



“... the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a fiduciary or caregiver, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.”

—OLDER AMERICANS ACT

Did You Know?

- A recent study estimates that one in five older Americans are victims of financial exploitation, losing \$3 billion annually.
- The number of bills introduced by state legislators to combat elder financial exploitation increased by more than 57 percent in three years.
- In 41 states, the District of Columbia and the U.S. Virgin Islands, lawmakers have enacted tougher criminal penalties to combat financial exploitation of older people and vulnerable adults.

Combatting Elder Financial Exploitation

BY HEATHER MORTON

Elder abuse, like many other forms of domestic abuse, is an often-hidden phenomenon that affects many older people. Financial exploitation is the most prevalent form of elder abuse. The federal [Older Americans Act](#) defines elder financial exploitation as “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a fiduciary or caregiver, that uses the resources of an older individual for mon-

etary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.”

According to AARP, one in three Americans is now 50 years or older and by 2030, one out of every five people in the U.S. will be 65-plus. Older Americans are estimated to have accumulated \$18 trillion in assets. A recent study estimates that one in five older Americans are victims of financial exploitation, losing \$3 billion annually.

While exact statistics on how often financial crimes against the elderly occur are not available, it is widely believed to be underreported by the victims. The National Adult Protective Services Association estimates that only one in 44 cases of elder financial exploitation is reported.

State Action

The aging population and its vulnerability to financial exploitation is catching the attention of state lawmakers and other policymakers. The number of bills introduced by state legislators to combat such exploitation increased to more than 140 bills in 2017, up from 130 bills in 2016, 106 bills in 2015 and 89 in 2014. The bills take various approaches to addressing illegal or improper use of an older person or other vulnerable adult's funds, property or assets.

In 41 states, the District of Columbia and the U.S. Virgin Islands, lawmakers have enacted tougher criminal penalties for those who engage in this type of financial exploitation.

At least 30 states defined the specific crime of financial exploitation in their statutes. For example, in [Idaho](#), it's a misdemeanor to exploit a vulnerable adult unless the monetary damages exceed \$1,000. In that case, the penalty jumps up to a felony, punishable by imprisonment for not more than 10 years and not more than a \$25,000 criminal fine. [New Hampshire's financial exploitation of an elderly, disabled or impaired adult statute](#) provides for a Class A felony when the value of funds, assets or property is \$1,500 or more; a Class B felony if the value is between \$1,500 and \$1,000; and a misdemeanor if the value is less than \$1,000. In Vermont, the criminal penalty trigger is \$500; if the exploitation value is less than \$500, the penalty is up to 18 months in prison and a fine of up to \$10,000, or both. If the value exceeds \$500, the imprisonment jumps to 10 years while the criminal fine remains at \$10,000.

Fourteen states, the District of Columbia and Guam have enacted statutes specifying that financial institutions have a duty to report when an employee or institution suspects or has cause to believe that an individual is being exploited or financially victimized. Thirteen states amended the state securities laws for broker-dealers and investment advisors to provide protections for vulnerable adults from financial exploitation.

Financial exploitation can also occur when powers

of attorney are abused. To help prevent such abuse, 25 states have enacted the [Uniform Power of Attorney Act \(UPOAA\)](#), drafted by the Uniform Law Commission in 2006. While chiefly a set of default rules, the act outlines the duties of the agent and contains safeguards for protecting the principal. The UPOAA allows a third party, like a financial institution, to refuse an otherwise valid power of attorney if it believes "the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent." It may also refuse the power of attorney if the principal or another person has made a report to Adult Protective Services (or the equivalent governmental agency).

Finally, states are focusing on adult guardianship oversight and monitoring reforms to help prevent abuse and exploitation. In 2017, Texas enacted [S.B. 36](#) and [S.B. 1096](#), requiring that all guardianships be registered with the Judicial Branch Certification Commission (JBCC). The laws also direct guardians to obtain proper training and have their criminal history reviewed by the JBCC. After [A.B. 130](#) was enacted in 2017, Nevada's new Guardianship Compliance Office opened its doors in January. The office is available to review guardianship cases to identify reporting deficiencies by the guardian, review annual reports and accountings, and report findings to the district court during the administration of guardianship services. In March, the Nevada Supreme Court created a new guardianship abuse toll-free hotline as part of an effort to help prevent individuals under guardianship and other vulnerable adults from abuse and exploitation.

Federal Action

The [Senior Safe Act](#) extends immunity from liability to certain individuals who, in good faith and with reasonable care, disclose the suspected exploitation of a senior to a regulatory or law enforcement agency. The immunity applies to employees of certain credit unions, depository institutions, investment advisers, broker-dealers, transfer agencies, insurance companies and insurance agencies who have received specified training to identify and report the suspected exploitation of a senior. The employing financial institution shall not be liable with respect to disclosures made by such employees. The bill allows financial institutions and third parties to offer training on senior financial exploitation to specified employees.

Additional Resources

- [Money Smart for Older Adults Resource Guide](#), Consumer Financial Protection Bureau and the Federal Deposit Insurance Corporation, 2017
- "Fraud in the Family," AARP The Magazine
- [Toolkit: Managing Someone Else's Money in Texas](#), AARP Texas and Texas Appleeed

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