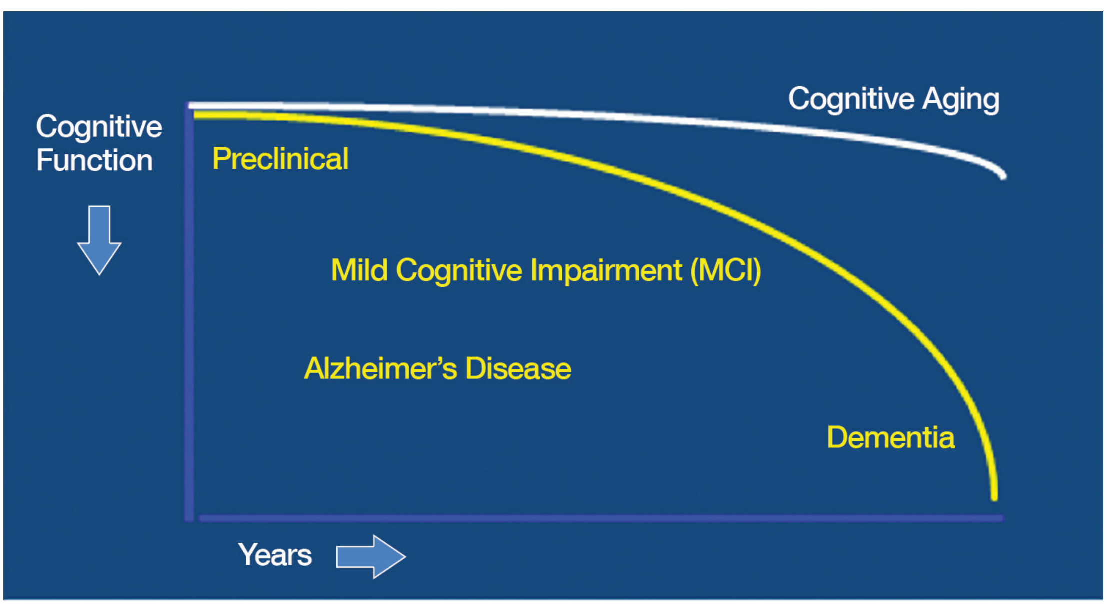
A study of healthy, community-dwelling older adults found that many of them displayed troubling behaviors, such as believing deceptive and misleading advertisements and buying falsely advertised products.[25] Researchers also speak of a "doubt deficit," in which false and far-fetched claims fail to prompt doubt in older adults and others who are overly credulous.[26] Similarly, such persons may be unable to infer the intentions of others, including those with the intent to deceive.[27] One research paper suggests that these age-related declines in the ability to doubt "provide a compelling rationale why highly knowledgeable and intelligent older people are often susceptible to deception and fraud."[28]

Other researchers describe changes in the emotional and time perspectives among the elderly. As older adults begin to feel their remaining time is limited, they appear to become more focused on the present and on positive or happy emotions, in contrast to future and stress-based emotions. Again, that could make them more vulnerable to scams or other forms of financial exploitation.[29]

Cognitive impairment may also be caused by various diseases of the brain, including Alzheimer's disease, other forms of dementia, and mild cognitive impairment (MCI). MCI is less severe than dementia and has been described as an intermediate stage between cognitive aging without disease and dementia.[30] Unlike persons with dementia, those with MCI do not show significant changes in Activities of Daily Living (ADLs).[31] In other words, MCI does not interfere with daily life or independent function.

Like dementia, however, MCI involves cognitive impairment–either memory impairment alone, or combined with other verbal or executive function impairments, such as language, thinking and judgment.[32] Researchers

FIGURE 1. **The Aging Brain: Cognitive Aging and Alzheimer's Disease**



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also have found significant impairments in applying financial concepts and completing related tasks, such as understanding and using a bank statement as well as understanding bills and preparing to pay them by mail.[33]

Even at an early stage of MCI, a person can be vulnerable to financial abuse. The cognitive changes can impair a person's ability to recognize a scam or fraud.[34] At least one organization dedicated to combatting elder financial abuse focuses its efforts on assisting persons with MCI.[35]

About 15 percent to 20 percent of persons 65 or older have MCI, and about a third of persons with MCI develop dementia within five years, according to the Alzheimer's Association.[36] In 2002, an estimated 5.4 million people in the United States age 71 years or older (22.2 percent) had cognitive impairment without dementia.[37] Some persons with MCI can be in an early stage of Alzheimer's, but without a diagnosis of dementia yet.

Alzheimer's disease is no doubt the most famous disease of the brain. (Others include vascular disease, Parkinson's, and Lewy Body disease.)[38] These diseases impair cognitive skills–such as memory, language, communication, problem solving, and judgment[39] –that make them particularly vulnerable to abuse.[40] Dementia is a documented risk factor for financial exploitation,[41] and Alzheimer's disease is a relentlessly progressive form of dementia that inevitably leads to a complete loss of financial capacity.[42]

The risk of dementia rises with age. Nearly half of those over the age of 85 have Alzheimer's disease or another kind of dementia. This age group is also the fastest growing segment of our population.[43]

In 2017, an estimated 5.5 million Americans were estimated to have Alzheimer's with a diagnosis of Dementia. More than 96 percent of that group (5.3 million people) consisted of persons age 65 or older.[44] As the U.S. population ages, the number of those with Alzheimer's dementia is also expected to grow.[45] By 2050, the number of people age 65 and older with Alzheimer's disease is expected to more than double, to 13.8 million, absent medical breakthroughs to prevent or cure the disease.[46]

Diseases such as Alzheimer's are progressive, and the risk of financial exploitation and other forms of elder abuse rise as the disease progresses.[47] Nonetheless, it is possible for a person to maintain financial skills and judgment at the initial stage of cognitive decline and even through a moderate stage of dementia. In that case, a person at that stage would retain financial capacity despite cognitive decline that could manifest itself in other ways. (See box 2.)

Nonetheless, financial impairment is often one of the earliest clinical signs of cognitive decline. It strikes at an early stage of decline, even before the patient and his family are aware of it. Indeed, the ability to manage finances is one of the first Instrumental Activities of Daily Living (IADLs) to decline in MCI and Alzheimer disease. (IADLs also include managing medications, using the telephone, and shopping.)[51]

This is crucial, for at least two reasons. First, if the cognitive decline remains undetected, a patient can deplete his family's lifetime savings–either because of bad financial decisions or elder financial exploitation–before other family members can stop it.[52] On the other hand, diminished financial capacity can serve as an early warning to alert patients, their loved ones, and their doctors of impending cognitive decline. This suggests that closer communication and coordination between financial services professionals and health care professionals could yield significant benefits for the welfare of the elderly. (See Looking Ahead for more on these potential synergies.)

Poor physical health and functional impairment are also associated with a greater risk of abuse among older persons (not limited to elder financial exploitation).[53]

BOX 2. **Diminished Financial Capacity**

Cognitive impairment and diminished financial capacity are not the same thing, though the first often leads to the second. Financial capacity has been defined as "the capacity to manage money and financial assets in ways that meet a person's needs and which are consistent with his/her values and self-interest."[48] A decline in that ability is called impaired or diminished financial capacity.[49] It can significantly weaken a person's financial judgment and render him unable to understand the consequences of investment decisions. Persons with cognitive impairment may be unable to protect themselves from financial exploitation or even recognize that they are being exploited.[50]

According to one national study of elder abuse, "Older adults who needed assistance with activities of daily life or who reported poor health were more likely to be targets [of financial exploitation by family members], a finding that echoes past research on fraud and financial abuse of impaired older adults."[54] Other studies also find associations linking functional impairment and poor physical health with a greater risk of elder abuse.[55]

A New York state study quantified the links between conditions of dependency and documented cases of elder financial exploitation:

- More than three-quarters of the reported victims (76 percent) had at least one serious health impairment, including physical or mental impairment, dementia, and drug/substance abuse.[56]
- More than half (58 percent) routinely required assistance in at least one daily activity.[57]
- More than one-third of the cases (35 percent) involved victims who lived with the perpetrators.[58]

A more recent study, also in New York State, found that having disabilities involving one or more Activities of Daily Living or Instrumental Activities of Daily Living were significantly associated with lifetime financial exploitation, and having more than one IADL was associated with past-year prevalence.[59]

The authors of the latter study offered an explanation for the connection between dependence and exploitation: when a person needs assistance with Instrumental Activities of Daily Living, such as shopping or preparing meals, the person providing assistance may gain greater access to the elderly person's finances. That in turn could open the door for the provider to engage in exploitation.[60]

Financial and Retirement Trends

Willie Sutton was a bank robber. Legend has it that, when asked why he robbed banks, he replied, "That's where the money is."

The same logic can be applied to the elderly: they can become targets because of the retirement savings and other assets they have spent decades building up. As the authors of a 2014 New York study on elder financial exploitation observe:

> Older adults are more likely to have financial resources than their younger counterparts, and this, in combination with the higher prevalence of social isolation, cognitive impairment, and other factors, renders them uniquely susceptible to financial exploitation.[61]

The wealth of older generations is an important factor in explaining why the elderly in particular are targets of financial exploitation, but it is not the whole story. Paradoxically, the elderly poor are at even greater risk of financial exploitation. (See box 3.) Nonetheless, there is a wealth of data highlighting the assets belonging to the elderly:

- ***Total Financial Assets:*** Americans over the age of 50 currently account for 77 percent of financial assets in the United States, according to the Securities Industry and Financial Markets Association (SIFMA).[62]
- ***Retirement Assets:*** As of Dec. 31, 2017, retirement assets reached $28.2 trillion[63] and accounted for 43.8 percent of all household financial assets in the United States for householders aged 65 and older.[64]
- ***Total Household Net Worth:*** In 2011, the net worth of households headed by someone aged 65 or older totaled approximately $17.2 trillion.[65]
- ***Median Household Net Worth:*** By 2013, households headed by someone aged 65 or older had a median net worth of $202,950, including $80,000 in retirement accounts.

It's not just the size of retirement accounts that make them particularly important in understanding elderly financial exploitation. A shift in the fundamental nature of retirement accounts makes the elderly responsible for managing their retirement assets on their own. This shift has come about because of a trend away from defined benefit pension plans, which are managed by the employer, and toward defined contribution retirement plans, such as 401(k)s, which are controlled by the individual investor.

BOX 3. **Elderly Financial Exploitation of the Poor**

If assets attract thieves, one might expect elder financial exploitation to be limited to, or at least skewed toward, the wealthy. But that is emphatically not the case. Far from reducing the risk, poverty appears to increase the risk of elder financial exploitation.

"Thus, somewhat counterintuitively, it was not those with the greatest resources who were most likely to be financially exploited, but those with the least," according to a 2014 New York study.[66] The study found poverty strongly associated with elder financial exploitation. What can explain this surprising finding?

First, even in conditions of poverty, seniors may have something that an abuser wants: an apartment to live in, equity in a home, or a regular source of income, such as Social Security or a pension.

Second, one wonders whether, and to what extent, reverse causality could help to explain the association. Does living below the poverty line drive financial exploitation, or, conversely, does the financial exploitation impoverish the elderly victims? Causality cannot be inferred from the study findings, as the authors note, because factors such as poverty were assessed at the same time as the assessment of elderly financial exploitation.[67]

Third, there may be other confounding factors that explain the paradoxical association between poverty and elderly financial exploitation. A combination of three potential confounding factors comes to mind: sharing the home with large numbers of others; the absence of a spouse; and financial exploitation committed by non-spousal family members. Studies find that living with a larger number of household members other than a spouse is associated with an increased risk of abuse, especially financial and physical abuse.[68] Living with a spouse, in contrast, lowers the risk.[69] Several studies also find that family members are the most common perpetrator of elder financial exploitation.[70] Thus, it may be that the risk of elder financial exploitation increases among the poor when 1) the victim's spouse is not there to protect the elderly person, and 2) other household members, including family members, commit the financial exploitation.

Finally, the disproportionate numbers of victims who live below the poverty line suggests that the poor as a group may be less able to protect themselves from elderly financial exploitation.

In a defined benefit ("DB") plan, the employer guarantees the pension and typically manages it, both while the employee is working and after he or she has retired. The employer decides how to invest the assets and typically provides the retiree a steady stream of retirement payments. Under a defined contribution ("DC") plan, in contrast, it is the employee, not the employer, who shoulders direct responsibility for managing the retirement assets. While the employee is working and accumulating retirement assets, the employee decides how much to contribute to his retirement assets and how to invest them. When the employee retires, the retirement assets shift from an accumulation phase to a decumulation phase, but the retiree retains responsibility for managing his account. He or she controls the retirement account, deciding how to invest it and now also deciding whether and how much to draw down each month. This in turn can make them tempting targets to others.

The trend from defined benefit to defined contribution plans has been unfolding for the past 25 years. Among families with an active participant in an employment-based plan, the share with a DB only plan fell by more than half, from 40 percent in 1992 to 17.2 percent in 2016, according to the Employee Benefit Research Institute. Meanwhile, over the same period, the share with a DC only plan rose from 37.5 percent to 66.5 percent. (The share with both DB and DC plans also fell, from 22.5 percent in 1992 to 16.2 percent in 2016.)[71]

With a defined benefit plan, a perpetrator could only take a periodic retirement payment. That does not make persons with DB plans safe from exploitation. Indeed, there are cases in which perpetrators regularly take a person's social security or other retirement payments. Nonetheless, the perpetrator can only take one payment at a time. With a defined contribution plan, however, the perpetrator can attempt to take the entire lump sum all at once. The holder of a DC plan shoulders the responsibility of how to dispose of his or her nest egg: where to invest the remaining balance and how to spend it down. The retired person may turn to others–whether a relative, friend, or investment adviser–to determine how to make those decisions. This may give a wrongdoer an opening to gain access to the full amount of the retirement assets–whether by manipulation, deceit, threats, or other such means.

This trend is particularly ironic in light of the cognitive aging issues described above. Just when the demands of financial management should be lightened, they may instead grow heavier for retirees who begin to experience cognitive aging.

It's not just the asset side of household balance sheets that causes concern. On the liability side, older persons are increasingly taking on more student debt. Seniors are the fastest growing segment of the student debt market, according to a CFPB report citing Federal Reserve data. From 2005 to 2015, the number of Americans age 60 or older with one or more student loans jumped four times, from about 700,000 to 2.8 million, according to a CFPB analysis.[72] The average amount of debt among older borrowers nearly doubled in those 10 years, from $12,000 to $23,500. About three-quarters of the older borrowers with student loans used them to finance their children's or grandchildren's college education.[73] (Similarly, a New York Fed analysis finds that debt held by borrowers between the ages of 50 and 80 increased by roughly 60 percent from 2003 to 2015).[74]

The New York Fed analysis calls this the graying of American debt and sees it as positive for the economy: older borrowers generally enjoy stronger average credit history, higher credit scores, comparatively stable income streams, and greater experience in handling credit.[75] "Hence," the New York Fed analysis concludes, "the aging of the American borrower bodes well for the stability of outstanding consumer loans."[76]

But could that stability be shattered by elder financial exploitation? On an individual level, stealing financial assets from the elderly would make it harder, if not impossible, for them to pay off their student debts. And, would bad actors further exploit the elderly by encouraging them to take on additional debt? Could there also be more systemic spill-over effects on the economy at large?

That is the question that the head of Federal Reserve Bank of Philadelphia raised at a recent conference on aging, cognition and financial health. Patrick T. Harker, President and Chief Executive Officer of the Philadelphia Fed, observed:

> Not only does that have the potential to spill over to the real economy, it's poised to become a multigenerational problem….
>
> While each of these factors—student debt, retirement costs, eldercare—might not be crisis inducing in and of itself, the interconnectivity could make the sum more systemically dangerous than its individual parts. It may be that the problem of elder financial exploitation is not fully contained but could spill over into the larger economy. The sheer size and complexity pose a challenge for industry and regulators alike.[77]

To summarize, it helps to think of financially exploitation in terms of two types of risk. First, there is the risk that an elderly person becomes the target of attempted financial exploitation. Second, once targeted, a person may be less able to protect himself.

Like Willie Sutton's bank robbers, a perpetrator of elderly financial exploitation may be attracted to the victim's wealth or assets, even relatively humble assets such as a regular Social Security check. Unlike banks, however, the elderly may be unable to protect themselves. Banks can fortify their defenses with safety vaults, security systems, and armed guards. The elderly, in contrast, may have defenses that have become significantly weaker in older age.

Thus, the elderly face both types of risk: the risk of being targeted in the first place, and the risk of being unable to protect their assets once they are targeted. This double vulnerability helps to explain why the elderly in particular face higher risks of financial exploitation.

Add in demographic and financial trends, from the aging of America to the shift in retirement plans and responsibilities, and the problem of elder financial exploitation becomes even greater and more urgent. This combination of factors makes clear why elder financial exploitation has been called the crime of the 21st century.[78] And, as discussed below, it explains why some experts warn that elder financial exploitation is a burgeoning public health crisis.

THE SCOPE OF THE PROBLEM

Ironically, it is easier to say why elder financial exploitation is expected to grow than to quantify how big a problem it is right now. Our knowledge suffers from a scarcity of research and researchers, and the studies that do exist have some significant limitations. Nonetheless, we have enough data to build a mosaic that shows the scope of the problem.

We can seek to measure the extent of elderly financial exploitation along several dimensions, beginning with its prevalence. To put those prevalence rates in context, we can compare them to the corresponding rates of other types of elder abuse. It is also important to measure the extent that elder financial exploitation goes unreported to authorities, thus making our picture of reported levels merely the tip of the iceberg. We must also consider the costs of elder financial exploitation, both financial and non-financial, to the victims and to society. Finally, we can look for quantitative evidence to confirm the expectation that elder financial exploitation will increase alongside the growth in the elderly population.

The data lead to two conclusions. First, the numbers are as compelling as they are alarming. They have led some prominent experts to call elder financial exploitation "a burgeoning public health crisis"[79] and "a virtual epidemic."[80] Second, for all the data points found in various studies, perhaps the larger point is how much we do not know. There is a glaring lack of adequate research into numerous key questions involving elder financial exploitation, from solid national statistics on costs, to the causes of abuse, to empirical evidence of the most effective treatments.

Start with prevalence. It can be measured either as the percentage of the elderly who have experienced financial exploitation in the past 12 months (past-year prevalence), or at any time since age 60 (lifetime prevalence). As described below, various studies put past-year prevalence in the range of 2.7 percent to 6.6 percent and lifetime prevalence at 4.7 percent.

Those numbers, however, are almost surely underestimates, as some of the authors point out about their own research studies.[81] An important reason for that stems from limitations on study samples. Several studies were based on interviews of elderly persons who were cognitively intact and lived in the community, such as their own homes. This approach excluded those with dementia or other cognitive impairments and those living in institutional settings such as nursing homes. Yet those excluded subpopulations of the elderly are among the most at risk of exploitation.[82] In addition, some studies were limited solely to financial exploitation committed by family members, thus excluding other types of perpetrators, such as more distant relatives, friends and neighbors, romantic partners, caregivers, strangers, and others.

Taken as a whole, the studies demonstrate the significance–some say alarming significance—of financial exploitation. Nonetheless, apples-to-apples comparisons between surveys are elusive, because they differ in numerous ways, including sampling and interviewing techniques, methodology and survey questions, geographic location, and the age range of survey sample.[83]

With those caveats, here are brief summaries of five studies, two of which are nationwide (the Acierno and

TABLE 1. **Summary of Prevalence Studies**

	Elder Mistreatment in the United States	**The National Elder Mistreatment Study**	**The South Carolina Elder Mistreatment Study**	**Under the Radar (Self-Reported Study Component)***	**Financial Exploitation of Older Adults***
Lead Author	Laumann	Acierno	Amstadter	Lachs	Peterson
Date Published	2008	2010	2011	2011	2014
Past-Year Prevalence	3.50%	5.2%	6.60%	4.21%	2.7%
Lifetime Prevalence	Not reported	Not reported	Not reported	4.79%	4.7%
Region Covered	National	National	South Carolina	NY State	NY State
Type(s) of Perpetrators Studied	Family members only	Family members only	Family members only	All types	All types
Age Range of Sample	57 to 85	60+	60+	60+	60+
Number of Respondents	3,005	5,777	902	4,156	4,156
Status of Respondents	Vast majority cognitively intact; community dwelling	Cognitively intact and living in community	Had cognitive capacity to consent to participation; community residing	Cognitively intact and community dwelling	Cognitively intact and community dwelling
Contact Method	In-home + questionnaire	Telephone	Telephone	Telephone	Telephone

* The Lachs and Peterson reports were both based on the same underlying research. The Lachs paper reported frequency counts of quantitative data only (based on answers to closed-end questions), whereas the Peterson paper also analyzed respondents' narrative accounts in their own words.[84]

Laumann studies) and three are statewide (two in New York and one in South Carolina).

The 2010 National Elder Mistreatment Study researched the past-year prevalence of incidents of elder financial mistreatment committed by a family member. It found a past-year prevalence rate of 5.2 percent. The most common type of financial mistreatment consisted of family members' spending money without the elderly person's permission, according to the study. (Here and throughout, the study dates refer to the date of publication, not the date of field testing or survey work.)[85]

The study was based on a nationally representative sample of adults ages 60 and over, and it was limited to those who were cognitively intact, lived in the community, and were willing to participate in a telephone interview.[86] Caution is advised, however, in accepting the accuracy of the study's prevalence statistics for elder financial exploitation, according to Dr. Acierno, the lead author of the study.[87] For details, see Appendix One: The Gaps in our Knowledge: A Closer Look at Two Seminal Studies.

An earlier national survey, the Laumann study, found a past-year prevalence of 3.5 percent for financial mistreatment by a family member.[88] The sample consisted of persons aged 57 to 85 who lived in the community (not in nursing homes) and were cognitively intact.[89] The researchers used a combination of in-home interviews conducted between July 2005 and March 2006 and questionnaires that respondents were asked to fill out on their own and mail in.[90]

A 2014 Peterson study in New York State found rates of 2.7 percent for past-year prevalence and 4.7 percent for lifetime prevalence (since age 60) of elder financial exploitation.[91] The most common form of such exploitation consisted stealing or misappropriation of money or property, accounting for more than three-fourths of past-year and lifetime prevalence.[92] The study examined exploitation committed by any perpetrator, whether a family member or not. The authors describe the underlying research as "one of the largest and most methodologically rigorous studies of elder abuse conducted to date."[93]

(The researchers previously reported partial results in the study *Under the Radar*.[94] Whereas *Under the Radar* reported frequency counts of quantitative data only (based on answers to closed-end questions), the Peterson report also analyzed respondents' narrative accounts in their own words.[95])

A 2011 study in South Carolina found a prevalence rate of 6.6 percent for financial exploitation committed by family member in the previous year. The study noted that it was the first to examine elder abuse in a southern state with a significant rural population.[96] It was based on telephone survey of a representative sample of persons age 60 and older who were cognitively intact.[97]

The overwhelming majority of incidents of elder financial exploitation go unreported to authorities: they slip "Under the Radar," to cite the apt title of the 2011 New York study. It found that, for every documented case of elder financial exploitation, 43.9 went unreported. This means that a mere 2 percent of incidents were reported to authorities. The study arrived at that number by undertaking two research components: a Self-Reported Prevalence Study, in which researchers conducted a phone survey of New York residents over 60; and a Documented Case Study, in which researchers collected and analyzed the data on all elder abuse cases reported to all state agencies and programs over a one-year period.[98] By comparing the results, the study came up with the ratio of 44 to 1.

Some studies compare the prevalence of financial exploitation to that of the other four basic types[99] of elder abuse (physical abuse, psychological or verbal abuse, sexual abuse, and neglect). Though the studies overall provide mixed results,[100] two recent reports identify financial exploitation as the most prevalent type of elder abuse.

"Financial exploitation is the most common and least studied form of elder abuse," according to a research article published in 2014 in the Journal of General Internal Medicine.[101] Similarly, according to a comprehensive review of elder abuse published in 2015 in the New England Journal of Medicine, "recent studies suggest financial exploitation is emerging as the most prevalent form of abuse."[102]

A 2017 joint publication of three federal entities–the Consumer Financial Protection Bureau, the U.S. Department of Treasury, and the Financial Crimes Enforcement Network (FinCEN)–also asserts that elder financial exploitation is the most common form of elder abuse in the United States.[103]

The Acierno study found a higher prevalence for financial exploitation than for any of other forms of elder abuse that it studied (emotional, physical, sexual mistreatment and potential neglect).

Likewise, the Self-Reported Study component of the Under the Radar study in New York–the part that interviewed the elderly directly–found that financial exploitation was the most prevalent form of mistreatment that respondents said had taken place in the preceding year. That finding, however, stood in contrast with the Documented

Case Study component, which tallied cases received by local authorities and documented by them. This component found that psychological abuse was the most common form of mistreatment reported by agencies. One possible explanation of this inconsistency could be that elder financial exploitation is reported to authorities less frequently than other types of abuse. Thus, it is underrepresented in official statistics and does not show up as the most prevalent form of elder abuse in state administrative data.

The Laumann national study found that financial exploitation was the second to verbal mistreatment as the most prevalent form of elder abuse.[104] Similarly, the South Carolina survey found that financial exploitation by family members was second to emotional abuse as the most common form of abuse.

No assessment of the scope of elder financial exploitation would be complete without an estimate of the costs. Start with the monetary costs imposed on the victims. The truth is that we simply do not have a good estimate of total national financial costs to the victims.

It is often said that victims of elderly financial exploitation lose at least $2.9 billion per year.[105] This number comes from a widely cited MetLife Study of Elder Financial Abuse, which was based on a review of newsfeed articles of elderly financial exploitation over a three-month period in 2010. By putting a single, compelling number on the victims' losses, this study succeeded in focusing attention on the problem. The accuracy of that number, however, hinges on numerous assumptions and extrapolations that the researchers made to fill in gaps in the data.[106]

The Elder Justice Roadmap recognizes the lack of quantitative data on costs,[107] and instead describes the impact in more general terms:

> Financial exploitation causes large economic losses for businesses, families, elders, and government programs, and increases reliance on federal health care programs such as Medicaid.[108]

Though we don't have a solid estimate of the cost of financial exploitation at the national level, we do have one for the state of New York. The 2016 study, "The New York State Cost of Financial Exploitation" estimated that seniors (age 60 and older) suffered annual losses ranging from nearly $352 million to more than $1.5 billion.[109]

The New York State Office of Children and Family Services, which conducted the study, described it as "one of the most comprehensive studies to quantify both the financial and the non-financial costs of financial exploitation of vulnerable adults."[110] The study included the largest number of Adult Protective Services (APS) financial exploitation cases to date in any single state.[111]

Researchers began by reviewing more than 900 actual APS cases of verified financial exploitation throughout the state (estimating losses for APS cases it did not review). These cases involved elderly victims as well adults 18 or older who, because of physical or mental impairment, were unable to protect themselves.[112] The researchers estimated that actual losses–verified by APS–totaled $109 million.[113]

The researchers then adjusted the estimate in two ways.[114] First, they limited the cases solely to victims who were seniors (age 60 and older). Second, they expanded the estimate to include not only APS cases but also the far greater number of incidents that were not reported to APS. The researchers noted that many incidents of elder financial exploitation go unreported to APS: the Under the Radar study found a ratio of nearly 44 cases of elder financial exploitation to every 1 referred to APS, and a 1998 National Center on Elder Abuse study put that ratio at 10 to 1. To account for these unreported incidents, the researchers multiplied their baseline data of elder financial exploitation by 10 for a low-end estimate and multiplied by 44 for a high-end estimate of victims' annual losses. This produced the estimate ranging from nearly $352 million (low-end) to more than $1.5 billion (high-end). This estimate sought to capture the total universe of elder financial exploitation in the state, whether it or not the incident was reported to APS.

Among other significant results, the study found that vulnerable adults between the ages of 18 and 59 accounted for 19 percent of the victims, or nearly one in five. The study also found that a mere 5 percent of victims partially or completely recovered the items or funds taken from them. That figure suggests how devastating the financial losses can be. And they hit victims who can least afford it: victims of any age may not have the income stream to recover their losses, and elderly victims face the additional likely burden of a shortened time horizon.

The harm to victims, however, goes well beyond monetary loss. The study found that "financial exploitation was associated with a wide range of negative outcomes for the victims, including emotional pain (29 percent), financial impoverishment (19 percent), guardianship (nine percent), and health concerns (six percent) and eviction (four percent)."[115]

Moreover, elder abuse in general (though not necessarily elder financial exploitation in particular) has also been linked to a higher risk of mortality. "[S]tudies have shown that victims of elder abuse are at increased risk for death, after adjustment for any chronic illness they may have," according to the Lachs article in the New England Journal of Medicine.[116]

As we have seen, the elderly are often targets precisely because of their vulnerabilities, such as health problems, cognitive decline, and social isolation. These same factors can make the elderly the least able to cope from the losses when elder financial exploitation does occur (and possibly less likely to report abuses). This brings us full circle, suggesting that a grim and self-reinforcing dynamic is at work.

Quantifying the costs in terms of dollars and cents, or even in terms of health and mortality, fails to capture its larger significance. Elder financial exploitation attacks the victim's dignity and quality of life.[117] In the words of the MetLife study, "Elder financial abuse invariably results in losses of human rights and dignity."[118]

Elder financial exploitation also imposes costs on society, including public costs to render assistance to the victims. Quantifying the public costs, however, remains elusive. As with the costs to victims, we do not have a national estimate of the total costs to the public, but we do have estimates at the state level.

The most compelling estimates again come from the "The New York State Cost of Financial Exploitation." This study estimated the annual public costs at more than $14.5 million. That amount comprises nearly $6.3 million in service agency costs, such as APS investigations, plus nearly $8.3 million in public benefit costs, such as food stamps or Supplemental Nutrition Assistance Program benefits (SNAP), Medicaid or Medicare coverage, and health and housing-related benefits.[119] Studies in three other states–Utah, Wyoming, and Oregon–also examine the costs, with varying degrees of rigor and precision.[120]

Finally, there is quantitative evidence that elder financial abuse is growing as the population ages, with most of the data at the state level, in New York and Connecticut in particular.

According to the New York State Cost of Financial Exploitation Study, the number of state APS referrals involving allegations of financial exploitation jumped more than 35 percent between 2010 and 2014.[121] Similarly, Connecticut saw an increase of 28 percent in reported cases of elder abuse over the same period–with the growth rate accelerating.[122] (The Connecticut data encompassed all forms of elder abuse, of which financial exploitation is just one component.) Public costs are likely to rise further if, as expected, incidents of elder abuse increase with the aging of the population.[123]

At the national level, we do not have hard numbers or rigorous studies demonstrating growth in elder financial exploitation over time.[124] We do, however, have some anecdotal evidence, including observations by at least two large brokerage firms. They have seen rising numbers of incidents of suspected elderly financial exploitation in recent years, though it is possible that the increase could partially be attributed to heightened sensitivity among financial professionals who spot the red flags and report them internally within their firms.[125]

We also have a national source of data that could play a more important role in the future in tracking the growth of elder financial exploitation. This source consists of Suspicious Activity Reports (SARs) received by the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN"). Financial institutions, including banks and broker dealers, are required to file Suspicious Activities Reports with FinCEN in certain cases. The reports are confidential, but FinCEN provides summary statistics of the number (though not the dollar amount involved) of reports filed.

In 2013, FinCEN released a new electronic filing form that included a specific check box indicating that the filer suspects elder financial exploitation.[126] Two years earlier, FinCEN issued an advisory highlighting the issue of elder financial exploitation to financial institutions. The alert included a list of potential red flags and instructions on how to report suspected elder financial exploitation through a SARS filing (at that time, through a narrative portion of the report).[127] In 2017, FinCEN joined with the U.S. Treasury Department and the Consumer Financial Protection Bureau in issuing a memorandum to reiterate that message.[128]

The number of SARS filings of suspected elder financial exploitation has increased rapidly in recent years, rising to nearly 60,000 reports in 2017.[129] It's not clear, however, how much of this reflects actual growth in cases of suspected elder financial exploitation. The increasing number of SARS filings could instead largely reflect financial institutions' growing familiarity with the new checkbox along with their increased awareness of the need to detect and report elder financial exploitation.

Going forward, however, as familiarity with the checkbox grows, it seems reasonable to expect that any upward trend SARS filings on suspected elder financial exploitation will reflect increases in actual cases of suspected exploitation.

Conclusions: The Significance of the Numbers

Any attempt at finding the meaning behind the numbers must come with caveats. The various studies point to major gaps in our knowledge (as explored in the next section). Reported numbers, moreover, most likely underestimate the extent of elder financial exploitation.

Nonetheless, the weight of the evidence presents a compelling picture that is disconcerting if not alarming. It is a picture that has led some prominent medical doctors and public health experts to warn that elder financial exploitation represents "a virtual epidemic"[130] and "a burgeoning public health crisis in need of immediate attention."[131]

Take the Peterson study, which found a lifetime prevalence of elder financial exploitation of nearly 5 percent. The study explains what that rate means from the perspective of public health:

> If a new disease entity were discovered that afflicted nearly one in 20 adults over their older lifetimes and differentially struck our most vulnerable subpopulations, a public health crisis would likely be declared. Our data suggest that financial exploitation of older adults is such a phenomenon.

In sum, the quantitative evidence from empirical research studies reinforces the qualitative conclusions based in large part on demographic and financial trends. Elder financial abuse is a major problem today. It is likely to grow significantly worse. And it demands our urgent attention.

WHAT WE DON'T KNOW

As the discussion above makes clear, there is a great deal that we do not know about elder abuse in general and elder financial exploitation in particular. The National Center on Elder Abuse (NCEA) observes:

> Experts have reported that knowledge about elder abuse lags as much as two decades behind the fields of child abuse and domestic violence. The need for more research is urgent and it is an area that calls out for a coordinated, systematic approach that includes policy-makers, researchers and funders.[132]

The gaps are reflected in a set of national research priorities proposed in "The Elder Justice Roadmap" ("Roadmap"). The report distills the collective wisdom of 750 stakeholders and experts from a wide variety of disciplines and fields on how to combat elder abuse. The initiative was funded by the U.S. Department of Justice with support from the Department of Health and Human Services.[133]

As the Roadmap priorities make clear, a number of fundamental questions remain unanswered, including these:

How many people have experienced elder financial exploitation?

There appear to be few national studies published in the past 10 years on elderly financial exploitation. Two of the most prominent—the Laumann study of 2008 and the Acierno study of 2010—are both dated and had significant design limitations.[134]

The studies were restricted to incidents of elderly financial exploitation committed by family members, and the interviews were limited to cognitively intact individuals who lived in the community.

"Unfortunately, we simply do not know for certain how many people are suffering from elder abuse and neglect," the NCEA observes.[135] One of the research priorities that the Roadmap recommends is to determine rates of elder financial exploitation.[136]

What are the financial costs to victims and to society at large?

What is the annual total dollar amount of the losses suffered by victims of elder financial exploitation? The near-ubiquitous answer, repeated at conferences and in speeches and articles, is "at least $2.9 billion." This estimate is based on a single study: the 2011 MetLife Study of Elder Financial Abuse. (The researchers' predecessor work, the 2009 study "Broken Trust: Elders, Family, and Finances," put the cost to victims at $2.6 billion.)

Recall that the MetLife Study based its estimated costs to victims solely on newsfeed articles over a single three-month period in 2010 (just as the predecessor study based its estimate on a three-month period in 2008). Therefore, those estimates would have failed to capture any incidents of elder financial exploitation not reported in the news articles and, as a result, most likely significantly underestimated the costs to victims. Apart from the reliance on newsfeeds, there are also other reasons to question the accuracy of the estimated cost of $2.9 billion (or the earlier estimate of $2.6 billion). See Appendix One: The Gaps in our Knowledge: A Closer Look at Two Seminal Studies for details.

At the time, the 2010 Study and the predecessor 2008 publication represented a creative way with limited resources (newsfeed articles) to focus public attention on a single, compelling number. Thanks to that number, the studies succeeded in raising the visibility of problem of elder financial exploitation. That was particularly important at the time, when frustrated experts and practitioners bemoaned the general lack of attention to a problem that was all around them. In this respect, one can say that the studies made lemonade from the lemons of insufficient data.

A decade has passed since those pioneering studies, and yet we suffer from the same lack of data. We have not filled in the gaps with authoritative research. We still cannot give a definitive answer to the question of the total annual costs incurred by the victims of elder financial exploitation.

Nor can we say how much of the cost is borne by the American public through case investigations, interventions, prosecutions and assistance to the victims of elder financial exploitation. As we have seen, researchers have produced a rigorous estimate of the costs to the state of New York, but we have not established similar estimates for most other states or for the nation as a whole.

Acknowledging that the "cumulative toll of elder abuse has not yet been quantified,"[137] the Roadmap recommends as one of its research priorities to identify the costs and consequences of elder financial exploitation.

What are the causes of elder financial exploitation? Who are perpetrators, and why do they commit specific types of exploitation?

The existing studies point to a number of risk factors for elder financial exploitation. Nonetheless, substantially more research is needed to identify causes of various types of financial exploitation and to gain a better understanding of why perpetrators commit those actions. Thus, one of the Roadmap research priorities is to "Conduct a long-term (longitudinal) study examining the characteristics of victims and/or perpetrators (such as substance abuse, mental illness) and contextual factors (such as poverty, isolation, dependence or disability, family violence) in elder abuse cases."[138]

What are the most effective treatments?

There are significant research and data gaps on effective strategies to prevent and intervene in cases of elder abuse.[139]

"There have been no large, high-quality randomized, controlled studies of specific and discrete inventions in cases of elder abuse—a situation that has been identified as leading to a critical knowledge gap in the field," according to Dr. Lachs, the prominent gerontologist.[140]

As a result, those on the front lines often find themselves without the tools or resources to detect elder abuse or the most appropriate ways to respond to it. Referring to significant gaps in data and research, the Administration on Community Living in the Department of Health and Human Services has observed:

> These conditions perpetuate the absence of uniform approaches, guidance, and training across the allied industries working to prevent and address adult maltreatment, resulting in APS investigations that are difficult to conduct…[142]

Similarly, the Roadmap makes clear, "Comprehensive data collection is critical to inform efforts to detect, respond to, and prevent elder abuse, to shape policy, and to allocate resources where they're most needed."[143]

Fragmentation and the Lack of Data

In an age of big data and predictive analytics, the gaps in our knowledge may seem surprising. But big data and predictive analytics rely on copious amounts of data, and there is a paucity of data on elder abuse, along with shortages of researchers and empirical research studies. This has been one of the biggest obstacles to understanding and treating elder financial exploitation.[144]

At least until now, there has been no nationwide system to collect and report APS data on cases of elder abuse. Instead, a highly fractured system has emerged, with each state maintaining its own system to collect and store data. This has had a significant impact on our ability to understand elder abuse, as the NCEA makes clear:

> [L]ongstanding divergences in the definitions and data elements used to collect information on elder abuse make it difficult to measure elder abuse nationally, compare the problem across states, counties, and cities, and establish trends and patterns in the occurrence and experience of elder abuse.[145]

This fractured system stands in sharp contrast to the data collected for decades on child abuse and domestic violence, leading some experts to point to the National Child Abuse and Neglect Data System as a model for collecting and reporting on incidents of elder abuse.[146]

It's not just a question of siloed data systems. Fragmentation permeates state and local responses to elder abuse, including types of services provided, populations served, eligibility requirements to receive such services, response times, and education and training of caseworkers. "Because the APS system is designed and administered at the state or local level, as a national system it is fragmented and unequal, both within and across states," the Department of Health and Human Service's Administration on Community Living has observed.[147]

While fragmentation affects treatment for all forms of elder abuse, the impact on elder financial exploitation may be particularly pronounced. Financial exploitation is the most common form of elder abuse and yet the least studied, according to the Peterson study. Financial exploitation of older adults "was explored only minimally in the initial studies,"[148] with research instead emphasizing more "traditional" forms of elder abuse (e.g., physical, sexual, emotional abuse/neglect).[149]

In a similar vein, a retired manager of federal research grants recalled to me how he had struggled for years to find funding for research on elder financial exploitation. Often he had to make do by persuading researchers to include a few questions on that topic within studies that had focused on other forms of elder abuse.

BOX 4. **A Big Step Forward: Creating a National APS Data System**

The National Adult Maltreatment Reporting System (NAMRS) promises to become the first comprehensive national reporting system for data reported to state adult protective services (APS) programs. That is a major step forward.

The U.S. Department of Health and Human Services' Administration for Community Living leads the initiative, with the voluntary participation of states and territories. Data collection began in 2017, with submissions from 54 of 56 states and territories (48 states, the District of Columbia, and the five territories). Of them, 44 entities provided either case-specific or aggregated APS data, while the others provided information about state agency policies and practices.[150] To accommodate states or territories that were unable to provide case-specific data, the system allowed instead for the submission of aggregated data on key statistics. An earlier, two-year pilot program identified these priorities for NAMRS:

- **Defining Abuse,** by creating a clear definition of vulnerable adult abuse and neglect.
- **Learning about Victims and Abusers,** including demographic information about clients and their relationships to alleged perpetrators.
- **Describing and Informing APS Practice,** which eventually will provide insight into APS practice, case outcomes, and types of interventions.
- **Affecting State and National Policy Issues,** by providing data on macro-level issues, which could impact state or national policy.

In August 2017, ACL released the first in a promised series of reports on the data received from the states. The first release provided an overview of the types of information and data submitted by participating states and territories. Future reports, among other topics, will describe victim and perpetrator demographics and a summary of case-specific data on investigations of maltreatments, clients, victims, services, and perpetrators.

For more on NAMRS, see https://www.acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs.

Data is necessary to inform policies on elder abuse–and to justify the need for adequate funding and other resources. That can lead to a Catch-22: data and research are needed to justify the allocation of resources, but those resources are needed to collect the data and conduct the research in the first place.

Fortunately, there is a federal initiative underway to build a national data system of APS data. Called the National Adult Maltreatment Reporting System (NAMRS), it seeks to become the first comprehensive national reporting system for data reported to state adult protective services (APS) programs. (See box 4.)

Since NAMRS is designed to capture APS data, it will not collect information on incidents of elder abuse that are not reported to APS. That appears to be a large number: as we have seen, only one in every 44 incidents elder financial exploitation is reported to APS in New York State. Thus, a considerable number of incidents will fall outside the NAMRS database. Nonetheless, the development of a national database will be a major step forward, promising to address some of the data and research shortcomings described above.

WHAT REGULATORS ARE DOING ABOUT IT: LEGAL AND REGULATORY REFORMS

On February 5, 2018, two FINRA rules took effect to allow brokerage firms to respond quickly to protect customers from suspected elder financial exploitation.[151] One of the rules allows broker-dealers to place a temporary hold on disbursements from a client's account when elder financial exploitation is suspected.[152] The other rule seeks to facilitate communication between a firm and a customer's trusted contact to address possible financial exploitation.[153] (For other FINRA activities to protect senior investors, see Appendix Three: SEC and FINRA Actions to Protect Senior Investors.)

Meanwhile, more than a dozen states have adopted laws that would permit certain financial firms to pause disbursals when financial exploitation is suspected.[154] The state laws are patterned on the Model Act, which was adopted two years ago by the North American Securities Administrators Association (NASAA), the association of state securities regulators.[155]

FINRA Rule 2165, "Financial Exploitation of Specified Adults," permits broker-dealers to place a temporary hold on disbursements of funds or securities from the accounts of certain customers, if the broker reasonably believes that financial exploitation of the customer has occurred, is occurring, has been attempted or will be attempted. The rule covers customers who are age 65 and older as well as those who are 18 or older and who, the broker-dealer reasonably believes, have a mental or physical impairment that prevents them from protecting their own interests.

The rule allows—but does not require—broker dealers to place a hold on disbursements if they suspect financial exploitation. If a brokerage firm places such a hold based on reasonable suspicion, the rule provides the firm with a safe harbor from other FINRA rules. That means that the broker-dealer would not be held liable if compliance with this rule conflicted with other FINRA rules, such as a requirement to follow a customer's instructions.[156]

The hold can remain in effect for up to 15 business days, and the firm can extend the expiration date for an additional 10 business days following an internal review. State agencies, such as Adult Protective Services or a state securities regulator, also can extend the hold.[157]

FINRA's other rule change (Amendment to Rule 4512, "Customer Account Information") requires firms to make reasonable efforts to obtain the name and contact information for a trusted contact person when a retail customer's account is opened and when the account information is updated. (The rule applies to individual clients, not institutional investors.) Firms are required to ask for the information, but customers are not required to provide it. If the customer declines to do so, the firm can still open the account.[158]

If a firm places a hold on a customer's account, the firm must notify the trusted contact unless the firm reasonably believes that the trusted contact is engaged in the financial exploitation.

The trusted contact person is intended to be a resource for broker-dealers, according to the FINRA release. For example, the rule also allows, but does not require, the firm to communicate with the trusted contact when the brokerage is concerned that the customer is being financially exploited but the firm has not yet decided to place a temporary hold on a particular disbursement.[159] In addition, the firm can contact the trusted contact and disclose the customer's account information to inquire about the customer's health status. FINRA explicitly states that a brokerage firm may communicate with the trusted contact if it suspects that the customer may be suffering from Alzheimer's disease, dementia or other forms of diminished capacity. The firm also could contact the trusted contact to confirm the identity of a legal guardian, executor, trustee, or holder of a power of attorney.[160]

Brokers may only communicate with persons whom the customer already has designated as trusted contacts. Nothing in these or other FINRA rules permit contact with anyone not listed as a trusted contact, even if the person is a close relative of the customer.

Being designated a trusted contact would not in itself confer authority to transact business on an account. The rule would, however, allow persons already authorized to transact business on an account—such as joint accountholders, trustees, or individuals with powers of attorney—to be designated as trusted contacts.[161]

Even before the rule took effect, some firms had taken the initiative to ask customers for the names of trusted contacts. This had been considered an industry best practice, but it had not been universally followed. Now that it is mandatory, this best practice will become standard practice for all broker-dealer firms.

FINRA adopted the rule changes in October 2016, the SEC approved them in February 2017, and they took effect 12 months later, on Feb. 5, 2018. The SEC oversees FINRA, which regulates broker-dealers.

NASAA adopted its Model Act to Protect Vulnerable Adults from Financial Exploitation in January 2016. As its name implies, the Model Act has no force of law on its own, but can serve as a model for state laws or regulations. A total of 13 states have passed laws based in whole or part on the Model Act. All 13 of those state laws contain a provision allowing for a delay on disbursements if financial exploitation is suspected, and eight of the state laws are nearly identical to the Model Act. Meanwhile, three other states have been considering legislation based on the Model Act. Before it was adopted, three states already had similar laws on their books.[162]

Like the FINRA Rule, the Model Act permits pauses of disbursements upon reasonable suspicion of financial exploitation. Specifically, the Model Act provides broker-dealers and investment advisers with the authority to delay disbursement of funds from an eligible adult's account if the broker-dealer or investment adviser reasonably believes that such disbursement would result in the financial exploitation of the eligible adult.[163]

Note that this only applies to pauses on disbursements from the account, not to transactions within it. For example, if a customer ordered a broker to sell shares of a stock, neither FINRA Rule 2165 nor the Model Act would permit

TABLE 2. **Comparison of FINRA Rule Changes and NASAA's Model Act**

	FINRA		NASAA
	Rule 4512, "Customer Account Information"	**Rule 2165, "Financial Expllloitation of Specified Adults"**	**Model Act to Protect Vulnerable Adults from Financial Exploitation**
Applies to	Broker-dealers	Broker-dealers	Broker-dealers and investment advisers
Permits delay of disbursements	N/A	Yes	Yes
Permits delay of transactions	N/A	No	No
Requires asking for trusted contacts	Yes	N/A	No
Requires notifying trusted contacts/designated third parties if hold is place on disbursement	N/A	Yes	No
Requires reporting to state APS and securities commissioner and sharing relevant records with them*	N/A	No	Yes
Requires record retention	Yes	Yes	Implied
Requires training	N/A	Yes	No
Provides safe harbor from other FINRA Rules	N/A	Yes	N/A
Provides civil and administrative immunity	No	No	Yes

* Whenever there is either 1) a reasonable belief of financial exploitation of the vulnerable adult or 2) the disbursement is delayed

the firm to refuse to execute the transaction or to delay it.[164] FINRA said it may consider extending the safe harbor to transactions in securities in future rulemaking.[165]

Disbursement of money or securities out of the account can have far more severe consequences than a transaction within the account. Disbursement can have a devastating impact, as when, for example, fraudsters persuade the elderly to empty their entire retirement or brokerage account and send it overseas. There the money vanishes without a trace, leaving no way to recover it. The sale of a security, in contrast, would be less damaging, because the proceeds would remain in the customer's account.

Nonetheless, it is possible to envision circumstances of financial exploitation in which a transaction results in harm to the victim, even if the assets remain in the account. For example, depending on the circumstances, surrendering or cashing out an annuity could incur substantial penalties. The victim would suffer a financial loss, even if the cash proceeds remained in the account.

Despite the similarities between the FINRA rules and the Model Act, there are some important differences between them. One basic difference results from FINRA's status as the self-regulatory organization for broker-dealers: the FINRA rules apply only to broker-dealers, while the Model Act also would apply to state-registered investment advisers (but not to investment advisers registered with the SEC).[166]

In another key difference, only the Model Act confers immunity from civil and administrative liability. Unlike the states, FINRA lacks authority to provide immunity.

The Model Act would confer immunity from administrative or civil liability for delaying a disbursement and for reporting suspected financial abuse to governmental agencies and designated third parties (who are analogous to the "trusted contacts" in the FINRA rule). To gain that immunity, the broker, investment adviser, or qualified individual must act in good faith, exercise reasonable care and comply with the provisions of the Model Act. Qualified individuals would include broker-dealer agents, investment adviser representatives, and those acting in a supervisory, compliance or legal capacity for broker-dealers and investment advisers.[167]

The Model Act is intended to apply to enforcement actions brought by state regulators, not to civil cases brought by the firm's customers, according to Joseph Brady, Executive Director of NASAA. He noted that he was referring to the intent of the Model Act, and that it was possible that a state could adopt it or apply it differently and a court could interpret it differently.[168]

The safe harbor provisions in FINRA Rule 2165 would provide a defense against an action by FINRA itself, but would not provide immunity from a civil lawsuit by a disgruntled customer or a legal representative of one. Nonetheless, it might be expected that a broker-dealer's legal defense might point to the safe harbor provisions to argue that the actions were reasonable.

Another key difference relates to mandatory reporting. The FINRA rule contains no reporting requirements, even if a firm places a hold on disbursements,[169] though it does require that broker-dealers retain relevant records.[170] The Model Act, in contrast, makes reporting mandatory. If there is a reasonable belief that financial exploitation of an eligible adult may have occurred, been attempted, or is being attempted, the state securities regulator and Adult Protective Services must be notified promptly. This requirement holds true whether or not a pause is placed on disbursals from the customer's account. In addition, if there is a pause on disbursals, any persons authorized to transact business on the account must also be notified, unless they are the ones suspected of the financial exploitation.

It's also important to understand limitations on both the FINRA rules and the Model Act. As we have seen, they permit pauses only for disbursements, not from transactions. In addition, pauses would be permitted only in cases of suspected financial exploitation, but not in instances of suspected diminished financial or cognitive capacity unaccompanied by financial exploitation. Imagine, for example, that a customer were making bad financial decisions not because she was being exploited, but solely as a result of Alzheimer's disease or other cognitive impairment. In this case, neither the FINRA Rule 2165 nor the Model Act would allow the broker to place a hold on disbursements from the account. Acknowledging this limitation, FINRA observed that diminished capacity is an important issue for future consideration.[171]

Note, moreover, that FINRA Rule 4512 does permit the broker to call the customer's trusted contact to discuss if it has concerns that the customer may be suffering from diminished capacity. Once alerted to that concern, the trusted contact might follow up directly to assist the individual in addressing the health issues. Such a scenario could unfold, for instance, where the trusted contact is a son or daughter who lives in another state and had been unaware of the suspected cognitive decline.

Finally, both the Model Act and the FINRA rules focus only on a subset of one or two financial institutions: either broker-dealers (FINRA), or broker-dealers plus investment advisers (the Model Act). Other types of financial institutions, such as banks, are not covered. That raises the question of how comprehensive the measures will prove to be.

Their limitations notwithstanding, the FINRA and NASAA measures are of major significance, for several reasons. First, they demonstrate momentum in combatting elder financial exploitation. State and national authorities have recognized the importance of elder financial exploitation, and they have taken action to address it.

Second, the measures recognize the critical role that financial firms and professionals can play in combatting elder financial exploitation. The financial industry finds itself on the front lines. Broker-dealers and investment advisers often have a unique vantage point thanks to the long-standing relationships they have developed with their clients. Financial professionals may be the first to spot warning signs of financial exploitation, or to notice erratic behavior or other indications that could suggest a decline in their customers' cognitive capacity.[173]

In addition, financial firms may have software and algorithms in place to parse a customer's age, transaction patterns, and other information to detect suspicious transactions as soon as they occur. By providing new tools to financial firms and their employees, FINRA and NASAA are recognizing them as essential allies in the fight against financial exploitation.[174]

Finally, the FINRA Rules and Model Act, while resolving a number of important policy questions, speak to the broader issue of striking the right balance when values and rights come into conflict. For example, the need to protect the elderly from exploitation can come into conflict with their right to privacy, to have access to their accounts, and to make their own financial decisions. These make for challenging policy choices and ethical dilemmas, as we explore in the conclusion and Appendix Two: Ethical Dilemmas: "When Helping Hurts".

LOOKING AHEAD

Financial Innovations and IT Advances

The expected trends in elder financial exploitation, and our responses to them, will evolve in a world that is itself changing. One significant change involves the continuing advance of information technology and related emerging technologies, from artificial intelligence to distributed ledger technology. This can cut both ways, with both positive and negative potential implications for combatting elder financial exploitation.

Start with the negative potential implications. We already see widespread growth in online financial accounts as well as call centers that field calls from banking or brokerage clients. Customers can now choose from a variety of ways to withdraw or transmit money from their accounts electronically, ranging from online bill-pay options to credit and debit cards linked to a brokerage or bank account. These electronic and online transactions, while not anonymous, are far removed from in-person meetings at a local bank or with a personal financial adviser.

When an elderly person visits a bank in person, the teller–especially one who knows the regular customers– is in a position to recognize red flags of possible financial exploitation.[175] So, too, are financial advisers who have known their clients for years. Those personal ties are severed, however, when a customer–or a fraudster impersonating the customer—withdraws cash or executes trading instructions online or on the phone. Suppose, for instance, that an imposter calls in to a brokerage call center and claims to be a customer who is 80 years old. The imposter's voice may sound nothing like that of an octogenarian, but if the caller is able to answer all of the security questions correctly, what is the call center employee to do? Is suspicion based on the sound of a person's voice a sufficient basis to refuse a request for cash? (Hint: see below.)

As more and more people use online services, this problem is likely to grow. It might be objected that elderly persons are less likely to use online accounts, call centers, and related products and services. That may be true for many in the old-old category, but there are plenty of persons past the age of 65 who do use online services. Moreover, even if the elderly person does not use electronic services, a perpetrator who steals the elderly person's identity may do so. In sum, new technologies may offer new platforms and venues for those intent on exploiting the elderly.

On the other hand, IT advances present the promise of new tools to detect, prevent, and even predict the risks of elder financial exploitation. Today, financial firms already deploy IT technology to detect suspicious patterns or transactions. Other current and emerging tools, such as two-method verification, voice recognition, and face recognition, could be used to foil attempts by imposters to steal money from the account of victims.

In the future, we may also be able to put artificial intelligence (AI) and predictive analytics to use in combatting elder financial exploitation. AI deploys computers to sort through great quantities of data and, without being explicitly programmed to do so, to find patterns and make predictions that have eluded the human mind alone.[176] Conceivably, AI could be used in the future to identify combinations of risk factors for elder financial exploitation (or other forms of exploitation).[177] This could enable us to take actions to prevent abuse before it happens.

It will, however, take more than technical advances to get to that stage. It will also take data, and lots of it: characteristics and circumstances of victims, perpetrators, elderly persons who do not become victims, and so on. Where will the data come from? A new set of far-reaching proposals holds the promise to provide that data and to harness AI and other digital advances to combat elder financial exploitation.

Reform Proposal: Building an Integrated and Systemic Approach

Some thought leaders advocate building a new set of capabilities to treat elder financial exploitation in a far more comprehensive, integrated and systemic way. The new system would develop two new networks of communication: first, an early warning system of communication among brokerage firms, investment adviser firms, banks, and other players within the financial services industry; and second, a bridge of cross-communication and collaboration between the financial services and health services industries. The conclusion of this paper examines what this system would like look and considers some of the formidable obstacles and potential drawbacks that would need to be overcome to achieve it.

Many of us keep our money and financial assets at more than one financial institution. We may have a bank account, a credit union account, a brokerage account, a mutual fund account, an investment adviser account, a 529 plan education savings plan, other financial accounts, or some combination thereof. Because of privacy laws and other reasons, however, communication between separate financial firms is quite limited.

There are some exceptions. Financial institutions are permitted to communicate directly with each other and share personal consumer information in matters of suspected money laundering or suspicion of terrorist financing.[178] In addition, exceptions to the privacy provisions of the Gramm-Leach-Bliley Act generally permit financial institutions to disclose nonpublic personal information about consumers to local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults.[179]

Nonetheless, broker-dealers, investment advisers and other financial institutions generally do not communicate directly with each other about suspected elder financial exploitation. For example, if a broker suspected that elderly financial exploitation was being attempted against a customer, the firm would not communicate its suspicions to the customer's bank or other third-party financial institutions. Some thought leaders argue that it should.

> “Creating a regulatory environment whereby financial institutions can more easily share data among themselves could be an important component of a more comprehensive strategy to bridge the communication gap and reduce the frequency and severity of financial losses for older adults.”
>
> —LARRY SANTUCCI, Discussion Paper: *Can Data Sharing Help Financial Institutions Improve the Financial Health of Older Americans?*

Imagine a burglary alarm set-up consisting of unconnected components in each room: the alarm would sound only in the specific room that the burglar entered, and we would have to wait for him to step into another room to trigger that room's alarm. Nowhere would we have an integrated system, in which an attempted intrusion in any room would set off an alarm throughout the house.

Analogously, proponents argue, we need to build a coordinated communication system among financial institutions to protect against elder financial exploitation. If one institution suspected an attempt to exploit a customer, it would set off an early-warning system for all of the customer's other financial institutions. In addition, the system could warn against signs of a customer's diminished financial capacity or cognitive decline.

The heart of the system would consist of a database and communications hub, which would be run by a neutral entity, possibly a government agency. The system would have the ability to identify all the financial institutions serving each individual customer and to link them in a virtual network. If any one financial institution submitted a report communicating suspected elder financial exploitation (or diminished financial capacity), the system would distribute the warning to all of the customer's other financial institutions. Any one of them could submit an inquiry about a customer or suspicious pattern, and that inquiry would be distributed to all the other financial institutions that serve that customer.

The idea of just such a system was broached in a recent Discussion Paper of a center within the Federal Reserve Bank of Philadelphia.[180] The paper describes an industry-wide data sharing system to enable financial institutions "to act as a single, unified consumer protection tool, independently learning about their customers' financial behavior, but acting jointly to protect the consumer's assets when they are being exploited."

Significant obstacles would need to be overcome to build such a system. Regulators and legislatures might need to make changes in law and regulation, including those governing the right to privacy. Financial institutions would need to develop new policies and practices, change embedded cultures, and develop new standards on how to handle notifications from unaffiliated firms of suspected elderly financial exploitation.[181] We as a society would need to think through the implications of such a system for the rights of the elderly to privacy and autonomy. (The Discussion Paper examines these challenges in detail.) Before considering them further, however, we explore a concept for even more far-reaching reform.

Financial institutions and professionals are not the only ones on the front lines; so, too, are doctors and some social workers.[182] So why not build a system of cross-communication between financial services and healthcare services, linking bankers, brokers and investment advisers with medical doctors and social workers. This would entail significant synergistic benefits. As we have seen, changes in financial behavior often serve as the first sign of the onset of cognitive decline. Thus, financial institutions have invaluable information–and, increasingly, the technology to capture, store, and report it–that doctors can use to identify symptoms, detect risks, and treat patients. Likewise, doctors can render the medical judgments and diagnoses that could help financial institutions in deciding when and how to intervene in cases of suspected financial exploitation or cognitive decline. And social workers could play an important role in investigating and intervening as appropriate in individual cases of suspected financial exploitation. Thus, there is a natural symbiosis among professionals in these three fields, a symbiosis that could accrue to the benefit of their patients/customers/clients.

Dr. Jason Karlawish has been a leading advocate of such a vision. He calls it "whealthcare," a term that suggests the integration of medical and financial services to protect and preserve both the wealth and the health of older adults. He explains:

> We expect the financial system will preserve our wealth, and that healthcare will preserve our health and, as they do this, that they have little need to work together. And yet, our aging brains are intimately entwined into the financial system. The failure to integrate the care of our wealth and our health is why cognitive impairment is discovered too late. We need a system that delivers whealthcare.
>
> Cognitive impairment is not simply a medical problem. It's a public health problem, and the banking and financial services industries are at its front lines. America must think outside the biomedical box to envision a system that cares for our health and our wealth.[183]

Such a system could not only facilitate communication between doctors and financial professionals, but also hold the key to supplying essential data to understand the causes of elder financial exploitation and the best ways to prevent or treat it. Financial institutions hold vast amounts of transactions data involving their customers, data that is likely to include a treasure trove of signs of possible elder financial exploitation and cognitive decline. For example, a variety of erratic or unusual banking transactions, as well as changes in banking patterns, can serve as possible signs of financial abuse of older adults.[184]

As we have seen, missing data hampers research and limits our understanding of the causes of elder financial exploitation and how best to prevent and treat it. That data may be hiding in plain sight, in the form of financial transaction data. The data could allow us to make real-time measurements of the prevalence of financial exploitation and the amounts of money involved. Or to detect incipient cognitive decline. Again, to quote Dr. Karlawish:

> Consumers' interactions with banks and investment firms–from logon to logout at the computer or the cash machine–are a real world dataset describing brains engaging in financial tasks. Researchers can use these data to better understand the aging brain, particularly changes in social cognition that impair the abilities to judge risks and whether to trust other people, changes that lead older adults to be victims of scams.

Perhaps even more significantly, financial transactions data could serve as a key source to supply the voracious data requirements of AI. If the financial data were supplemented with health histories of individuals who are elderly and have suffered financial exploitation, the combination potentially could lead to even more powerful predictive analytics. Armed with that knowledge, we could predict the likelihood that a person could be subject to financial exploitation or other forms of elder abuse in the future, and we could take proactive steps to prevent that from happening.[185]

> "[O]ne of the greatest challenges in addressing elder abuse is navigating the right balance among autonomy, safety, and privacy goals."
>
> —THE ROADMAP

There is already some interaction between the financial and medical fields,[186] but nothing on this grand a scale. To develop such a system one would need to overcome an array of daunting obstacles, beginning with privacy concerns.[187] The right to privacy is embedded in laws regulating both personal financial and medical information, and those laws would need to be changed to enable the cross-communication and sharing of information embraced by Dr. Karlawish's vision of whealthcare.

A database and communication system linking financial and health care professionals also would raise daunting security risks. Any centralized database of financial data would offer a tempting target for hacking, theft and abuse. Data security risks also would be magnified if information from any one financial or medical provider ended up residing in multiple databases across financial and medical institutions.[188]

One potential solution to these security concerns, which the Federal Reserve Discussion Paper suggests, would be to consider using the same secure communication and database system that financial institutions already use to submit SARS. Under this scenario, the Treasury Department's FinCEN, which administers that SARS system, would manage the elder exploitation system as well.

Another potential solution would be to draw on emerging distributed ledger technology. A permissioned block chain would house a single repository of data, obviating the need for duplication by separate financial institutions, while limiting access to a select group of approved (or "permissioned") institutions. And, in theory at least, it would be impossibly difficult for anyone to alter the data.

Arguably, however, the technical hurdles would be secondary to even more fundamental challenges involving our basic values. Efforts to protect the elderly from exploitation could quickly come into conflict with the rights of the elderly to privacy and autonomy. We as a society would need to rethink those values and establish priorities to resolve these potential conflicts.

If you view privacy as a fundamental right that cannot be compromised, it could be difficult to accept a system in which personal information about an individual–their financial decisions, transactions, or concerns over their behavior or cognitive capacity–would be relayed to a web of financial or medical providers. On the other hand, one can regard privacy as a means to a higher end; i.e., the well-being of the individual. In this view, intrusions on a person's privacy must be weighed against the risks of financial exploitation. In general, risks can be measured as a combination of two factors: the probability of something bad happening, and the magnitude of the harm if it did. The risks are high on both counts when it comes to elder financial exploitation: the likelihood of abuse is relatively high, and the impact can be devastating on the victim's finances and their health. Therefore, one may well conclude that giving up a limited measure of privacy would be worth it to prevent or minimize the risks of elder financial exploitation.

The same considerations obtain when we consider the rights to autonomy, including the right of the elderly to make their own financial decisions. One banker was recently quoted in the press as stating his belief that customers "have the liberty to make dumb financial decisions."[189] That is a reasonable viewpoint if one assumes that the customer is not being exploited or suffering from diminished financial capacity. It is a questionable attitude, however, if it keeps a financial firm or professional from intervening to protect an elderly person from financial exploitation or self-inflicted financial harm brought on by cognitive decline. Exploitation (or bad financial decisions resulting from cognitive decline) may result in a far greater assault on the individual's sense of autonomy, self-identity and dignity.

In sum, it is right to begin by asking, "Where do attempts to protect the elderly end and where does an overly intrusive paternalism begin?" In view of the consequences of elderly financial exploitation, however, we may end up asking instead, "Where does the right to self-determination end, and where does the right to self-harm or self-destruction, whether witting or unwitting, begin?"

It is a central truth of elder abuse that it is a complex phenomenon that demands a comprehensive, multi-disciplined response.[190] That explains why multi-disciplinary teams are considered to be one of the most effective and promising ways to treat elder financial exploitation.[191] The system described here–facilitating communication and coordination between financial and health care professionals–represents one more way to build a comprehensive, multi-disciplined and effective response.

No system, however, will be a panacea. Cases of elder abuse can present excruciatingly difficult, if not impossible, ethical dilemmas. This issue transcends financial regulatory policy choices and is therefore beyond the scope of this paper, but is described in Appendix Two: Ethical Dilemmas: "When Helping Hurts".

Conclusion

To recap, elder financial exploitation is already considered a public health crisis and is expected to grow dramatically along with the aging of America. Financial and pension trends will only exacerbate the problem.

We have seen recent signs of momentum in addressing elder financial exploitation. Both NASAA's Model Act and FINRA's recent rule changes allow certain financial firms to place a temporary hold on disbursements from the accounts of customers when financial exploitation is reasonably suspected. The new measures also reflect renewed emphasis on communication.

Nonetheless, we must ask whether we as a society have done everything we can and should do to address the challenge. Would the data sharing system described above, fostering communication and coordination within the financial industry and between the financial and health care industries, justify the trade-offs it would entail and the reforms required to overcome legal and other obstacles? If not that, then what alternatives do we have to build the safety net that is needed to protect the elderly from financial exploitation?

APPENDIX 1: THE GAPS IN OUR KNOWLEDGE: A CLOSER LOOK AT TWO SEMINAL STUDIES

Two of the most commonly cited statistics regarding elder financial exploitation suggest its scope: it costs victims at least $2.9 billion a year, and its past-year prevalence is 5.2 percent of the elderly. Yet both those numbers, and the studies upon which they are based, are open to serious questions. The monetary costs come from a review of newsfeed articles, not a representative survey. And the prevalence statistic comes from a widely cited national study whose lead author himself says he does not trust the numbers.

The purpose of this appendix, it must be emphasized, is in no way to criticize the study authors. They displayed ingenuity and perseverance in launching pioneering studies, finding impactful results with limited resources, and succeeding in focusing public attention on the problem. The purpose instead is to illustrate the gaps in our knowledge and the need for more research.

The 2011 MetLife Study of Elder Financial Abuse: At Least $2.9 Billion in Costs to Victims

What is the total amount of annual monetary losses incurred by victims of elder financial exploitation? The near-ubiquitous answer, of at least $2.9 billion," comes from the 2011 MetLife Study of Elder Financial Abuse. (The researchers' previous study, the 2009 Study "Broken Trust: Elders, Family, and Finances, reported an estimate of $2.6 billion.)

It has been widely noted that this number probably underestimates the losses, because it relies solely on amounts reported in newsfeed articles. The methodology would fail to capture cases of exploitation that were not reported in the newsfeeds. As a result, the annualized estimate could significantly underestimate the true extent of victim losses. That's why the Study says that the annual figure is "at least" $2.9 billion.

But there are also other methodological issues that raise questions as to the reliability of this estimate. It is worth reviewing two such issues, not to criticize the two seminal studies, but reflect on the continuing problems of insufficient data and lack of knowledge regarding elder financial exploitation.

First, the 2011 MetLife Study actually found a huge difference in the total dollar losses of elder financial exploitation in two separate three-month periods. Yet the study based its annualized estimate solely on the larger of those two numbers.

An analysis of articles from April through June of 2010 found victims' losses totaled of $530 million.[192] (The previous report, Broken Trust, based on newsfeeds for the period of June through August of 2008, found a cost of nearly $397 million, which the researchers extrapolated to an annualized estimate of $2.6 billion.)

But the researchers also analyzed reported financial losses during the winter holiday months of November 2010 through January 2011, and here they found losses to victims of nearly $38 million[193]–a full order of magnitude less than the spring number. The researchers took the spring number ($530 million), while ignoring the winter number ($38 million), to produce an annualized estimate of $2.9 billion. They used their analysis of winter months only to investigate whether the holiday season and family visits led to higher incidents of elder financial exploitation.

What could explain such a gaping difference between the losses in the two periods? The single biggest component of the spring number consisted of Medicare and Medicaid fraud, which amounted to $306 million,[194] or 58 percent of the total of $530 million for that three-month period. One of the news articles that spring reported on several cases of Medicare and Medicaid fraud and a state-wide bust. In the winter period, in contrast, there were no reports of Medicare and Medicaid fraud, bringing the dollar amount for those three months down to zero.

That raises the question of which period was more representative of the average losses. Was one of the numbers an outlier? Would an average of the spring and winter reported losses come closer to the typical amount? With these questions left unanswered, it seems hard to have confidence in either number, and thus also for the annualized estimate of $2.9 billion.

One might also question why losses resulting from Medicare and Medicaid fraud were included in an estimate of the financial losses to elderly victims. Medicare and Medicaid fraud are not defined in the 2011 MetLife Study, but the glossary to the 2009 Broken Trust publication offers this definition of Medicare fraud: "Manufacturers bill Medicare for merchandise or service that was not needed or was not ordered."[195] The glossary offers several examples, all involving fraudulent billing to insurers, not to the elderly victims. The Broken Trust report also reproduces an excerpt from a news article reporting how one doctor performed needless surgeries on elderly patients after concocting false diagnoses of cancer, and then billed Medicare and Medicaid for the operations. That represents a heinous crime against the elderly (and fraud against the government), but, again, it's unclear why the dollar amount of the fraud would be classified as financial losses borne by the elderly victims.

The National Elder Mistreatment Study

This is one of the most frequently cited studies in financial exploitation literature. Yet the lead researcher, Ron Acierno, told me he did not trust the numbers—because they were based on responses that were highly dependent on context and the perceptions of the elderly respondents. That dependence on context and perceptions will become clearer in considering how the study classified responses.

The overall finding of 5.2 percent past-year prevalence of financial mistreatment by family members consisted of the following components:

Family member spent money without permission	3.4%
Family member did not give copies of financial transactions	0.7%
Family member forced respondent to sign a document	0.3%

(The components add up to more than 5.2 percent because they were not mutually exclusive).

I asked Dr. Acierno why the first three components would be considered forms of elder financial exploitation. Take the first component, whether a family member spent the elderly person's money without permission. Surely, I argued, what mattered was whether the money was spent in the best interests of the elderly person. Turning to the second component, it did not seem reasonable to consider it financial exploitation merely because a family member did not make good financial decisions. As for the third component, I recalled that, in the final years of my mother's life, I made financial decisions for my mother and did not give her transaction receipts or statements. She would not have been interested in them and would have just put them in a drawer (as she had with similar documents she had received in earlier years). Moreover, accumulating financial statements would have been a security risk, given the number of caregivers, aides, and others who visited her apartment daily.

Dr. Acierno explained that the interviewers framed the survey questions in the context of financial exploitation and of actions by family members that the respondents did not want. This also explains why Dr. Acierno considered the findings dependent on context and perception. He added that when he began the study, there was no consensus on a definition of financial exploitation. Therefore, he told his funders that he would provide data on the components listed above, allowing the funders to pick and choose among components based on any future definition.

Moreover, Dr. Acierno continued, the researchers were challenged to classify certain family actions that were open to differing interpretations. He cited as an example an elderly mother who gives her son twenty dollars to buy her groceries. He returns one and a half hours later with the groceries, which cost $17, and does not give her back the remaining $3. Some would argue that this amounted to theft and, therefore, constituted elderly financial exploitation. Others would disagree, viewing the $3 as compensation for the son's time. Dr. Acierno concluded that the methodology for financial exploitation was less clear-cut than for other types of elder abuse. He credited the subsequent work of another scholar, Kendon J. Conrad, with advancing a conceptual framework for elder financial exploitation.

APPENDIX 2: ETHICAL DILEMMAS: "WHEN HELPING HURTS"

"An all-too-common and especially heartbreaking scenario is when the abuser is an adult child with mental illness or a substance abuse problem," observes Jean Callahan, Director of the Brookdale Center for Healthy Aging at City University of New York.

She offers a case in point in a short but powerful article titled, "When Helping Hurts: Confronting Ethical Dilemmas in Casework."[196] The article describes a case involving an 89-year-old woman called Mrs. A, who lives with her 59-year-old son. The son is mentally ill, and he is financially dependent upon his mother and financially exploits her. According to neighbors, the son would scream at his mother throughout the day, and they suspected that he was neglecting her basic needs. According to the article, there was evidence that the son was living off his mother's Social Security income and was not paying the rent on their apartment. The son regularly brought his mother to the bank to withdraw her monthly income and appeared loud and aggressive to her, according to a bank teller.

Authorities took steps to remove the son from the home, while seeking to arrange assistance for the son by a mental health agency. But the outcome was not what Mrs. A wanted:

> Despite her advanced age, frail condition, and the abuse she had endured, she still felt an obligation to care for her son at home. While counselors explained to Mrs. A that living with her son was seriously compromising her own health and well-being, this may be one of those cases in which a simple happy ending is not possible. Many older people in similar situations report they continue to experience a different kind of suffering, one that's no less painful.

Ms. Callahan concludes by emphasizing "the ethical dilemmas at play: how to help the victim of abuse while minimizing the negative repercussions to a perpetrator who is also needy, and the difficulty of balancing the victim's safety with that person's right to make choices in life."[197]

BOX 5. **SEC Investor Bulletins**

SEC Investor Bulletins relevant to seniors include:.

- **Investor Bulletin and Consumer Advisory: Planning for Diminished Capacity and Illness** (modified Feb. 6, 2017), https://www.sec.gov/oiea/investor-alerts-bulletins/ib_illness.html. This is a joint publication of the SEC and the Consumer Financial Protection Bureau's Office of Older Americans.
- **Updated Investor Alert for Seniors: Five Red Flags of Investment Fraud** (July 18, 2016), https://www.sec.gov/oiea/investor-alerts-bulletins/ia_fraud5redflags.html.
- **Help for Adult Protective Services (APS) Workers Encountering Senior Investor Fraud** (May 9, 2017), https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_aps_seniorfraud.

APPENDIX 3: SEC AND FINRA ACTIONS TO PROTECT SENIOR INVESTORS

The SEC

The SEC's efforts to combat elder financial exploitation largely fall within the broader goal to protect senior investors, including those nearing retirement and those who are already retired. The SEC's efforts are based on the three E's: education, exams and enforcement.

Seniors are a key audience for the SEC's education efforts, which emphasize outsmarting investment fraud. Commission staff engage in dozens of outreach events for seniors each year at public libraries and other settings. The investor and outreach staff[198] works with the enforcement staff to promote awareness aimed at preventing fraud.

The SEC also produces a variety of publications that explain how scam artists work, how to avoid fraud, and how to deal with diminished financial capacity. (See box 5.) Both the SEC's main website (sec.gov) and its site for retail investors (investor.gov) devote pages to seniors.

SEC Commissioners and the SEC Investor Advocate have given speeches to highlight the issue.[199] The SEC has hosted events for World Elder Awareness Day each year since the inaugural summit in June 2015.[200] In addition, individual SEC staff members have spoken on the topic of elder financial exploitation.[201]

Examinations form the second leg of the SEC efforts to protect senior investors. Each year, Commission staff conducts a National Exam Program of broker-dealers and investment advisers. The 2018 annual priorities document states, "We will review how broker-dealers oversee their interactions with senior investors, including the ability of firms to identify financial exploitation of seniors.[202]

Exam programs can serve to raise awareness of senior issues among broker-dealers and investment advisers. A case in point is the National Senior Investor Initiative, which the Commission and FINRA jointly launched in 2013 and culminated with the publication in 2015 of a joint report.[203] The regulators conducted 44 broker-dealer examinations, including a review of the training that firm representatives received on issues relating to aging, such as diminished capacity and elder financial exploitation. The report provided information to broker-dealers "to facilitate a thoughtful analysis with regard to their existing policies and procedures related to senior investors and senior-related topics and whether these policies and procedures need to be further developed or refined." By the time the examinations were completed, firms were paying increased attention to the accounts of senior investors.[204]

Enforcement constitutes the third leg of SEC efforts to protect seniors. Deterrence through strong enforcement action has been an important part of the SEC's efforts to protect senior investors from fraud. The SEC's Division of Enforcement places a priority on protecting the elderly in its investigations and actions. Moreover, it recently formed the Retail Strategy Task Force to develop proactive, data-driven approaches to identifying large-scale misconduct impacting retail investors, including senior investors.

The Commission has a long history of bringing cases to protect senior investors. In 2018 alone, the Commission has filed multiple cases involving fraudulent conduct perpetrated against senior investors. For example, on April 6, 2018, the SEC charged two Texas companies and their principals in a $2.4 million Ponzi scheme and in a related, $1.4 million fraud targeting retirees. The SEC's complaint alleges that, from 2010 to 2017, a Ponzi scheme lured at least 30 elderly victims to invest approximately $2.4 million of their retirement savings with baseless promises and claims of outsized investment returns. In addition, the SEC's complaint alleges that, beginning in 2015, a second fraud used misrepresentations and empty promises to convince a group of predominantly elderly victims to invest roughly $1.4 million.[205]

On the same day that it made that announcement, the SEC also issued an Investor Alert to help seniors spot red flags of Ponzi schemes.[206] The SEC's Office of Investor Education and Advocacy (OIEA) and the Division of Enforcement's Retail Strategy Task Force jointly issued the Investor Alert.

Similarly, on March 29, 2018, the SEC charged the pastor of one of the largest Protestant churches in the country and a self-described financial planner in a scheme to defraud elderly investors by selling them interests in defunct, pre-Revolutionary Chinese bonds. The SEC complaint alleges that the two men raised at least $3.4 million from 29 mostly elderly investors, some of whom liquidated their annuities to invest in this scheme.[207]

FINRA

FINRA's decade-long focus on senior investors has increased steadily in light of investor protection concerns and demographic trends.[208] The FINRA rule changes described earlier are but two examples of a wide array of activities, ranging from rulemaking to operating a helpline for seniors; from examining broker-dealers to taking enforcement actions against regulatory violations; and from engaging in public education and outreach to training broker-dealer professionals on seniors issues.

FINRA operates a Securities Helpline for Seniors, which seniors can call toll-free to receive neutral, knowledgeable assistance on topics such as these: understanding how to review investment portfolios or account statements; concerns about the handling of a brokerage account; and investor tools and resources from FINRA, including BrokerCheck®. (As noted earlier, the U.S. Senate Special Committee on Aging also provides a toll-free Fraud Hotline as a resource for seniors and others affected by scams. See Box 6.)

Since its launch on April 20, 2015, the Helpline has received more than 12,000 calls from residents of all 50 states, the District of Columbia, Puerto Rico, and several other countries.[209] The average age of callers is 70 years old, and has ranged from 17 to 102.[210] When FINRA's initial assessment suggests serious misconduct by a securities industry professional, FINRA opens an investigation. In addition, FINRA refers about one out of every 12 calls to other entities, including the SEC, state agencies, Adult Protective Services, and for certain non-investment questions, to AARP.[211] To date, the Helpline has led to voluntary reimbursement of more than $5 million to investors.[212]

The FINRA Investor Education Foundation plays a central role in FINRA's senior investor education and outreach efforts. For more information, see the Senior Investors section of the FINRA website, available at http://www.finra.org/industry/senior-investors.

BOX 6. **Fraud Hotline Resources**

FINRA Securities Helpline for Seniors

- 001-844-57-HELPS (844-574-3577)
- www.finra.org/seniorhelpline

U.S. Senate Special Committee on Aging
Toll-free Fraud Hotline

- 1-855-303-9470

FINRA also offers several online training programs for broker-dealer employees on seniors-related topics, including how to spot red flags and protect senior investors from financial exploitation.[213]

FINRA's 2018 *Regulatory and Examination Priorities Letter* highlights several of its initiatives to protect seniors, including a focus on microcap fraud schemes that target senior investors.[214] "FINRA investigations have identified senior investors who have been victimized by unregistered individuals using high-pressure sales tactics as part of a pump-and-dump scheme," the letter states.

As a top priority, FINRA will continue to identify high-risk firms and individual brokers and to mitigate the potential risks that they can pose to investors, including senior investors.[215] Among other things, FINRA will evaluate rollovers of qualified plans into non-qualified accounts for senior investors.[216]

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ENDNOTES

1 Stephen Deane is the Engagement Adviser in the Office of the Investor Advocate. He advises the Investor Advocate on topics of concern to investors, including elder financial exploitation. *See Biography: Stephen Deane*, SEC, https://www.sec.gov/biography/deane-stephen (last visited May 29, 2018).

2 Janey C. Peterson et al., *Financial Exploitation of Older Adults: A Population-Based Prevalence Study,* 29(12) J GEN. INTERN. MED. 1615, 1620 (2014).

3 Mark S. Lachs & Karl A. Pillemer, *Elder Abuse*, 373 NEW ENG. J. OF MED. 1947, 1947 (2015).

4 U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-208, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, 4 tbl.1 (2011), https://www.gao.gov/new.items/d11208.pdf.

5 MARIE-THERESE CONNOLLY ET AL., THE ELDER JUSTICE ROADMAP: A STAKEHOLDER INITIATIVE TO RESPOND TO AN EMERGING HEALTH, JUSTICE, FINANCIAL AND SOCIAL CRISIS 24 (2014).

6 Marguerite DeLiema & Kendon J. Conrad, *Financial exploitation of older adults*, *in* ELDER ABUSE: RESEARCH, PRACTICE, AND POLICY 141, 141 (XinQi Dong ed., 1st ed. 2017). *See also* LIFESPAN OF GREATER ROCHESTER, INC. ET AL., UNDER THE RADAR: NEW YORK STATE ELDER ABUSE PREVALENCE STUDY 8 (2011) (citing R.J. Bonnie & R.B. Wallace, NATIONAL RESEARCH COUNCIL*, Elder Mistreatment: Abuse, Neglect and Exploitation in an Aging America* 39-41 (2002)) ("[T]here has recently been more consensus, promulgated by a National Academy of Sciences Panel, on a definition [of elder mistreatment] that includes the notion of a trusting relationship in which the trust of the older victim is violated.") [Hereinafter "UNDER THE RADAR."]

7 U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 4, at 4.

8 S. SPECIAL COMM. ON AGING, 115TH CONG., FIGHTING FRAUD: SENATE AGING COMMITTEE IDENTIFIES TOP 10 SCAMS TARGETING OUR NATION'S SENIORS (Comm. Print 2018).

9 *Id.*

10 *See* Larry Santucci, *Discussion Paper: Can Data Sharing Help Financial Institutions Improve the Financial Health of Older Americans?* 8 (Nov. 2017) (stating some legal definitions classify this type of scam as elder fraud and distinguish it from elder financial exploitation).

11 Lachs & Pillemer, *supra* note 3, 1947-48, tbl.1.

12 KIRSTEN J. COLELLO, CONGRESSIONAL RESEARCH SERVICE, *The Elder Justice Act: Background and Issues for Congress* (2014) (citing MARIE-THERESE CONNOLLY ET AL., THE ELDER JUSTICE ROADMAP: A STAKEHOLDER INITIATIVE TO RESPOND TO AN EMERGING HEALTH, JUSTICE, FINANCIAL AND SOCIAL CRISIS 24 (2014)).

13 *See* NAT'L CTR. ON ELDER ABUSE, *America's Growing Elderly Population,* https://ncea.acl.gov/whatwedo/research/statistics.html (citing CARRIE A. WERNER, U.S. CENSUS BUREAU, THE OLDER POPULATION: 2010 (2011)) (last visited Apr. 11, 2018).

14 U.S. DEP'T OF HEALTH AND HUMAN SERV., A PROFILE OF OLDER AMERICANS: 2015 at 1 (2015). The population of Americans age 65 years or older grew from 36.2 million in 2004 to 46.2 million in 2014.

15 ALZHEIMER'S ASS'N, *2017 Alzheimer's Disease Facts and Figures* 24 (2017) (citing JM ORTMAN ET AL., U.S. CENSUS BUREAU, AN AGING NATION: THE OLDER POPULATION IN THE UNITED STATES, CURRENT POPULATION REPORTS, (2014), http://census.gov/content/dam/Census/library/publications/2014/demo/p25-1140.pdf), https://www.alz.org/documents_custom/2017-facts-and-figures.pdf.

16 WAN HE ET AL., U.S. CENSUS BUREAU, AN AGING WORLD: 2015 (2016). This source is referenced by A March 2016 Article from NIH, A March 2016 from National Institute of Aging (A division of NIH), and the 2017 Alzheimer's Report. Earlier sources projected an elderly population of 83.7 million in 2050. *See*, *e.g.*, A May 2014 report from the Census bureau.

17 Mark Mather, *Fact Sheet: Aging in the United States*, POPULATION REFERENCE BUREAU, (Jan. 13, 2016), https://www.prb.org/aging-unitedstates-fact-sheet/.

18 ALZHEIMER'S ASS'N, *supra* note 17, at 25 (citing JM ORTMAN ET AL., U.S. CENSUS BUREAU, AN AGING NATION: THE OLDER POPULATION IN THE UNITED STATES, CURRENT POPULATION REPORTS (2014), https://census.gov/content/dam/Census/library/publications/2014/demo/p25-1140.pdf).

19 Keith Jacks Gamble et al., *The Causes and Consequences of Financial Fraud Among Older Americans*, BOSTON COLLEGE CENTER FOR RETIREMENT RESEARCH (2014) http://crr.bc.edu/wp-content/uploads/2014/11/wp_2014-13.pdf (finding that "decreasing cognition is associated with higher scam susceptibility scores and is predictive of fraud victimization"). *See also* Marie-Therese Connolly et al., *supra* note 5, at 3; CONSUMER FIN. PROT. BUREAU, RECOMMENDATIONS AND REPORT FOR FINANCIAL INSTITUTIONS ON PREVENTING AND RESPONDING TO ELDER FINANCIAL EXPLOITATION 9 (2016), http://files.consumerfinance.gov/f/201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf [hereinafter CONSUMER FIN. PROT. BUREAU, Recs. and Report].

20 Joyce Lee, *Penn Memory Center, Federal Reserve Challenge Financial Leaders to Take Steps to Protect Wealth of Older Adults*, PENN MEMORY CENTER, http://www.whealthcare.org/2017-conference (last visited Apr. 10, 2018) ("The decline of fluid intelligence, the ability to learn new things, is one characteristic of aging, Dr. Karlawish said. Both this 'cognitive aging' and neurodegenerative diseases like Alzheimer's disease can lead to problems of 'higher cortical function,' which can make tasks of daily living such as managing money and making sound financial decisions more difficult.")

21 INST. OF MED., COGNITIVE AGING: PROGRESS IN UNDERSTANDING AND OPPORTUNITIES FOR ACTION 233 (Dan G. Blazer et al. eds., 2015).

22 "An additional but relatively understudied determinant of financial capacity is the ability to judge trustworthiness and risk, which may be processed differently as people age." *Id.*).

23 "An additional but relatively understudied determinant of financial capacity is the ability to judge trustworthiness and risk, which may be processed differently as people age." *Id.*

24 Erik Asp et al., *Benefit of the Doubt: a new view of the role of the prefrontal cortex in executive functioning and decision making*, FRONTIERS IN NEUROSCIENCE, May 24, 2013, at 5 (citations omitted).

25 Bryan P. Koestner et al., *The role of the ventromedial prefrontal cortex in purchase intent among older adults*, FRONTIERS IN AGING NEUROSCIENCE, Aug. 3, 2016, at 8 (citations omitted).

26 Erik Asp, *supra* note 29, at 3, 5 (citations omitted).

27 *Id.* at 3 (citations omitted).

28 *Id.* at 5.

29 In one psychological test, a set of pictures is shown to a group of older adults and a group of younger ones. Some of the pictures are positive (daffodils or a smiling person) while others are negative (a baby crying, a wounded child after bomb). Individuals are then asked to recall what they have seen. The younger adults remember the negative and positive pictures with equal facility. The older adults remember the positive pictures as well, or nearly as well, as do the younger adults. But the older adults have a poorer memory of the negative pictures. This consistent finding offers empirical

verification that the aging brain seems to prefer positive images and in-the-moment emotions and to avoid negative ones. This preference could translate into financial behaviors and make older adults more vulnerable to scams. I am indebted to Dr. Jason Karlawish for this explanation. Telephone Interview with Dr. Jason Karlawish, Physician and Professor of Med., Med. Ethics and Health Pol'y, and Neurology, U. of Penn and Penn. Memory Ctr. (Mar. 9, 2018).

30 *Mild Cognitive Impairment (MCI)*, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/mild-cognitive-impairment/symptoms-causes/syc-20354578 (last visited Jan. 30, 2018).

31 Alzheimer's Ass'n, *supra* note 17, at 34 tbl.7 (stating ADLs include bathing, dressing, grooming and feeding).

32 Mayo Clinic, *supra* note 36. Persons with MCI, along with their family and friends, may notice some slippage in memory or mental function, though the changes generally do not significantly interfere with a person's day-to-day activities. *See also* Alzheimer's Ass'n, *supra* note 17.

33 H.R. Griffith et al., *Impaired Financial Abilities in Mild Cognitive Impairment: A Direct Assessment Approach*, 60(3) Neurology 449, 454-55 (2002).

34 Consumer Fin. Prot. Bureau, *supra* note 21, at 9.

35 *EIFFE Prevention Program*, Investor Protection, http://www.investorprotection.org/protect-yourself/?fa=protect-seniors (last visited Apr. 10, 2018) ("The Elder Investment Fraud and Financial Exploitation Prevention Program . . . educates healthcare and legal professionals to recognize when their older clients may be vulnerable to or victims of financial abuse, particularly those with MCI, and then to refer those persons to appropriate state authorities for assistance or further screening.").

36 Alzheimer's Ass'n, *supra* note 17, at 10 (citations omitted). "A systematic review of 32 studies found that an average of 32 percent of individuals with MCI developed Alzheimer's dementia in 5 years." *Id.* (citations omitted).

37 *See* Brenda L. Plassman et al., *Prevalence of Cognitive Impairment without Dementia in the United States*, 148(6) Annals Internal Med. 427 (Mar. 2008).

38 *See* Karlawish, *supra* note 23; *see also* Alzheimer's Ass'n, *supra* note 17.

39 *See* Nat'l Ctr. on Elder Abuse, *Abuse of Adults with Dementia,* https://ncea.acl.gov/whatwedo/research/statistics.html (last visited Apr. 11, 2018); *see also* Alzheimer's Ass'n, *supra* note 17, at 5.

40 *See* Nat'l Ctr. on Elder Abuse, *Abuse of Adults with Dementia,* https://ncea.acl.gov/whatwedo/research/statistics.html (last visited Apr. 11, 2018).

41 Lachs & Pillemer, *supra* note 3, at 1950.

42 Eric Widera et al., *Finances in the Older Patient With Cognitive Impairment: "He Didn't Want Me to Take Over*", 305(7) [J]AMA 698, 705 (Feb. 16, 2011).

43 *See* Nat'l Ctr. on Elder Abuse, *Abuse of Adults with Dementia, supra* note 46 (citations omitted).

44 Alzheimer's Ass'n, *supra* note 17, at 18 (stating the other 200,000 persons have younger-onset Alzheimer's).

45 *Id.* at 24.

46 *Id.* (showing earlier estimates, based on higher projections of population growth, projected the number to triple to 16 million).

47 Nat'l Ctr. on Elder Abuse, *Abuse of Adults with Dementia*, *supra* note 46.

48 Naomi Karp & Ryan Wilson, AARP Public Policy Institute, Protecting Older Investors: The Challenge of Diminished Capacity 1 (2011) (citing Daniel C. Marson et al., *Assessing Civil Competencies in Older Adults with Dementia: Consent Capacity, Financial Capacity, and Testamentary Capacity*, *in* Forensic Neuropsychology: A Scientific Approach 401-37 (G. J. Larrabee ed., 2d ed., 2011). Widera offers a similar definition: "the ability to independently manage one's financial affairs in a manner consistent with personal self-interest." Widera et al., *supra* note 48, at 698 (citing Daniel C. Marson et al., *Financial Capacity*, *in* 1 Encyclopedia of Psychology and the Law 313-16 (Brian L. Cutler ed., 1st ed. 2008)).

49 Sec, *Investor Bulletin and Consumer Advisory: Planning for Diminished Capacity and Illness* (Jun. 1, 2015), https://www.sec.gov/oiea/investor-alerts-bulletins/ib_illness.html (last modified Feb. 6, 2017).

50 U.S. Gov't Accountability Off., *supra* note 4, at 12 (stating the GAO was referring to elder abuse in general, not necessarily financial exploitation in particular).

51 Eric Widera et al., *supra* note 48, at 699.

52 Gina Kolata, *Money Woes Can Be Early Clue to Alzheimer's*, NY Times (Oct. 30, 2010), https://www.nytimes.com/2010/10/31/health/healthspecial/31finances.html.

53 Lachs & Pillemer, *supra* note 3, at 1950.

54 Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study,* 100(2) Am. J. of Pub. Health 292, 296 (Feb. 2010).

55 Lachs & Pillemer, *supra* note 3, at 1950.

56 Yufan Huang & Alan Lawitz, Off. of Children & Family Serv., The New York State Cost of Financial Exploitation Study 32, (2016).

57 *Id.* at 34.

58 *Id.* at 9.

59 Peterson et al., *supra* note 2, at 1615, 1618, 1620.

60 *Id.* at 1621.

61 *Id.* at 1615.

62 *Senior Investor Protection*, SIFMA, https://www.sifma.org/explore-issues/senior-investors/ (last visited May 30, 2018).

63 *Retirement Assets Total $28.2 Trillion in Fourth Quarter 2017*, Investment Company Institute, (Apr. 19, 2018), https://www.ici.org/research/stats/retirement/ret_17_q4

64 *Table 1: Wealth, Asset Ownership, & Debt of Households Detailed Tables: 2013,* U.S. Census Bureau, tbl.2, https://www.census.gov/data/tables/2013/demo/wealth/wealth-asset-ownership.html (follow "Table 1" hyperlink to download excel file; then open table 2).

65 Consumer Fin. Prot. Bureau, *supra* note 21, at 9.

66 Peterson et al., *supra* note 2, at 1620.

67 *Id.* at 1621.

68 *Id.* at 1615, 1618 tbl.1.

69 *Id.*

70 *Id.* at 1618, 1620.

71 Craig Copeland, *Overview of Older Americans Assets, Income, and Spending: Aging, Cognition, and Financial Health*, Employee Benefit Research Institute at 3 (Nov. 28, 2017), https://www.philadelphiafed.org/-/media/consumer-finance-institute/events/2017/aging/resources/1-Copeland-RoadAhead.pdf.

72 *CFPB Warns Student Loan Servicing Problems Can Jeopardize Long-Term Financial Security for Older Borrowers: Growing Concerns as Number of Older Student Loan Borrowers Quadruples, Amount of Debt Per Senior Borrower Doubles in Last Decade*, Consumer Fin. Prot. Bureau (Jan. 5, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-student-loan-servicing-problems-can-jeopardize-long-term-financial-security-older-borrowers/.

73 *Id.*

74 Meta Brown et al., *The Graying of American Debt,* FED. RES. BANK OF N.Y.: LIBERTY STREET ECONOMICS (Feb. 24, 2016) http://libertystreeteconomics.newyorkfed.org/2016/02/the-graying-of-american-debt.html.

75 Nonetheless, default rates are strikingly high one segment of older borrowers: those who are age 65 and older and have federal student loans. More than one in three (37 percent) of these borrowers were in default in 2015, and an additional 5 percent became subject to offset from any federal payment, including federal tax refunds and Social Security benefits. (Federal student loans are treated differently from private student loans. Federal student loans remain even if after bankruptcy, and the debt is subject to offsets. In contrast, federal benefits such as Social Security are generally protected from collection for defaulted private student loans.) The 5 percent who were subject to offsets generally present a distinct profile. Most took out took on federal student loans for themselves, not their children or grandchildren. Most of those who are 50 years and older took out the loans twenty years earlier or more, at traditional mid-career working ages. Thus, they appear to have carried their student debt with them into older years, rather than taking out federal student loans, or co-signing for private student loans, for their children or grandchildren. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-45, *Social Security Offsets* at 10-13 (2016); *see also* CONSUMER FIN. PROT. BUREAU, *Snapshot of Older Consumers and Student Loan Debt* at 11-13 (Jan. 2017).

76 Meta Brown et al., *supra* note 80.

77 Patrick T. Harker, *Opening Address at the Conference on Aging, Cognition, and Financial Health*, FED. RES. BANK OF PHILA. 2-3 (Nov. 28, 2017), https://www.philadelphiafed.org/-/media/publications/speeches/harker/2017/11-28-17-aging-cognition-financial-health.pdf?la=en.

78 METLIFE MATURE MARKET INST. et al., THE METLIFE STUDY OF ELDER FINANCIAL ABUSE: CRIMES OF OCCASION, DESPERATION, AND PREDATION AGAINST AMERICA'S ELDERS 5 (2011).

79 Peterson et al., *supra* note 2, at 1620.

80 Lachs & Pillemer, *supra* note 3, at 1947.

81 *See, e.g., id.* at 1949.

82 Acierno et al., *supra* note 60, at 296 ("Generalization of our results to what may be the group most at-risk for mistreatment, the cognitively impaired elderly, is not appropriate.").

83 See, e.g., Ananda B. Amstadter et al., Prevalence and Correlates of Elder Mistreatment in South Carolina: The South Carolina Elder Mistreatment Study, 26(15) J. INTERPERSONAL VIOLENCE 2947, 2948-9 (Oct. 2011); U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-208, Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse, 10 (2011), https://www.gao.gov/new.items/d11208.pdf; NAT'L CTR. ON ELDER ABUSE, Challenges in Elder Abuse Research, https://ncea.acl.gov/whatwedo/research/statistics.html (last visited Apr. 11, 2018) (referring to "the use of different operational definitions, administrative data, samples, or methods used among elder abuse prevalence studies").

84 Peterson et al., *supra* note 2, at 1623.

85 Acierno et al., *supra* note 60, at 292.

86 *Id.* at 296 ("[W]e required interviewers to proceed with questioning only if they had no doubt about the ability of respondents to understand and respond to questions. Our data therefore reflect responses of a cognitively intact, community-residing subpopulation of older adults.").

87 Phone Interview with Dr. Ron Acierno, Professor and Associate Dean for Research, College of Nursing Faculty, Medical University of South Carolina (May 24, 2018).

88 Edward O. Laumann et al., *Elder Mistreatment in the United States: Prevalence Estimates From a Nationally Representative Study*, 63(4) J. GERONTOL. B. PSYCHOL. SCI. SOC. SCI. S248, S252 (2008). https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2756833/.

89 *Id.* at S249 ("Older adults deemed by interviewers to be too impaired to give formal consent were excluded from the study. Consequently . . . the vast majority of respondents were cognitively intact.").

90 *Id.*

91 Peterson et al., *supra* note 2, at 1615, 1618.

92 Stealing or misappropriation of money or property accounted for 77.8 % of the one-year period prevalence and 78.4 % of the lifetime prevalence. Peterson et al., *supra* note 2, at 1617.

93 *Id*. at 1616.

94 LIFESPAN OF GREATER ROCHESTER, INC. et al., *supra* note 7, at 3, 28, tbl.5. *See generally* HUANG & LAWITZ, *supra* note 62.

95 Peterson et al., *supra* note 2, at 1621, 1623.

96 Ananda B. Amstadter et al., *Prevalence and Correlates of Elder Mistreatment in South Carolina: The South Carolina Elder Mistreatment Study*, 26(15) J. INTERPERSONAL VIOLENCE 2947, 2950 (Oct.2011).

97 *Id.* at 2968.

98 HUANG & LAWITZ, *supra* note 62, at 36 (stating system-wide date was collected from all agencies and programs responsible for serving elder abuse victims in New York State, including Adult Protective Services (APS), Area Agencies on Aging, law enforcement, District Attorney offices, community-based agencies, and others. The Study extrapolated where necessary to fill in missing data.).

99 Lachs & Pillemer, *supra* note 3, at 373.

100 NAT'L CTR. ON ELDER ABUSE, *What is Known About the Incidence and Prevalence of Elder Abuse in the Community Setting?*, https://ncea.acl.gov/whatwedo/research/statistics.html (last visited Apr. 11, 2018).

101 Peterson et al., *supra* note 2, at 1615.

102 Lachs & Pillemer, *supra* note 3, at 373.

103 CONSUMER FIN. PROT. BUREAU, U.S. DEP'T OF THE TREAS., and the Fin. Crimes Enf't Network (FinCEN), Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation (Aug. 30, 2017), https://www.fincen.gov/sites/default/files/2017-08/8-25-2017_FINAL_CFPB%2BTreasury%2BFinCEN%20Joint%20Memo.pdf.

104 Laumann et al., *supra* note 99, at S251 (examining three non-financial and non-emotional types of abuse, including physical, sexual, and potential neglect).

105 HUANG & LAWITZ, *supra* note 62*,* at 8. ("Drawing on accounts of financial exploitation reported in the media, one frequently cited study estimated victim losses nationwide to be around $2.9 billion. *See* Fin. Indus. Reg. Auth. SR-2016-039, C.F.R Vol. 82, No. 26 (2017) (stating "the elderly are estimated to lose up to $2.9 billion per year from scams."); citations omitted. *See also* Ken Bentsen, President and CEO, SIFMA Opening Remarks at SIFMA Senior Investor Forum (October 13, 2015); CONN. LEGIS. COMM'N ON AGING, *Study of Best Practices for Reporting and Identification of Abuse, Neglect, Exploitation and Abandonment of Older Adults* 9 (January 1, 2016); Comm. on the Pub. Health Dimensions of Cognitive Aging, Bd. on Health Sciences Policy, Inst. of Med., Cognitive Aging: Progress in Understanding and Opportunities for Action 234 (Dan G. Blazer, Kristine Yaffe, Catharyn T. Liverman eds., 2015); Nick Leiber, *How Criminals Steal $37 Billion a Year from America's Elderly,* BLOOMBERG (May 3, 2018), https://www.bloomberg.com/news/features/2018-05-03/america-s-elderly-are-losing-37-billion-a-year-to-fraud. (providing a significantly higher estimate of $36.5 billion).

106 *See infra* Appendix One: The Gaps in Our Knowledge: A Closer Look at Two Seminal Studies.

107 Connolly et al., *supra* note 5, at 1, 4 ("The cumulative toll of elder abuse has not yet been quantified but is estimated to afflict more than 5 million people and cost many billions of dollars a year.").

108 *Id*. We lack quantitative data for both elder abuse in general and elder financial exploitation in particular.

109 Huang & Lawitz, *supra* note 62, at 43-44.

110 *Id*. at 7.

111 *Id.*

112 *Id.* In New York State, APS provides protective services to adults 18 and older who, because of physical or mental impairment, are unable to protect themselves from abuse, neglect, financial exploitation or other harm, and have no one else willing and able to assist responsibly.

113 *Id.* at 11, 41-43.

114 *Id.* at 41-44.

115 *Id.* at 37.

116 Lachs & Pillemer, *supra* note 3, at 373. The article cites two studies. One includes analysis of financial exploitation along with other forms of elder abuse. The other article does not include financial exploitation.

117 Peterson et al., *supra* note 2.

118 MetLife Mature Market Inst. et al., *supra* note 84, at 4.

119 Huang & Lawitz, *supra* note 62, at 11.

120 Conn. Legis. Comm'n on Aging, *supra* note 117, at 9.

121 Huang & Lawitz, *supra* note 62, at 11.

122 Conn. Legis. Comm'n on Aging, *supra* note 117, at 9 (stating the number of referrals to Connecticut's Protective Services for the Elderly Program increased by almost 28% between 2010 and 2014).

123 U.S. Gov't Accountability Off., *supra* note 3, at 18. The U.S. Government Accountability Office (GAO) projects that, if the number of APS investigations of elder abuse tracks the growth of the elderly population in a sample of 33 states, then the number of such investigations will rise 28 percent by 2020 and 50 percent by 2030, from a baseline of 2008. Note that this refers to all forms of elder abuse, not just elder financial exploitation. Additionally, according to the study, stronger federal leadership could enhance national prioritization of elder abuse oversight.

124 To be considered conclusive, such studies would have to be repeated over time and would have to use the same methodology and definitions of such terms as the elderly and elder financial exploitation.

125 The two brokerages are Morgan Stanley Wealth Management and Wells Fargo Advisors. Telephone Interview with Thomas M. Mierswa, Jr., Executive Director, Legal and Compliance, Morgan Stanley Wealth Management (May 25, 2018); Thomas M. Mierswa, Jr. Executive Director, Legal and Compliance, Morgan Stanley Wealth Management, Yale Alumni Breakfast, co-sponsored by Yale Law School's Center for the Study of Corporate Law and its Solomon Center for Health Law and Policy, in New York City (Sep. 2016); Ronald C. Long, Director of Elder Client Initiatives, Wells Fargo Advisors, LLC, remarks at various conferences and personal communications to the author (2017-2018).

126 Consumer Fin. Prot. Bureau et al., *supra* note 114.

127 See U.S. Dep't of the Treas., Fin. Crimes Enf't Network, *Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation* 1 (2011), https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2011-a003.

128 Consumer Fin. Prot. Bureau et al., *supra* note 114.

129 Report generated on the FinCEN webpage, https://www.fincen.gov/reports/sar-stats (last visited May 19, 2018).

130 Lachs & Pillemer, *supra* note 3, at 373.

131 Peterson et al., *supra* note 2, at 1615, 1620.

132 Nat'l Ctr. on Elder Abuse, *Statistics/Data*, https://ncea.acl.gov/whatwedo/research/statistics.html (last visited Apr. 11, 2018).

133 Connolly et al., *supra* note 5, at 4.

134 Other studies or research on investment or consumer fraud have relevance to elderly financial exploitation. *See, e.g.,* Applied Research and Consulting, LLC, "Financial Fraud and Fraud Susceptibility in the United States," *FINRA Research Report* (2013), https://www.saveandinvest.org/sites/default/files/Financial-Fraud-And-Fraud-Susceptibility-In-The-United-States.pdf; Mark Egan et al., *The Market for Financial Adviser Misconduct*, Journal of Political Economy Sept. 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739170; DeLiema, Marguerite, Gary Mottola, and Martha Deevy, "Findings from a Pilot Study to Measure Fraud in the United States," *Stanford Center on Longevity Report (*2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2914560; Pak, Karla and Doug Shadel, "AARP Foundation National Fraud Victim Study," *AARP Research Report* (2011), https://assets.aarp.org/rgcenter/econ/fraud-victims-11.pdf.

135 Nat'l Ctr. on Elder Abuse, *What is known about the incidence and prevalence of elder abuse in the community setting?*, *supra* note 111.

136 Connolly et al., *supra* note 5, at 1, 24.

137 *Id.* at 4.

138 *Id.* at 1, 24.

139 U.S. Dep't of Health and Human Servs., Admin. for Cmty. Living, *Final National Voluntary Consensus Guidelines for State Adult Protective Services Systems September, 2016, 4-5* (2016), https://www.acl.gov/sites/default/files/programs/2017-03/APS-Guidelines-Document-2017.pdf.

140 Lachs & Pillemer, *supra* note 3, at 373.

141 Connolly et al., *supra* note 5, at 1, 24.

142 U.S. Dep't of Health and Human Servs., supra note 151, at 9.

143 Connolly et al., *supra* note 5, at 28.

144 *Id.* ("The dearth of academic researchers studying elder abuse issues impedes knowledge development in the field. As a result, there are few data to inform and guide practitioners, policy-makers, and trainers.")

145 *See* Nat'l Ctr. on Elder Abuse, *How Is Elder Abuse Defined for Research Purposes?,* https://ncea.acl.gov/whatwedo/research/statistics.html (citing Carrie A. Werner, U.S. Census Bureau, The Older Population: 2010 (2011)) (last visited Apr. 11, 2018).

146 Connolly et al., *supra* note 5, at 1, 28. *See also* U.S. Gov't Accountability Off., *supra* note 4, at 4 tbl.1; Broken Trust: Combating Financial Exploitation of Vulnerable Seniors: Hearing before S. Special Comm. on Aging, 2 and 7 (Feb. 4, 2015) (testimony of Kathleen M. Quinn, Exec. Dir., Nat'l Adult Protective Serv. Ass'n) ("What is a very rarely acknowledged phenomenon, federal investment in addressing both child abuse and domestic violence has resulted in significantly reducing the incidence rates of both.").

147 U.S. Department of Health and Human Services, Responding to Maltreatment: State Adult Protective Services Systems, https://www.acl.gov/sites/default/files/programs/2017-03/APS-Guidelines-Document-2017.pdf, 4 (last visited May 30, 2018) ("This uneven access especially affects services to racial and ethnic minorities, and those with limited English-speaking skills. Fragmentation hinders cross-jurisdictional cooperation, information sharing, and investigation. There exists a lack of standardized service provision across states and localities, contributing to the absence of critical supports for victims (e.g., reporting hotlines, shelters, and counseling) and the system at large.").

148 Lachs & Pillemer, *supra* note 3, at 373.

149 Peterson et al., *supra* note 2, at 1615-16.

150 National Adult Maltreatment Reporting System, *FFY 2016 Data Report - Release 1* 4 (2017), https://www.acl.gov/sites/default/files/programs/2017-08/NAMRS2017_Report_Release-1.pdf.

151 Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 and Adopt FINRA Rule 2165, 81 Fed. Reg. 10,059 (February 3, 2017).

152 *Id.*

153 Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 and Adopt FINRA Rule 2165, *supra* note 163.

154 N. Am. Sec. Adm'r Ass'n, *NASAA Model Legis. to Protect Vulnerable Adults from Fin. Exploitation: Legis. Text & Updated Commentary for 2018 Legis. Session* 3 (2018) http://serveourseniors.org/wp-content/uploads/2017/12/NASAA-Model-Act-and-Updated-Commentary-for-2018-Session.pdf.

155 *Id.*

156 Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 and Adopt FINRA Rule 2165, *supra* note 163, at 10,062 ("when members exercise discretion in placing temporary holds on disbursements of funds or securities from the accounts of specified adults under the circumstances denoted in the Rule.").

157 FINRA, Frequently Asked Questions Regarding FINRA Rules Relating to Financial Exploitation of Seniors, http://www.finra.org/industry/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors, Q.2.1. (last visited May 30, 2018).

158 Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 and Adopt FINRA Rule 2165, *supra* note 163, at 10,061 n.22.

159 *Id.* at 10,060.

160 *Id.* at 10,061.

161 *Id.* at 10,060.

162 N. Am. Sec. Adm'r Ass'n, *supra* note 166, at 3.

163 *Id.* The Model Act would require placing the funds in a temporary escrow.

164 FINRA, *supra* note 169, at Q.1.1.

165 Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 and Adopt FINRA Rule 2165, *supra* note 163, at 10,062.

166 The Model Act would not apply to investment advisers registered with the SEC, according to Joseph Brady, Executive Director, NASAA. He cited the 2002 Uniform Securities Act and the 1956 Uniform Securities Act, which exclude federal covered investment advisers from the definition of investment adviser. The vast majority of states have adopted either of those two laws. Email communication to the author, May 29, 2018.

167 N. Am. Sec. Adm'r Ass'n, *supra* note 166., at 7 n.33 ("As proposed for public comment, the Model Act used the term "qualified employee," however this term was revised in the final version of the Model to make clear that the Model Act does not only apply to employees of a broker-dealer or investment adviser, but also to any independent contractors that may be fulfilling any of the roles described in the definition. The use of the term also reflects the determination that requiring individual agent and adviser level reporting is appropriate given these individuals often have closer relationships with their clients and customers than does any firm or institution.").

168 Joseph Brady, Executive Director, NASAA, email communication with author (May 29, 2018).

169 *See* Comment Letter, Rick A. Fleming, Investor Advocate, U.S. Sec. and Exch. Comm'n, Re: File No. SR-FINRA-2016-039: Notice of Filing of a Proposed Rule Change to Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults) (Dec. 28, 2016), https://www.sec.gov/comments/sr-finra-2016-039/finra2016039-1447952-130092.pdf).

The SEC Office of the Investor Advocate, among others, had argued that it should have:

> If a firm's suspicion of elder financial exploitation is strong enough to warrant a pause on a disbursement, it should trigger an obligation to report that suspicion to state and local authorities, such as the state securities commission and Adult Protective Services ("APS")…. A safe harbor for broker-dealers demands counterbalancing safeguards for investors. [p. 3]

In a Response Letter submitted to the SEC, FINRA noted that some states mandate such reporting by financial institutions, including broker-dealers. The letter also expressed FINRA's belief that it might be beneficial to contact relevant state agencies:

> Given the varying and evolving reporting requirements under state law, FINRA believes that states are well positioned to determine whether a broker-dealer or any other entity has satisfied its reporting requirements under state law… Even where a state may not require such reporting, FINRA believes that members may find it beneficial to contact relevant state agencies, such as state securities regulators or state or local adult protective services, to assist in resolving matters involving possible financial abuse." Response Letter to Rule SR-2016-039, FINRA, https://www.sec.gov/rules/sro/finra/2017/34-79964.pdf

170 Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 and Adopt FINRA Rule 2165, *supra* note 163, at 10,060. Rule 2165 requires broker-dealers to retain records related to compliance with the Rule. That includes, among other things, 1) requests for disbursement that may constitute financial exploitation, 2) the finding of a reasonable belief of financial exploitation underlying the decision to place a temporary hold on a disbursement; and 3) the internal review of the facts and circumstances of the suspected financial exploitation.

171 Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 and Adopt FINRA Rule 2165, *supra* note 163, at 10,061.The FINRA release states that if a customer with diminished capacity requests a potentially problematic disbursement, it is likely that the firm would have a reasonable belief, at least initially, that financial exploitation may be occurring.

172 Connolly et al., *supra* note 5, at 1, 15.

173 Consumer Fin. Prot. Bureau, *supra* note 21, at 15.

174 Connolly et al., *supra* note 5, at 17. This is consistent with the advice expressed in a leadership interview for the Roadmap: "Look for natural allies outside the field: financial institutions, criminal justice, long-term care, housing, the aging network, victim services. Often they know it's an issue but not how to get involved."

175 To cite just one example, financial professionals may notice suspicious interactions between elderly customers and others who accompany them, such as a new caregiver, a relative, or friend who suddenly begins conducting transactions on behalf of the elder without proper documentation. Elderly customers also may exhibit fear of the persons accompanying them.

176 For a definition of AI and its potential in various industries, *See GrAIt expectations: Non-tech businesses are beginning to use artificial intelligence at scale*, The Economist, Mar. 31. 2018, https://www.economist.com/news/special-report/21739431-artificial-intelligence-spreading-beyond-technology-sector-big-consequences (last visited Apr. 11, 2018).

177 Connolly et al., *supra* note 5, at 13. *See, e.g.*, a leadership interview quoted in the Roadmap: "Could you create a prediction model? When a person reaches age X, they get some assessment and education about the likelihood they'll fall victim to abuse, neglect, or exploitation because of the following factors: age, cognitive status, financial security or lack thereof, and family and social support. If 3 of 4 factors are present, their probability of being mistreated by age, say 80, is XYZ. So, what factors are 'treatable?' What can we do to prevent them proactively from going down that road?"

178 USA PATRIOT Act, Section 314(b) (2001); 31 CFR 1010.540, Voluntary information sharing among financial institutions (2011).

179 CFTC, staff guidance, *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults* (2013).

180 Santucci, *supra* note 10, at 1. The paper contains a disclaimer explaining that the views expressed in it are those of the author and do not necessarily reflect the views of the Federal Reserve Bank of Philadelphia or the Federal Reserve System.

181 By what standards should a financial firm judge the veracity and accuracy of the third-party report and calibrate its actions to respond to it? Would the bank's report in itself constitute a reasonable basis for the brokerage to place a hold on disbursements from the customer's brokerage account?

Financial institutions could also be exposed to new legal and business risks, whether or not they chose to act on reports from unaffiliated firms (for example, by freezing the customer's account). That, in turn, could give rise to the enactment of new safe harbors for financial institutions, as the Santucci Discussion Paper suggests. *See* Santucci, *supra* note 10, at 1.

182 Physicians are mandatory reporters of elder abuse in all states that have mandatory-reporting laws. Lachs & Pillemer, *supra* note 3, at 373. On page 1953, the article includes a diagram of "Recommended Strategies for Intervention by Physicians in Suspected Cases of Elder Abuse."

183 Jason Karlawish and Dan G. Blazer, *Why Bankers, Financial Analysts And Doctors Need To Start Working Together*, Forbes (Jul 22, 2015), https://www.forbes.com/sites/sciencebiz/2015/07/22/why-bankers-financial-analysts-and-doctors-need-to-start-working-together/#bca776541597.

184 U.S. Dep't of the Treas., Fin. Crimes Enf't Network, *supra* note 139, at 2.

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), in its February 2011 advisory, presented a list of potential signs of elder financial exploitation that could trigger the filing of a Suspicious Activity Report (SAR). The list included the following:

- Erratic or unusual banking transactions, or changes in banking patterns:
  - Frequent large withdrawals, including daily maximum currency withdrawals from
  - an ATM;
  - Sudden non-sufficient fund activity;
  - Uncharacteristic nonpayment for services, which may indicate a loss of funds or
  - access to funds;
  - Debit transactions that are inconsistent for the older adult;
  - Uncharacteristic attempts to wire large sums of money; or
  - Closing of CDs or accounts without regard to penalties.

The Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults, issued by eight federal entities in 2013, repeated this list.

185 *See* Jason Karlawish, *Spend Some Money to Make Money, Or the Opportunities of Whealthcare*, Forbes (Jan. 27, 2018), https://www.forbes.com/sites/jasonkarlawish/2018/01/27/spend-some-money-to-make-money-or-the-opportunities-of-whealthcare/#5f0532e219f7 ("This system will learn from itself and it will adapt. It will produce data so that the nation can better estimate the size and contours of the problem of financial fraud, errors and cognitive impairment. This system will provide more intensive whealthcare to clients at risk for developing Alzheimer's and other brain diseases.").

186 For example, training programs have been developed to help doctors recognize financially vulnerable patients. Furthermore, some leading experts on elder financial exploitation are themselves medical doctors specializing in such fields as gerontology. *See* Peterson et al., *supra* note 2, at 1615; Robert E. Roush et al., *Why Clinicians Need to Know About the Elder Investment Fraud and Financial Exploitation Program*, 36(2) Generations at 94–97 (2012); U.S. Sec. and Exch. Comm'n, Investor Advisory Committee Meeting, *Discussion Regarding Efforts to Combat the Financial Exploitation of Vulnerable Adults*, (March 8, 2018) (archived webcast available at https://www.sec.gov/video/webcast-archive-player.shtml?document_id=030818iac).

The idea of an integrated system of care for individual's financial and medical wellbeing was raised at a November 2017 conference titled, "Aging, Cognition, and Financial Health: Building a Robust System for Older Americans." The conference, organized by the U. of Penn. Memory Center and the Phila. Fed. Res. Bank, brought together financial and health professionals. Some said this conference was their first such opportunity to talk to each other, and they were unfamiliar with each other's terminology and practices. *See* U. of Penn. Memory Center & Phila. Fed. Res. Bank, *Conference on Aging, Cognition, and Financial Health: Building a Robust System for Older Americans* (Nov. 28, 2017), http://www.whealthcare.org/2017-conference; *see* Karlawish, *supra* note 197 (for blog post on the conference).

187 It might also be observed that newly elevated concerns over privacy in online social networks make this is a particularly inopportune to propose new designs to share financial and medical information.

188 See Fed. Res. Discussion Paper for a further discussion of the data security risks.

189 *Not losing it: The Elderly, Cognitive Decline and Banking*, The Economist (Feb. 11, 2017), https://www.economist.com/news/business-and-finance/21716598-banks-need-strategies-helping-vulnerable-elderly-customers-elderly (last visited Apr. 11, 2018) (observing that the banker's comment suggests the changes in culture needed at some financial institutions).

190 *See supra* Introduction: What is Elder Financial Exploitation.

191 "The most promising response to the complex nature of cases of elder abuse has been the development of interprofessional teams." Lachs & Pillemer, *supra* note 3, at 373. For more on multidisciplinary teams, *see also* Conn. Legis. Comm'n on Aging, *supra* note 117; Huang & Lawitz, *supra* note 62.

192 MetLife Mature Market Inst. et al., *supra* note 84, at 7. The precise number was $530,476,743.

193 *Id.* at 11. The number was $37,953,710.

194 *Id.* at 8. The number was $306,105,093.

195 *Id.* at 7. The 2010 MetLife Study does not define Medicare or Medicaid fraud.

196 Jean Callahan, When Helping Hurts: Confronting Ethical Dilemmas in Casework, *Elder Abuse Multidisciplinary Teams: Planning for the Future* 12 (2015).

197 *Id.* This article is juxtaposed with another article, "How Are We Measuring Success?," a question and answer with Mark Lachs, a geriatrician and leader in the field of elder justice. Asked how to define success in an individual case, he says that it is highly dependent on the individual case.

"Some clients want the abuser removed from their environment as the only metric of success, others might like to see the abuser get help, perhaps treatment for a mental health condition," he says. "Yet others might want additional home care as a way to protect themselves from neglect." Mark Lachs, *How Are We Measuring Success?*, Elder Abuse Multidisciplinary Teams: Planning for the Future 13 (2015).

Lachs suggests developing client-specific metrics and goal attainment scaling based on a person's progress toward whatever outcomes are appropriate for the individual.

198 In the Office of Investor Education and Advocacy Office (OIEA).

199 *See* e.g., Luis A. Aguilar, Comm'r, U.S. Sec. and Exch. Comm'n, Speech at The American Retirement Initiative's Winter 2014 Summit in Washington, D.C. on Protecting the Financial Future of Seniors and Retirees (Feb. 4, 2014), https://www.sec.gov/news/speech/2014-spch020414laa; Luis A. Aguilar, Comm'r, U.S. Sec. and Exch. Comm'n, Opening Statement at the Investor Advisory Committee Meeting on Combating the Financial Exploitation of Older Adults (July 10, 2014), https://www.sec.gov/news/public-statement/2014-07-10-opening-statement-laa; Daniel M. Gallagher, Comm'r, U.S. Sec. and Exch. Comm'n, Opening Remarks to the Investor Advisory Committee (July 10, 2014), https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac071014-minutes.htm; Michael S. Piwowar, Comm'r, U.S. Sec. and Exch. Comm'n, Remarks to the Securities Enforcement Forum 2014 (Oct. 14, 2014), https://www.sec.gov/news/speech/2014-spch101414msp; Luis A. Aguilar, Comm'r, U.S. Sec. and Exch. Comm'n, Speech Delivered by Commissioner Aguilar's Chief of Staff Smeeta Ramarathnam at The American Retirement Summit in Washington, D.C. on Why Seniors are More Vulnerable Now as Targets for Financial Abuse (Mar. 15, 2012), https://www.sec.gov/news/speech/2012-spch031512laahtm.

200 The events have been convened by the National Adult Protective Service Association, the National Center for Victims of Crime, and the International Network for the Prevention of Elder Abuse, in collaboration with national and international partners.

201 For example, in September 2016, the author of this White Paper helped to organize and participated in a Yale Alumni Breakfast in New York City on elder financial exploitation. The event was sponsored co-sponsored by Yale Law School's Center for the Study of Corporate Law and its Solomon Center for Health Law and Policy.

202 U.S. Sec. and Exch. Comm'n Off. of Compliance Inspections and Examinations, *2018 National Exam Program Examination Priorities* 6 (2018), https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2018.pdf.

203 U.S. Sec. and Exch. Comm'n Off. of Compliance Inspections and Examinations and FINRA, *National Senior Investor Initiative: A Coordinated Series of Examinations* 2, 32 (2015), https://www.sec.gov/files/sec-finra-national-senior-investor-initiative-report.pdf.

204 *Id.* at 31.

205 Press Release, U.S. Sec. and Exch. Comm'n, *SEC Charges Texas Company, Principals in Multimillion Dollar Ponzi Scheme Targeting Seniors* (Apr. 9, 2018) (accessible at https://www.sec.gov/news/press-release/2018-63).

206 U.S. Sec. and Exch. Comm'n , Investor Alert: Ponzi Schemes Targeting Seniors (April 9, 2018), https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-alert-ponzi-schemes-targeting-seniors.

207 *See* Press Release, U.S. Sec. and Exch. Comm'n, *SEC Charges Prominent Pastor, Financial Planner in Scheme to Defraud Elderly Investors* (March 31, 2018), https://www.sec.gov/news/press-release/2018-51 (last visited Apr. 11, 2018).

208 FINRA, *Report on the FINRA Securities Helpline for Seniors*, 1 (Dec. 2015), http://www.finra.org/sites/default/files/Securities_Helpline_for_Seniors_Report.pdf. More than a decade ago, in 2007, FINRA published Regulatory Notice 07-43, *Senior Investors: FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers* (Sept. 2007), http://www.finra.org/industry/notices/07-43.

209 U.S. Sec. and Exch. Comm'n, Investor Advisory Committee Meeting, *Discussion Regarding Efforts to Combat the Financial Exploitation of Vulnerable Adults*, (March 8, 2018), remarks by Gregory J. Dean, Senior Vice President of Government Affairs, FINRA, archived webcast available at https://www.sec.gov/video/webcast-archive-player.shtml?document_id=030818iac.

210 Gregory J. Dean, Senior Vice President of Government Affairs, FINRA, Remarks before. S. Sec. and Exch. Comm'n Investor Advisory Committee Meeting, *Discussion Regarding Efforts to Combat the Financial Exploitation of Vulnerable Adults*, (March 8, 2018) (archived webcast available at https://www.sec.gov/video/webcast-archive-player.shtml?document_id=030818iac).

211 *See id.*; FINRA, *Report on the FINRA Securities Helpline for Seniors* 3 (Dec. 2015), http://www.finra.org/sites/default/files/Securities_Helpline_for_Seniors_Report.pdf.

212 See Dean, Remarks*, supra* note 222.

213 FINRA, *E-Learning Courses* (May 2018), http://www.finra.org/sites/default/files/e-learning-course-catalog.pdf. Courses include: Retail Supervision: Sales to Senior Investors, EL-ELC139; Senior Investor Issues: Diminished Decisional Capacity, EL-ELC158; and Senior Investor Issues: Financial Exploitation, EL-ELC247.

214 FINRA, *2018 Regulatory and Examination Priorities Letter* 1 (Jan. 2018), http://www.finra.org/sites/default/files/2018-regulatory-and-examination-priorities-letter.pdf (accessed May 27, 2018).

215 *Id. at 2.*

216 *Id.*

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