
Guidelines to Financial Institutions on the Prevention of Elder Financial Exploitation

March 18, 2015

On February 26, 2015, the New York State Department of Financial Services (“DFS”) issued guidance to financial institutions doing business in New York State on the prevention of elder financial exploitation. The guidance reminds financial institutions that they are permitted under federal and state law to report suspected elder financial exploitation to Adult Protective Services (“APS”). It also outlines best practices and encourages financial institutions to adopt a program, including the employment of “red flag” procedures, in order to identify, investigate, and promptly report suspected abuse to APS units (contact information provided below) and/or other relevant authorities.

Federal and State Law Allows Financial Institutions to Report Elder Financial Exploitation

The DFS strongly encourages financial institutions in New York to report suspected financial exploitation to the relevant authorities. The guidance summarizes the federal and state laws that provide protection against potential liability arising from such reporting.

As outlined in a September 24, 2013 inter-agency guidance, the federal agencies (including the OCC and FDIC) clarified that reporting suspected financial abuse of elderly adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the Gramm-Leach-Bliley Act (“GLBA”) or its implementing regulations. The guidance is, in fact, careful to point out that specific privacy provisions of the GLBA and its implementing regulations permit the sharing of nonpublic personal information when elder financial exploitation is suspected, without complying with notice and opt-out requirements.

Similarly, New York State law allows financial institutions in New York to report suspected elder financial exploitation to APS units or law enforcement. Section 473-b of the New York Social Services Law provides immunity from civil liability to any person who in good faith believes that a person eighteen years of age or older may be an endangered adult or in need of protective services and who, based on this belief, reports that the adult needs protection to an APS unit or another authority who can take appropriate action. This provision provides civil immunity both to employees of financial institutions, as well as the financial institutions themselves. Furthermore, Section 4.1 of the New York Banking Law provides that, if requested by an official authorized to administer a program under the Social Services Law, financial institutions doing business in New

York must, under certain circumstances, report whether a customer has funds or other property with the institution and the amount or probable value thereof.

Best Practices: How New York Financial Institutions Can Prevent Elder Financial Exploitation

The DFS emphasizes that financial institutions can play a key role in preventing elder financial exploitation. Bank tellers and other staff, including those overseeing investment accounts or offering investment advice, are on the frontlines of combating elder financial exploitation. These individuals frequently work directly with elderly customers and are in a unique position to observe potential “red flags” of abuse. To prevent elder financial exploitation, DFS urges financial institutions to adopt the following best practices:

- (1) Develop a plan to detect and report suspected elder financial exploitation, including the use of “red flag” procedures;
- (2) Train employees regularly on the organization’s policies and procedures to prevent elder financial exploitation;
- (3) Appoint staff within the organization to investigate suspected elder financial exploitation and to report this information to APS or other authorities.

In adopting red flag procedures, New York financial institutions should consult the Financial Crimes Enforcement Network’s (“FinCEN”) 2011 advisory that directs financial institutions to submit a Suspicious Activity Report (“SAR”) filing with the code “elder financial exploitation” when they suspect that abuse is occurring. In this advisory, FinCEN proposed red flags to guide financial institutions on how to identify and prevent elder financial exploitation. These red flags are only examples of possible signs of elder financial exploitation, and it is therefore important for financial institutions to conduct careful, but prompt, investigations when employees observe signs of uncharacteristic behavior involving an elderly customer. Please note that the possible victim of abuse should not be identified as the subject of the SAR.

In sum, where a New York financial institution possesses a good faith belief that a customer is the subject of elder abuse, the institution can: (i) make a SAR filing with respect to such activity without concern about liability arising from such action; and (ii) notify a State or City agency that it believes will take appropriate action (e.g., an APS unit or law enforcement).

The New York Social Services Law does not specify the amount and type of information the financial institution is permitted to offer a State or City agency in such a report. Accordingly, the institution should be thoughtful in providing a reasonable degree of detail regarding the basis for its decision to report. Once the matter is reported and a request for additional information is received, the institution should conduct such additional interactions carefully and not freely engage in a dialogue about the customer’s non-public personal information.

Additional Information

The guides discussed in this advisory may be accessed at the following locations:

- The 2015 DFS guidance can be found online at <http://www.dfs.ny.gov/about/press2015/pr150226-ltr.pdf>.
- The 2013 federal inter-agency guidance can be found online at <https://www.fdic.gov/news/news/press/2013/Interagency-Guidance-on-Privacy-Laws-and-Reporting-Financial-Abuse-of-Older-Adults.pdf?source=govdelivery>.
- The 2011 FinCEN advisory can be found online at http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2011-a003.pdf.

To report adult abuse, call 1-844-697-3505 or contact the local county Department of Social Services Adult Protective Services. Contact information for these APS units may be found online at <http://ocfs.ny.gov/main/localdss.asp>.

If you have any questions regarding this advisory or elder financial exploitation issues in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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