

PREVENTING ELDER FINANCIAL EXPLOITATION:

HOW FINANCIAL INSTITUTIONS CAN HELP



HELP DETECT



PREVENT



REPORT



A joint project of

 OREGON
BANKERS
ASSOCIATION
The Voice of Oregon Banking • Since 1905



 **DHS**
Oregon Department
of Human Services

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Fifth Edition

For more information, please contact:

Oregon Bankers Association
777 13th Street SE, Suite 130
Salem, OR 97301
503-581-3522
www.oregonbankers.com

Department of Human Services
Office of Aging & People with Disabilities
500 Summer Street NE
Salem, OR 97301
503-945-9495
1-800-232-3020
TTY relay: 1-800-735-2900
Fax: 503-945-9893
<http://cms.oregon.gov/dhs/spwpd/pages/abuse/index.aspx>

The materials in the Bank Employee Training Kit are available in alternate formats for people with disabilities. To request any of these materials in an alternate format, please call DHS, Aging & People with Disabilities at 1-800-282-8096.



Oregon

Kate Brown, Governor

Department of Human Services

Aging and People with Disabilities

500 Summer St. NE, E-02

Salem, OR 97301

Voice: 800-282-8096 or 503-945-5811

Fax: 503-373-7823



Oregon Bankers Association Training Kit

The Department of Human Services (DHS), Aging and People with Disabilities and the Office of Adult Abuse Prevention and Investigations (OAAPI) is proud to partner with the Oregon Bankers Association to present the updated fifth edition of the “Preventing Elder Financial Exploitation: How Banks Can Help” training kit.

There is no doubt that financial exploitation is on the rise, not just in Oregon but nationally. A 2010 study by MetLife shed light on the widening problem of financial abuse across the country. The study estimated that the annual financial loss by victims of financial abuse is estimated to be at least \$2.9 billion dollars, a 12% increase from the \$2.6 billion estimated in 2008.

This study also found that most victims were women—they were twice as likely to fall victim of elder financial abuse as were men. Most victims were between the ages of 80 and 89, lived alone and required some level of help with either health care or home maintenance.

In Oregon, our data reflects a similar pattern. Here are a few key trends from 2016 we would like to share with you:

- There were 1,413 substantiated financial exploitation cases in Oregon – which represents over 31% of all substantiated abuse in Oregon communities.
- Financial exploitation and abuse constitute over 39 % of substantiated abuse claims for people who live in community settings such as their own home, apartment, etc.
- Financial abuse is not only the most common type of abuse perpetrated, but it often goes hand in hand with other types of abuse such as verbal/emotional abuse and neglect of care.

“Assisting People to Become Independent, Healthy and Safe”

- Awareness and understanding by bank employees has contributed to the increased reporting and identification of financial exploitation in Oregon.
- Family members are the most common perpetrators of financial exploitation. In fact, a random sample of 2013 financial exploitation cases in Oregon shows that this was the case 59% of the time.
- One in every 6 cases of substantiated financial abuse in Oregon is perpetrated by someone improperly using their Power of Attorney or other form of fiduciary relationship. This is something that bankers are in a unique position to identify and report.

In response, Oregon banks, the Oregon Attorney General's Office, local law enforcement, and adult protective services at The Oregon Department of Human Services and local Area Agencies on Aging are all partnering to act against financial exploitation and want to share this resource with you. This kit provides the tools to begin and/or enhance coordinated training efforts between banks and agencies that protect vulnerable adults.

We hope you will find this kit useful and that it provides an additional safeguard to protect those most vulnerable from financial abuse.

Sincerely,



Marie Cervantes, Senior APS Program Manager
Aging and People with Disabilities



Ashley Carson Cottingham, APD Director
Aging and People with Disabilities



Dear Financial Institution Professionals:

The Oregon Bankers Association and Oregon banking community have long been committed to elder financial abuse detection and prevention. It is critical to ensure older and vulnerable adults live safely and with dignity. The OBA led the charge with the first Preventing Elder Exploitation: How Banks Can Help training tool kit released in 1999. Since then, the tool kit has become a national model used in many other states.

Elder financial exploitation is a significant problem affecting millions of seniors across the country. Banks and other financial professionals happen to be in a unique position to spot elder abuse, particularly elder financial abuse. To that end, we are pleased to present you with this updated version of a training tool kit. In addition to this manual, the kit contains videos to help train staff on how to recognize and report possible elder financial exploitation. Additional resources can also be found in Appendix B.

This important project has enjoyed the support of many partners. The Oregon Bankers Association and Community Banks of Oregon were joined by the Office of Aging & People with Disabilities in the Department of Human Services of the State of Oregon, the Oregon Department of Justice, AARP Oregon and the Oregon Association of Area Agencies on Aging in developing these resources. The original project received the majority of its funding from a grant from the U.S. Department of Justice.

We encourage you to use the many resources available in planning a training program for your employees. You may even wish to contact your local adult protective services program for assistance. Contact numbers are available in the training manual on page 34.

Thank you for your attention to this important issue. Please feel free to contact us if we can be of any assistance.

Very best regards,

Linda W. Navarro
President & CEO
Oregon Bankers Association

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Chapter 1

Guide — How to use the Financial Institution Employee Training Tool Kit

This tool kit is designed to assist financial institutions in identifying and responding to financial exploitation of older adults and can be used in the following ways:

I. Reference

The chapters of this manual summarize the essential information about financial exploitation, including:

- What is financial exploitation;
- How to recognize and respond;
- How to report; and
- Protections for reporting under the law in Oregon.

II: Training of financial institution personnel

This kit provides a sample agenda, training text, and a video to train bank personnel about how to recognize and report elder financial abuse.

III. Community outreach by banks

Information in the tool kit can easily be adapted for financial institutions to provide abuse prevention presentations to customers and to the general public.

Training financial institution personnel

This tool kit provides you with the materials you need to train employees to recognize and report possible elder financial exploitation. Please review the training video available at <https://www.oregonbankers.com/preventing-elder-financial-exploitation-toolkit.html>.

A sample training agenda is included in this tool kit. Please contact your local Aging & People with Disabilities office (see chapter on reporting) and together design an agenda to suit your needs.

The basics of your training should include the following:

- A. Review of the training video.
- B. The phone number(s) of the local Aging & People with Disabilities office(s).
- C. Your institution's protocol for responding to and reporting suspected abuse.
- D. Law enforcement contact(s).

The video includes:

- Remarks by President and CEO of the Oregon Bankers Association.
- Elder financial abuse scenarios in a bank setting.
- Remarks by the Oregon Attorney General.
- Remarks by the Director of Oregon Office of Adult Abuse Prevention & Investigations.

The information provided in this manual is intended to provide general background information and is not intended to constitute legal advice and should not be relied upon in lieu of consultation with appropriate legal advisors in your own organization. Because of the frequent changes in the law, the information contained in this manual might be out of date and, while every attempt is made to ensure the content is current at the time of publishing, it should not be relied upon for your particular situation until you can independently verify its accuracy through consultation with you own legal advisor.

Sample 90-minute agenda for training financial institution employees

- 5 mins. Introductions and housekeeping
- 5 mins. Background and training goals
- 25 mins. Watch video and walk through scenarios presented
- 15 mins. Q&A and discussion – actual situations and responses
- 10 mins. Warning Signs
- 10 mins. Bank protocol for reporting
- 10 mins. Steps of investigation / role of adult protective services and law enforcement
- 5 mins. Use of teller cards, brochures, and other resources
- 5 mins. Questions and wrap-up

Consider using local adult protective services program and law enforcement representatives to help with the training. These experts can be particularly helpful with review of warning signs and steps of investigation.

Chapter 2

Financial exploitation

What is financial exploitation?

Financial exploitation is the illegal or improper use of another individual's resources for personal profit or gain. Also referred to as "fiduciary abuse," "financial abuse," "economic abuse," and "financial mistreatment." Examples include:

- Paid caregivers keeping the change from grocery purchases.
- Using credit, debit, or ATM cards without permission or knowledge.
- Draining bank accounts without knowledge or informed consent.
- Convincing an older adult to make investments or change their estate plan when they lack mental capacity.
- Wrongfully taking property such as cars, home, land, or jewelry.
- Stealing medications.

While almost any adult is susceptible to exploitation, there are specific protections for adults age 65 and older and persons with disabilities who cannot protect their own interests.

How does financial exploitation occur?

An older adult or person with disabilities can be exploited:

- Without his or her consent or knowledge.
- By trickery, intimidation, coercion, or exertion of undue influence.
- Due to cognitive impairment or confusion so the person cannot give valid consent.

Financial exploitation under Oregon law

Legal definitions

State statutes

Financial exploitation as defined in ORS 124.050 (4) means:

- a. Wrongfully taking the assets, funds, or property belonging to or intended for the use of an elderly person or person with a disability.
- b. Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.
- c. Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.
- d. Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

Many other statutes apply to financial crimes or civil wrong-doing, such as theft and fraud. This chapter includes a non-exhaustive list of some of those criminal and civil statutes.

Administrative rules for Adult Protective Services

The Department of Human Services is mandated by law to provide investigation and protective services for abuse, neglect, and exploitation of adults age 65 and older. Under that mandate, the Department has adopted Oregon Administrative Rules (OAR) to address how abuse, neglect, and exploitation will be investigated.

The Department's administrative rules include a definition of "financial exploitation" within its definition of "abuse." Under OAR 411-020-0002 (1)(e), financial exploitation includes:

- (A) Wrongfully taking by means including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence the assets, funds, property, or medications belonging to or intended for the use of an adult;
- (B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult reasonably believes that the threat conveyed may be carried out;
- (C) Misappropriating or misusing any money from any account held jointly or singly by an adult;
or

- (D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

Laws pertaining to financial victimization of older and vulnerable adults

NOTE: Below are only brief summaries of the referenced statutes. For complete statutory language, the actual statutes should be consulted. If questions arise about the applicability of a particular statute, legal counsel should be consulted.

Criminal statutes

Criminal mistreatment ORS 163.205

A person commits the crime of criminal mistreatment in the first degree if a person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody, or responsibility for the supervision of another person, intentionally or knowingly withholds necessary and adequate food, physical care, or medical attention from that other person. A person also commits the crime of criminal mistreatment if the person, in violation of a legal duty to provide care for a dependent person or elderly person, or having assumed the permanent or temporary care, custody, or responsibility for the supervision of a dependent person or elderly person, intentionally or knowingly does one of the following: a) causes physical injury to the dependent person or elderly person; b) deserts the dependent person or elderly person in a place with the intent to abandon that person; c) leaves the dependent person or elderly person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person; d) hides the dependent person's or elderly person's money or property or takes the money or property for, or appropriates the money or property to, any use or purpose not in the due and lawful execution of the person's responsibility; e) takes charge of a dependent or elderly person for the purpose of fraud; or f) leaves the dependent person or elderly person, or causes the dependent person or elderly person to enter or remain, in or upon premises where a chemical reaction involving one or more precursor substances is occurring or has occurred as part of the unlawful manufacture of a controlled substance. A "legal duty" includes, but is not limited to, a duty created by familial relationship, court order, contractual agreement, or statutory or case law. Criminal mistreatment in the first degree is a Class C felony.

Theft and related offenses ORS 164.005 to 164.125

A person commits theft when, with the intent to deprive another of property or to appropriate property to the person or to a third person, the person: a) takes, appropriates, obtains, or withholds such property from an owner; b) commits theft of property lost, mislaid, or delivered by mistake; c) commits theft by extortion; d) commits theft by deception (see below); or e) commits theft by receiving. Whether a theft is a felony or misdemeanor depends upon the circumstances surrounding the theft, including the value of the item stolen.

Theft by deception ORS 164.085

Theft by deception occurs when a person, who obtains the property of another with intent to defraud: a) creates or confirms another's false impression of law, value, intention, or other state of mind that the actor does not believe to be true; b) fails to correct a false impression that the person previously created or confirmed; c) prevents another from acquiring information pertinent to the disposition of the property

involved; d) sells, transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or e) promises performance that the person does not intend to perform or knows will not be performed. A “deception” requires financial significance and must be representations likely to deceive an ordinary person in the group that is addressed.

Mail theft or receipt of stolen mail ORS 164.162

A person commits the crime of mail theft or receipt of stolen mail if the person intentionally: a) takes or, by fraud or deception, obtains mail from a post office, postal station, mail receptacle, authorized depository, or mail carrier; b) takes from the mail any article contained therein; c) secretes, embezzles, or destroys mail or any article contained therein; d) takes or, by fraud or deception, obtains mail that has been delivered to or left for collection on or adjacent to a mail receptacle or authorized depository; or e) buys, receives, conceals, or possesses mail or any article contained therein knowing that the mail or article has been unlawfully obtained. Mail theft or receipt of stolen mail is a Class C felony.

Burglary ORS 164.205 to 164.235

Generally, a person commits the crime of burglary if the person enters or remains unlawfully in a building with an intent to commit crime. Burglary in the second degree is a Class C felony, while burglary in the first degree is a Class A felony.

Criminal trespass ORS 164.245 to 164.272

Generally, a person commits criminal trespass if the person enters or remains unlawfully in a motor vehicle or in a building or dwelling. Criminal trespass crimes vary in seriousness from a Class C misdemeanor to a Class A misdemeanor.

Forgery ORS 165.002 to 165.013 (fraud and deception offenses)

A person commits a forgery in the second degree if, with the intent to injure or defraud, the person falsely makes, completes, or alters a written instrument; or issues, delivers, publishes, circulates, disseminates, transfers, or tenders a written instrument which the person knows to be forged. Forgery in the second degree is a Class A misdemeanor. Forgery in the first degree includes the elements of a second-degree forgery but involves particular written instruments identified in ORS 165.013. These written instruments include such things as an issue of money, securities, instruments of value issued by a government agency, an issue of stock, a deed, a will, a contract, or an assignment. Forgery in the first degree also includes a check for \$1,000 or more or a credit card transaction slip of \$1,000 or more. Forgery in the first degree is a Class C Felony.

Fraudulently obtaining a signature ORS 165.042

A person commits the crime of fraudulently obtaining a signature if, with intent to defraud or injure another, the person obtains the signature of a person to a written instrument by knowingly misrepresenting any fact. Fraudulently obtaining a signature is a Class A misdemeanor.

Fraudulent use of a credit card ORS 165.055

A person commits the crime of fraudulent use of a credit card if, with intent to injure or defraud, the person uses a credit card for the purpose of obtaining property or services with knowledge that: a) the card is stolen or forged; b) the card has been revoked or canceled; or c) for any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit card is issued. The value of a single credit card transactions may be added together with others if the transactions were committed against multiple victims within a 30-day period or against the same victim within a 180-day period. Whether the crime is a Class A misdemeanor or Class C felony is determined by the total amount of property or services the person obtains or attempts to obtain.

Falsifying business records ORS 165.080

A person commits the crime of falsifying business records if, with intent to defraud, the person: a) makes a false entry in the business records of an enterprise; b) alters or removes a true entry in the business records; c) fails to make a true entry in the business records in violation of a known duty imposed by law or by the nature of the position of the person; or d) prevents the making of a true entry or causes an omission thereof in business records of an enterprise. Falsifying business records is a Class A misdemeanor.

Misapplication of entrusted property ORS 165.095

A person commits the crime of misapplication of entrusted property if, with knowledge that the misapplication is unlawful and that it involves a substantial risk of loss or detriment to the owner or beneficiary of such property, the person intentionally misapplies or disposes of the property that has been entrusted to the person as a fiduciary or that the property is from a government or financial institution. Misapplication of entrusted property is a Class A misdemeanor.

Obtaining execution of documents by deception ORS 165.102

A person commits the crime of obtaining execution of documents by deception if, with the intent to defraud, injure another, or acquire a special benefit, the person obtains by means of fraud, deceit, or subterfuge the execution of a written instrument affecting the pecuniary interest of a person. Obtaining execution of documents by deception is a Class A misdemeanor.

Records from banks and other financial institutions

Disclosure initiated by bank ORS 192.586

A financial institution, at its discretion, may initiate contact with the appropriate state and local agencies about suspected violations of law. The financial institution may follow up by communicating with the agency and disclosing relevant customer financial records.

Authorization by customer for disclosure ORS 192.593

Banks and other financial institutions may disclose financial records of a customer to a state agency with a written authorization of the customer. ORS 192.593(2) includes items that must be included in the authorization of disclosure.

Disclosure to law enforcement for an abuse investigation ORS 192.597

A financial institution must disclose and provide copies of financial records of an alleged abuse victim to law enforcement or a district attorney's office upon receipt of a subpoena issued by a court or on behalf of a grand jury in connection with an abuse case conducted under ORS 124.070 or 441.650. Except when specifically directed by the court or district attorney issuing the subpoena not to, a financial institution that discloses and provides copies of financial records may, but is not required to, inform the person about whom the financial records have been sought about the disclosure, or inform the person's caretaker, fiduciary, or other legal representative about the disclosure. A financial institution that provides copies of financial records is entitled to seek reimbursement for costs as provided by ORS 192.602. The statute also provides that copies of documents provided by a financial institution must be accompanied by an affidavit or declaration of a custodian of records for the financial institution. ORS 192.597 establishes the content of the affidavit or declaration.

Liability for bank reporting ORS 192.600

A financial institution is protected from liability for initiating contact and reporting to protective agencies or disclosing financial records under ORS 192.586 (2)(a), which related to cases of financial exploitation. See Chapter 5 for more information.

Disclosure to law enforcement ORS 192.603

A police, sheriff's department, or district attorney's office may request specified account information for criminal investigation purposes without issuing a subpoena. A financial institution shall supply a statement setting forth the requested account information with respect to a customer account specified by the police, sheriff's department, or district attorney's office, for a period of up to three months prior to, and three months following, the date of occurrence of the account transaction giving rise to the criminal investigation. The disclosure statement may include only the "account information" set forth in ORS 192.603(2). These items are: a) whether or not the financial institution has an account under a particular customer's name; b) the number of customer account items dishonored or which created overdrafts, dollar volume of dishonored items, and items which when paid created overdrafts; c) a statement explaining any credit arrangement between the financial institution and the customer to pay overdrafts, dates, and amounts of deposits and debits to a customer's account; d) copies of deposit slips and deposited items; e) the account balance on such dates; f) a copy of the customer's signature card; and g) the dates the account was opened or closed.

Civil remedies

Restraining orders related to elder financial abuse ORS 124.005 to 124.040

ORS 124.005 and ORS 124.040 gives elderly persons and persons with disabilities the right to petition the court for a temporary restraining order for financial exploitation. The definition of abuse applicable to these statutes, as it relates to financial exploitation, is the wrongful taking or appropriating of money or property, or knowingly subjecting an elderly person or a person with a disability to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with a disability to believe the threat will be carried out.

Civil cause of action for abuse of vulnerable persons ORS 124.100 to 124.140

ORS 124.100 and ORS 124.110 provide that a “vulnerable person” (defined as an elderly person age 65 or older, a financially incapable person, an incapacitated person, or a person with a disability who is susceptible to force, threat, duress, or coercion because of the person’s physical or mental impairment) who suffers injury or damage as a result of financial abuse may bring an action against the person who caused the financial abuse or against the person who permitted another person to engage in financial abuse. Specifically, a claim for financial abuse may be brought when a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person. Civil liability can also arise when a vulnerable person requests that a person transfer to the vulnerable person any money or property that the other person holds or controls, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when: a) the ownership or control of the money or property was acquired by the other person from the vulnerable person; and b) the other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person. Damages that can be recovered from a civil action of the kind articulated above are set forth in statute and include, among other things, attorney fees and the possibility of a penalty of up to three times the amount of economic and non-economic damages.

Unlawful Trade Practice Act (UTPA) ORS 646.605 to 646.652

A person or entity engages in an unlawful trade practice when, in the course of the person’s or entity’s business, vocation or occupation, the person or entity: a) employs any unconscionable tactic in connection with the sale, rental, or other disposition of real estate, goods, or services, or collection or enforcement of an obligation; or b) fails to deliver any portion of real estate, goods, or services as promised, and upon request of the customer, fails to refund any money that has been received from the customer that was for the purchase of the undelivered real estate, goods, or services and that is not retained by the seller pursuant to any right, claim, or defense asserted in good faith. A variety of specific prohibited acts are set forth under the UTPA. A successful plaintiff can recover damages, penalties, and attorney fees if successful in a lawsuit under the UTPA.

Unlawful debt collection practices ORS 646.639

A person commits an unlawful debt collection practice if the person, who in the course of their business, vocation, or occupation, engages in abusive, unfair, or deceptive actions to collect a debt. The statute sets forth a variety of prohibited actions.

Consumer protection laws for goods and services that may be purchased by older adults and persons with disabilities; simulated invoices ORS 646A.280 to 646A.290

A person commits an unlawful trade practice if the person issues, delivers, transfers, or tenders a simulated invoice that has unordered goods and the amount to be paid for the unordered goods. A plaintiff can recover damages, penalties, and reasonable attorney fees. Additionally, the Attorney General may have a cause of action against a person who violates ORS 646A.280.

Contest and sweepstakes solicitations ORS 646A.803

A person engages in unlawful practices when in the course of the person's business, vocation, or occupation the person uses the U.S. mail to solicit participation in a contest or sweepstakes and the person does not clearly and conspicuously make statutorily required disclosures or makes prohibited representations.

Statistics on financial exploitation

Financial exploitation is one of the fastest growing areas of abuse of older adults.

- As the baby boomer generation ages, the rise of financial abuse will only increase. In 2010, Oregon had approximately 500,000 people aged 65 and older. In 2020, that number is projected to be more than 750,000 (Oregon's Demographic Trends, Office of Economic Analysis, December 2012).
- What you need to know: Financial abuse is the largest portion of both reported and substantiated abuse for individuals living in their private homes (not in facilities). In 2016, this meant that of 14,737 investigations for abuse and self-neglect, 4,997 were for financial abuse and 1,413 were substantiated. For more data, see the Office of Adult Abuse Prevention & Investigations Data book located at <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/ADULT-ABUSE/Documents/OAAPI-2016-Data-Book.pdf> or go to <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/ADULT-ABUSE/Pages/index.aspx> and select Reports and Publications.
- Older adults have acquired savings, social security, and property over their lifetime. Financial exploitation can rob them of all of their hard-earned assets. At the same time, an older adult whose only asset is \$700.00 a month of Social Security benefits can still be targeted by abusers.
- The National Elder Abuse Incidence Study indicates that what is reported is "just the tip of the iceberg." More than half a million reports of abuse against elderly Americans reach authorities every year, but estimates are that only 1 in 44 cases are reported.

Trend of Oregon bankers reporting financial exploitation

Statistics have shown a growth in reports of elder financial exploitation made by banks and others in Oregon. In 2013, there were 3,398 financial exploitation investigations opened in Oregon. In 2016, this number had risen to 4,997, representing a 68% rise in investigations.

This growth in reporting correlates with increased training of frontline staff at banks. Ensuring that financial institution professionals recognize the signs of potential abuse and, importantly, know what actions to take when suspected abuse is occurring is vital.

Examples of exploitation

Financial exploitation of older adults can generally be classified in two broad categories, namely, exploitation by a person known to the victim or exploitation by a stranger.

Examples of exploitation perpetrated by a family member, acquaintance, person acting with power of attorney, or court appointed fiduciary:

Misappropriation of income or assets

Perpetrator obtains access to an older adult's Social Security payments, pension payments, checking or savings account, online banking account, credit, ATM or debit card, or withholds portions of checks cashed for an older adult.

Charging excessive rent or fees for services

Perpetrator charges an older adult an excessive rent or unreasonable fees for basic care services such as transportation, food, or medicine.

Obtaining money or property by undue influence, misrepresentation, or fraud

Perpetrator coerces an older adult into signing over investments, real estate, or other assets through the use of manipulation, intimidation, or threats.

Improper or fraudulent use of a power of attorney or fiduciary authority

Perpetrator improperly or fraudulently uses a power of attorney or fiduciary authority to alter an older adult's will, to borrow money using an older adult's name, or to dispose of an older adult's assets or income.

Examples of exploitation perpetrated by a stranger, con artist, unscrupulous salesperson or contractor, or person representing a bogus charity include:

Grandparent scam

Perpetrator poses as a grandchild of the older adult and requests that he or she load a prepaid card or wire money to help "the grandchild" get out of a bad situation.

Grant fraud scam

Perpetrator poses as a representative of a government agency or some other organization with an official sounding name. He or she contacts an older adult notifying him or her that they've been selected to receive a grant and requests the older adult's checking account number in order to deposit grant the funds into the account.

Inheritance scam

These scams offer the false promise of an inheritance to trick an older adult into parting with his or her money or sharing his or her bank or credit card details. The perpetrator usually poses as a lawyer, banker, or other foreign official and claims that the deceased has left no other beneficiaries. The victim is informed their supposed inheritance is difficult to access due to government and bank restrictions or taxes

in the country where the money is held, and that they will need to pay money and provide personal details to claim the funds.

Lottery scam or advance fee scam

Perpetrator tells an older adult that he or she has won a nonexistent prize and obtains the older adult's credit card or checking account number to pay for taxes, fees, shipping and handling charges, or to verify the older adult's identity.

Lonely hearts

Perpetrator befriends older adult in person, by phone, or online, and convinces him or her to send money to help them or a family member out of a bad situation (appeals to widows and widowers).

Mystery shopper

Perpetrator enlists older adult to become a "mystery shopper" for them and sends older adult a counterfeit cashier's check. They are instructed to cash the check, wire a portion back to the perpetrator, and keep the remaining amount (appeals to those on a fixed or limited income).

Bank examiner scam

Perpetrator represents himself or herself as a bank examiner and convinces an older adult to make a large withdrawal to help catch a dishonest bank employee.

Pigeon drop

Perpetrator claims to have found a sum of money and offers to split it with an older adult provided the older adult first withdraws an amount equal to his or her share as a sign of good faith.

Fake accident ploy

Perpetrator convinces an older adult that the older adult's child has been seriously injured or is in jail and needs money for medical treatment or bail.

Telemarketing and mail fraud

Perpetrator persuades an older adult to buy a valueless or nonexistent product, donate to a bogus charity, invest in a fictitious enterprise or timeshare, or take advantage of a free trial offer, sweepstakes, or prize.

Fake computer repair

Perpetrator informs an older adult that his or her computer is not working appropriately and convinces the older adult to provide access to his or her computer and passwords, bank account, or personal information.

Unsolicited work

Perpetrator arrives unexpectedly at an older adult's residence and offers to perform work for a reasonable fee. After starting the work, the perpetrator insists that the older adult pay more than originally agreed to before the work will be completed.

Money transfer scams

Perpetrator convinces an older adult to send funds via Western Union or other money transfer services using a number of elaborate schemes.

Chapter 3

Recognizing financial exploitation

When should a financial institution employee question a transaction or report possible financial abuse?

The following pages provide warning signs and risk factors for financial exploitation. Any of these signs could indicate that an older adult is in jeopardy. If you see irregular banking activity and judge that the older adult may not be able to protect his or her interests, then you have reasonable cause to question the transaction.

Trust your professional experience. Financial institution personnel see many different people and understand banking and banking behavior. Only a relatively few persons or activities cause concern of exploitation. Consider the following when determining whether an older adult may be in jeopardy:

- Is there more than one person in the bank that has the same concern?
- Is there a question that a customer is not freely making a banking transaction?
- Is the customer using informed consent?
- Is there a possibility that the transaction is happening without the older adult's consent by trickery, intimidation, or coercion?
- Is the older adult confused and unable to give consent?
- Is there suspicious financial activity coupled with changes in or unusual behavior? If both are happening, then there is a good reason to be concerned.

Financial institution personnel should note:

- The more quickly a report is made, the faster the exploitation can be stopped.
- Financial institution personnel do not need "proof" that elder financial exploitation is occurring. Suspicion, not proof, is adequate.
- It is the job of adult protective services programs and/or law enforcement to determine if exploitation is actually occurring.

Warning signs: changes in or unusual behaviors

A vulnerable adult may be a victim of financial abuse if:

- A. He or she is accompanied by someone that may not have his or her best interests at heart, such as:
 - A stranger.
 - A family member or other person who seems to coerce or bully the customer.
 - An acquaintance who appears too interested in the customer's financial dealings.
 - A recent or new acquaintance that takes up residence with the customer.
- B. The individual speaks on behalf of the customer even though the customer is present.
- C. His or her independence is limited. For example, the customer is:
 - Not allowed to speak for him or herself or to make decisions.
 - Apparently isolated from others.
- D. He or she shows fearful behaviors. For example, the customer is:
 - Nervous or afraid of the person accompanying him or her.
 - Fearful he or she may be evicted or institutionalized.
- E. He or she is confused or cannot give plausible explanations about finances. For example, the customer:
 - Offers implausible explanations for what other people are doing or going to do with the money.
 - Is concerned or confused about missing funds.
 - Reports missing property or documents.
 - Is unable to remember signing paperwork or making transactions.
 - Exhibits unreasonable distrust by accusing others of mismanaging money.
 - Frequently forgets questions asked or items necessary to do business, such as checkbooks or deposit slips.
- F. He or she appears neglected or is in danger of losing a secure living situation, including:

- Being evicted or having his or her utilities disconnected.
- Receiving insufficient care compared to financial means.
- Displaying noticeable changes in appearance, grooming, mood, body language, or relationships.

Warning signs: suspicious financial activities

The activities below may signal possible financial abuse:

- Unusual volume of banking activity.
- Large or frequent withdrawals.
- Frequent account changes from branches or banks.
- Activity that is inconsistent with the customer's usual habits.
- Requests by third parties for access to devices on the customer's behalf. This includes ATM and debit cards and access to online banking and bill pay.
- Frequent cash withdrawals from ATMs.
- ATMs used at casinos by a customer who does not gamble.
- Opening new credit cards when customer has a stable credit card history.
- Sudden changes to established patterns of deposits or withdrawals.
- Stable and single beneficiary trusts revoked.
- Suspicious signatures on checks or other documents.
- Other people's handwriting on checks, slips, or applications.
- Debit card or ACH transactions that do not fit the customer's normal spending pattern or are beyond their capabilities (i.e.: PayPal, music downloads, online shopping).
- Multiple requests to wire money internationally in increasing amounts or to money transfer businesses.
- Execution of a new power of attorney or adding someone to a signature card when appearing confused.
- Mail no longer sent to the customer's home.

- Sudden increase in debt.
- Bank loans obtained or drawn upon.
- Large unusual credit card charges.
- Second mortgages.
- Lack of customer awareness of transactions.
- Changes in documents such as wills, titles, or power of attorney when the customer is confused.
- Money withdrawn with no apparent benefit for the customer.
- Large or frequent online banking transfers to accounts accessible by other parties.

Who is at most risk for financial exploitation?

The following factors can increase the risk of abuse:

- Adults who are frail, ill, disabled, depressed, or lonely.
- Adults who are physically or emotionally dependent upon others.
- Adults who need help with finances or have never managed their finances before.
- Adults who are confused or have dementia.

Financial exploitation can diminish or destroy an older adult's economic stability and quality of life.

Often financial exploitation goes hand-in-hand with other types of abuse and neglect, such as verbal/emotional abuse, physical abuse, and neglect of care. If you believe an older person is being exploited, then he or she may also be being abused and neglected. If you see that an older person is neglected or abused, then he or she may also be taken advantage of financially.



Common risk factors for financial exploitation

Common patterns of exploitation:

- **Dependency:** The older adult or person with disability who is physically, mentally, or emotionally dependent on family, a friend, or caregiver may fall victim to a calculating or opportunist exploiter. Over time, the person gradually becomes dependent upon the exploiter for all aspects of well-being. The exploiter uses the person's money for his or her own needs. Often the exploiter is dependent upon the person's income.
- **Failing health or cognition:** The older adult or person with a disability finds it increasingly difficult to manage his or her finances and will turn to someone for help. The delegation of this responsibility and the authority is not discussed. The exploiter may simply start helping the person with his or her finances. The exploiter may then add his or her name to bank accounts, ask to set up an ATM and debit card in his or her name, set up an online banking account, or obtain a power of attorney. Often excuses are made to gain more and more control over the person's finances.
- **Confusion:** In this case, the person is already confused before the exploiter becomes involved. An attorney is hired for the exploiter to gain control over the person's finances. A legal fiduciary may take advantage and misappropriate funds. There is often inadequate screening or oversight to require accountability of the fiduciary.
- **Bereavement and loneliness:** Older adults in long marriages or persons with disabilities with caring parents find themselves alone after the death of a loved one. Often the person who dies managed the finances. The surviving spouse or child is coping with being alone plus the responsibility of taking care of everything himself or herself. The help of the exploiter offers a welcome relief, and the exploiter gains control of the finances.

Chapter 4

Financial institution responses to financial exploitation

What does the frontline financial institution employee do when confronted with a situation involving older adult financial exploitation? This is where training and protocol pay off. This tool kit's video illustrates six scenarios and responses:

Situation	Response
Daughter-in-law inappropriately uses an ATM.	Teller took ATM card from perpetrator and reported to supervisor. Supervisor contacted customer and then contacted local adult protective services (APS).
Caregiver asks bank to grant her power of attorney.	Customer service rep asks older adult her wishes, tells caregiver bank will not grant power of attorney, and contacts supervisor. Supervisor contacts APS. APS asks bank if it can put a restriction on the account. Bank alerts other branches.
Older adult withdraws large amounts of money to "purchase" lottery winnings.	Teller questions older adult then contacts supervisor. Supervisor contacts the Oregon Department of Justice.
Two suspicious men attempt to get older adult to withdraw large amount of cash.	Teller questions older adult then contacts supervisor. Supervisor asks older adult to speak with her alone. Teller takes photo of perpetrators and notes date/time. Police notified.
Older adult discovers bank account is missing funds.	Bank phone center employee calls APS.
Grandson wants to establish joint account without older adult being present.	With nod from security officer, teller allows grandson to take signature card home to customer.



Two suspicious men attempt to get an older adult to withdraw a large amount of cash.

Develop protocols for responding to financial abuse

Financial institutions, older adults, people with disabilities, public agencies and law enforcement all want to be fair, consistent, and effective in preserving privacy and providing protections for vulnerable adults at risk of exploitation.

Financial institution considerations when developing a protocol:

- When a teller has a concern, who and when should they tell?
- How much information should the teller or supervisor gather?
- Who makes the report about potential abuse and how much information should be provided to law enforcement or Aging & People with Disabilities/adult protective services agency?
- What are the roles of tellers, supervisors, backroom personnel, and bank security in detecting and preventing abuse?
- How much should the bank interview or question the customer and other parties?
- What other reporting needs to be completed?
- Does a Suspicious Activity Report (SAR) need to be filed?
- Are there red flags for ID Theft?

Quick response and close attention are the enemies of exploiters.

A financial institution's protocol should address the following elements or questions:

First, when an employee encounters a situation of suspected financial exploitation, they should know to whom within the financial institution they should report the suspected violation.

Second, who in the financial institution is responsible for making the report to the state or local agency or agencies on behalf of the bank?

Third, what information is to be gathered and provided in the report? The full name of the impacted customer, the number of any bank accounts that are involved, and the date, time, and basic facts of the incident giving rise to the suspected abuse are examples of the kinds of information that a financial institution's protocol should ensure is collected and provided.

Helpful information to gather

Learn the reason for the transaction from the bank customer:

- Inquire about the reason for suspicious transactions.
- Have the customer explain the reason.
- If the customer is prevented from answering, this may be a red flag for exploitation.

Check third party authorization and documentation:

- Many exploiters exaggerate or misrepresent their positions or powers.

Obtain and preserve photographic evidence:

- A surveillance photograph or tape may provide critical evidence or help to dissuade the exploiter.
- In the absence of a photograph, describe the suspected exploiter.

Interview the bank customer in private if possible:

- See if the customer can be separated from the person in question.

Helpful things to say

- Express your concern and emphasize the bank's commitment to protecting customers.
- Empathize with the customer and validate his or her feelings.
- Ask clear, non-threatening, and factual questions.
- Tell older adults they aren't alone. People are reluctant to reveal exploitation.
- Don't say that you are concerned simply because the customer is older.
- Don't let anyone else speak for the older adult; this is a "red flag" that something is wrong.
- Explain that you are concerned the situation will only get worse.
- Ask him or her if there is anyone else whom they trust who might provide a second opinion.

Review their accounts for other authorized signers that could be contacted for help.

The amount of loss does not have to be large to be substantial to an older adult; \$20 or \$40 can be substantial to someone who lives on \$800 a month.

Financial institution employees who report abuse are in a unique position to assist. Older adults are often isolated. Your call may be his or her only chance to have someone look into the situation.

Possible financial institution responses

The following steps are suggested to help determine if questionable transactions should or should not be processed.

Teller response steps	Supervisor response steps
<p>The teller should learn the reason for questionable transactions. Ask the older adult - not the person accompanying him or her - the reason for the activity. If the older adult is prevented from answering, this may be a sign of financial exploitation.</p>	<p>The supervisor should separate the customer from any companion so that the supervisor is able to speak with older adult alone. The older adult who is prevented from speaking for him or herself is a potential victim of exploitation.</p>
<p>The teller should check authorizations to act for the older adult. It is important to check all documents, including signature cards, guardianship, and power of attorney to be sure that the person claiming to act for the older adult has the authorization to do so. It is common for people who commit financial exploitation to exaggerate their authority to act for an older adult. The person may claim to be helping the older adult or may explain that the older adult is unable to visit the bank in person.</p>	<p>The supervisor may offer fraud information to the customer and options, including seeing if the older adult is willing to wait a period of time to complete a transaction. A common tactic of exploiters is to make the older adult believe it is urgent that the older adult act now. It is also advisable to warn customers of the dangers of carrying large amounts of cash.</p>
<p>The teller who suspects fraud should contact a supervisor immediately. Together, the supervisor and teller can review the account history, the pattern of transactions, and the transaction in question to determine if the transaction should be processed, stopped or reported to bank security.</p>	<p>The supervisor should notify bank security of a questionable transaction. If the older adult is thought to be in immediate danger, the supervisor or security officer should immediately notify local law enforcement and take steps to temporarily restrict the account.</p>
<p>The teller and supervisor may choose to explain that large or unusual transactions are routinely questioned.</p>	

Chapter 5

Legal protection and authority for financial institutions

Legal issues – reporting

As detailed in Chapter 2, there are many statutes related to elder abuse. Financial institution employees should be aware that there are legal issues related to reporting elder abuse as well. An issue of great concern to financial institutions is the potential liability stemming from disclosure of confidential account information.

Reporting under Oregon law

Under Oregon law, a financial institution may make contact and communicate with appropriate state or local agencies concerning suspected violations of the law. ORS 192.586 (2)(a) allows the reporting institution to disclose customer financial records to the state or local agency when financial exploitation is suspected. Under ORS 192.600(5), a financial institution is not liable to any person for any loss, damage, or injury arising out of, or in any way pertaining to, the release of information pursuant to ORS 192.586 (2)(a). Note that the provisions of ORS 192.586 (2)(a) and ORS 192.600 (5) only apply when a financial institution contacts the appropriate agency or law enforcement.

Reporting under GLBA

Further, in 2013, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Securities Exchange Commission issued an “Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults.”

This guidance clarifies that reporting suspected financial abuse of older 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. In fact, specific privacy provisions of the GLBA and its implementing regulations permit the sharing of this type of information under appropriate circumstances without complying with notice and opt-out requirements.

Reporting under EGRRCP Act

Most recently, in May 2018, the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCP Act) was signed into law. Section 303 of the Act extends immunity from liability to certain individuals employed at financial institutions who, in good faith and with reasonable care, disclose the suspected exploitation of an older person to a regulatory or law-enforcement agency. Similarly, the employing financial institution shall not be liable with respect to disclosures made by such employees.

Liability for not reporting

As stated in Chapter 2, ORS 124.100 provides a civil cause of action for victims of financial abuse. ORS 124.100 also provides that an action may be brought against a person who permits another to engage in financial (or physical) abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the abuse.

Moreover, financial institution employees who fail to report suspected instances of abuse could possibly find themselves included in a lawsuit for a violation of ORS 124.100. ORS 124.115 provides that financial institutions, with minor exceptions that are not likely to arise, may not be sued in an action under ORS 124.100. However, 124.115 does not expressly shield employees of financial institutions from being sued. By reporting suspected financial exploitation, banks and their employees have arguably limited the possible liability under ORS. 124.100.

General immunity for good faith reporting

It is important to know that Oregon law, ORS 124.075, provides immunity from civil action and criminal liability to anyone, including financial institution employees and the general public, who reports, in good faith, suspected abuse of an older person to the appropriate adult protection services agency. Additionally, anyone who reports suspected abuse can request to remain anonymous.

Reporting summary

While financial institutions are not required by Oregon law to report instances of suspected financial exploitation, institutions should seriously consider reporting suspected financial abuse or exploitation to the appropriate state agency or law enforcement. By reporting the suspected exploitation, the financial institution may open the door for a state or local agency to bring a civil action or criminal charges against the perpetrator.

Temporary account restriction in the case of suspected elder abuse

In 2017, the Oregon Legislature gave financial institutions another tool to help with elder abuse prevention. Introduced at the request of the Oregon Bankers Association, ORS 708A.670 to ORS 708A.680 permits a financial institution to temporarily refuse transactions on an account of a vulnerable person (defined in ORS 124.100 as an elderly person, a financially incapable person, an incapacitated person, or a person with a disability who is susceptible of threat duress or coercion) if the financial institution reasonably believes, or has received information from law enforcement or the Department of Human Services, that financial exploitation may have occurred, may have been attempted, or is being attempted.

“Financial exploitation” is defined in the law as: 1) wrongfully taking assets, funds, or property belonging to or intended for use of an elderly person or person with a disability; 2) alarming an elderly person or person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat would be carried out; 3)

misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an elderly person or person with a disability; or 4) failing to use the income or assets of an elderly person or person with a disability effectively for the support and maintenance of the person.

The financial institution may refuse a transaction, refuse to permit a withdrawal or disbursement of funds, prevent a change of ownership to an account, refuse a transfer of funds, or refuse to comply with an agent under a power of attorney. The financial institution may but is not required to act. If a financial institution does take one of the above actions, it shall make reasonable efforts to notify all parties authorized to transact business on the account unless the financial institution determines, at their discretion, that providing that information would compromise an investigation.

The default rule is that a temporary account restriction, or “freeze,” ends 15 business days after the financial institution first acted. Exceptions to this time limit are included in the law. A court may order the termination of a restriction. Financial institutions are permitted to extend the duration of a freeze, unless directed otherwise by a court, based on a reasonable belief that financial exploitation may have occurred or may continue to occur or be attempted. Financial institutions and their employees are immune from criminal, civil, and administrative liability for account freezes made in good faith. The law also provides that the authority to place a restriction on an account is in addition to, and not in lieu of, any right a financial institution may have under the its deposit or other contract with the customer.

A temporary account restriction law applicable to securities professionals also passed the legislature in 2017. ORS 59.480 to ORS 59.505 requires certain securities professionals (defined in the bill as “qualified individuals”) who have reasonable cause to believe that financial exploitation of a vulnerable person with whom that individual has come into contact has occurred, has been attempted, or is being attempted, to notify the Department of Consumer and Business Services either orally or in writing as soon as is practicable. OBA obtained an amendment to the bill that provides that this reporting requirement does not apply to securities professionals, or “qualified individuals”, employed by a bank or a trust company. However, some of the remaining provisions of this bill do apply to qualified individuals who work for banks and trust companies. If such an individual has reason to believe that financial exploitation of a vulnerable person has occurred or been attempted, the qualified person may notify any person previously designated by the vulnerable person to receive information, except for a person who is suspected of the abuse. Qualified individuals employed by banks or trust companies will not be liable under state law for disclosing information under the Act or failing to disclose to the vulnerable person as provided in the Act.

Chapter 6

Reporting financial exploitation

Internal policies needed

Financial institutions are urged to develop written policies and procedures regarding reporting financial exploitation. Financial institutions should also have legal counsel review the legal issues related to reporting.

Financial institutions are urged to develop written policies and procedures regarding their participation in the reporting of financial abuse.



How and where to report financial exploitation

The Department of Human Services (DHS) local offices of Aging and People with Disabilities (APD), such as the local Adult Protective Services or Area Agencies on Aging (AAA), provide protective services and investigate financial exploitation and other abuse and neglect. In fact, most financial exploitation is investigated by these local offices. Financial institutions can directly contact these local officers to report suspected abuse. To find the local office that serves your area, visit:

<http://www.oregon.gov/DHS/Offices/Pages/Seniors-Disabilities.aspx> or

visit www.oregon.gov, Department of Human Services.

Financial institutions can also report suspected abuse directly to the state's reporting hotline at:

(855) 503-SAFE (7233)

To expedite the reporting process, your financial institution may want to use the Financial Institution Elder Abuse Optional Screening Form found in Appendix C on page 50. Please note that the use of this form is not required. This form was developed by the Oregon Office of Adult Abuse Prevention and Investigations at the request of bankers simply as a means of expediting the reporting process by gathering helpful information.

For other questions or for referrals to local offices, you may also call the DHS state office at:

Office of Aging & People with Disabilities
201 High Street Suite
500 Salem, OR 97301
Phone: 1-800-232-3020 within Oregon or 503-945-9495
TTY relay: 1-800-735-2900
Fax: 503-945-9893

To report crime:

When there is an emergency situation or a present and obvious violation of law committed in a financial institution, then an immediate report should be made to local law enforcement.

To report consumer fraud:

In cases of suspected exploitation by telemarketing or scams, reports should also be made to the Consumer Protection Unit of the Oregon Department of Justice (DOJ). The transaction must be between an individual and a business. The Consumer Protection Unit may be contacted at:

<https://www.doj.state.or.us/consumer-protection/sales-scams-fraud/report-scams-fraud/> or at:

Salem area 503-378-4320
Portland area 503-229-5576
Oregon (toll free) 1-877-877-9392
Email: consumer.hotline@doj.state.or.us

When you make a report

When the bank places a call to report suspected abuse, the caller should quickly state that the call is regarding possible older adult financial exploitation so that the local adult protective services office or state hotline will know that a quick response is needed. Use of the Financial Institution Elder Abuse Optional Screening Form found in Appendix C on page 50 may be helpful.

Points to remember and consider:

- Financial institution personnel do not need “proof” that elder financial exploitation is occurring. Suspicion, not proof, is adequate. It is the job of the adult protective services agency and/or law enforcement to determine if exploitation is occurring.
- Adult protective services agencies regularly intervene in exploitation involving personal relationships. The suspected exploiter is most often someone known by the reported victim, such as a family member, friend, caregiver, legal fiduciary, or acquaintance. Older adults are particularly vulnerable to abuse from persons they know, trust, love, or depend upon. Adult protective services agencies are experienced with the delicate nature of abuse by a family member or someone close to the older adult.
- Complainant’s identity is confidential and may be anonymous.
- Adult protective services agencies provide protective services as well as investigate complaints of abuse and neglect.
- Adult protective services agencies will become involved to prevent loss, whereas law enforcement and the DOJ Consumer Protection Unit can only intervene once there is a loss.
- When appropriate, adult protective services agencies also report cases to law enforcement and the DOJ Consumer Protection Unit.

What happens when you make a report?

When you call the local adult protective services office, a representative will ask for details about the situation and for relevant records. Gathering information in advance by using the Financial Institution Elder Abuse Optional Screening Form found in Appendix C on page 50 may expedite the process.

The complainant’s name and the investigation report are confidential unless disclosed by court or law. The older adult may review the report upon request, but unless there is permission, all other participants’ identifying information will be removed.

The adult protective services investigator will proceed to make an unannounced on-site visit to the reported victim unless there are conditions which make that inadvisable. Anyone having information which could shed light on the situation will be interviewed. The older adult will be interviewed alone unless they request someone to be present. All relevant documents and records will be sought.

The investigator will determine if there is wrongdoing, offer assistance to the victim, and take steps to correct the situation. The older adult’s right to make choices about their affairs is respected.

Services offered to the older adult can include, but are not limited to, advocacy and assistance with referrals for financial, legal, housing, and medical needs. Money management and other options may be offered if resources are available. If a crime has been committed, adult protective services will work with law enforcement and the district attorney’s office on possible prosecution and restitution. Civil action may also be initiated.

Adult protective services can also respond to calls about the following:

- Neglect: failure to provide basic care.
- Physical abuse: excessive force, physical assault, and resulting pain.
- Psychological abuse: ridicule, threats, or denial of civil liberties.
- Sexual abuse: sexual contact that is forced or for which the victim is unable to give consent.
- Abandonment: desertion or withdrawal of duties.
- Self neglect: inability to care for self.
- Involuntary seclusion: locking up or isolating an adult for convenience or discipline.
- Wrongful restraint: tying up or sedating an adult for convenience or discipline.

Adult protective services also responds to referrals of suspected abuse and neglect of persons with disabilities who cannot protect themselves.

Filing Suspicious Activity Reports (SARs) regarding elder financial exploitation

When elder financial exploitation is suspected, a financial institution should also file a Suspicious Activity Report (SAR).

In 2011, FinCEN issued FIN-2011-A003, an advisory to financial institutions on filing SARs regarding elder financial exploitation. FinCEN noted that SARs are a valuable avenue for financial institutions to report elder financial exploitation.

Consistent with the standard for reporting suspicious activity as provided for in 31 CFR Part 103 1020.320, if a financial institution knows, suspects, or has reason to suspect that a transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, the financial institution should then file a SAR.

In order to assist law enforcement in its effort to target instances of financial exploitation of older adults, FinCEN requests that financial institutions select the appropriate characterization of suspicious activity in the Suspicious Activity Information section of the SAR form and include the term "elder financial exploitation" in the narrative portion of all relevant SARs filed. The narrative should also include an explanation of why the institution knows, suspects, or has reason to suspect that the activity is suspicious. It is important to note that the potential victim of elder financial exploitation should not be reported as the subject of the SAR. Rather, all available information on the victim should be included in the narrative portion of the SAR.

Chapter 7

Remedies and prevention

Some remedies for financial exploitation

If careful investigation and assessment indicate that abuse has occurred, a variety of interventions can be initiated to recover assets and protect older adults from further abuse. Typical steps that may be taken include the following:

Misused bank accounts

- The financial institution may be contacted to “flag” the account and observe it with caution or to place a hold on the account.
- Information might be accessed regarding the account through a financial institution visit with the older adult. If the older adult is homebound and has not granted anyone power of attorney, a home visit by Financial institution personnel may be advisable.
- The misused account might be closed and the older adult might open a new account. This may be done in person or via a letter signed by the older adult. Each Financial institution will have its own protocol. Financial institution personnel should make sure any direct deposits and valid automatic payments are transferred to the new account.
- Copies of past canceled checks, bank statements, and withdrawals may be requested to look for forgery or unusual activity. If forgery or misuse of funds is apparent, the older adult could sign an affidavit with the financial institution. The police or FBI may get involved at this point.
- Reg E Error Resolution Policy – The older person may contact the financial institution to notify it of any unauthorized electronic transfers (ACH, ATM, POS, or online banking transfers). The financial institution may request confirmation in writing. The financial institution may then be asked to block any ATM or debit cards that have been misused and to restrict access to online banking.

Misuse of power of attorney

- The older adult may verbally inform the attorney-in-fact that the power of attorney is being revoked. This revocation can only be performed if the older adult is capable. If the older adult (principal) no longer has capacity and the power of attorney states that it is not a durable power of attorney, the powers of the agent to act on behalf of the principal under the power of attorney cease to be effective at the time the principal ceased to have capacity.
- The older adult should sign a letter of revocation.

- The older adult should send a copy of the letter to the attorney-in-fact.
- Copies of the letter should then be sent to the older adult's financial institutions.
- In some states, courts can call for an accounting.
- It will be declared that the attorney-in-fact has misused the power of attorney and will be revoked if it is in the best interest of the principal.
- The investigating worker may file the revocation letter with the county recorder's office.
- In some states, a court investigator can be asked to investigate the misuse of a power of attorney.

If abuse has occurred, a variety of interventions can be initiated to recover assets and protect older adults from further abuse.

Prosecution

Proving that financial exploitation has occurred often involves determining what an elderly victim understood at a certain time in the past. Both building and prosecuting these cases requires special training. Prosecutors must be able to establish the following:

- Did the elder lack capacity when the transaction occurred?
- Did the suspect know that the elder lacked capacity?
- Did threats, force, or duress cause the elder to transfer property or give away assets?
- Were assets taken or used without permission by someone the elder trusted?
- Did misrepresentation or false promises cause the elder to transfer money or property?
- Was undue influence used to have the elder to turn over assets or to sign a power of attorney?

The number of cases going to prosecution and the number of successful convictions has significantly grown but has not kept up with the incidences of abuse.

Chapter 8

Preventing financial exploitation

The following helpful tips are designed to be shared with bank customers and the general public to help them avoid financial exploitation.

What might be helpful:

- Adding an “Agent” or authorized signer to bank accounts if the Agent or other signee can be trusted. * Note: use of a joint bank account may impact the estate plan of the customer and open the joint owners to joint liability.
- Power of attorney.
- Social Security representative payee.
- U.S. Department of Veterans Affairs Fiduciary Program.
- Bill pay programs.
- Direct deposit.
- Advance directive for health care.
- Living trusts and life estates.
- Case management.
- Conservatorship.
- Guardianship.
- Civil or criminal action for recovery.
- Multidisciplinary teams.
- Public education for older adults, their families, and the community.
- Training programs for professionals.

It is important to consider that, in the wrong hands, some of these tools (particularly powers of attorney, Agents, authorized signees, and joint accounts) can be used to financially exploit older and vulnerable adults. Bankers should be mindful of potential exploitation risks associated with these tools.

Who might provide information or hands-on assistance

- Family.

- Friends, neighbors, and volunteers.
- Health care provider.
- Attorneys, including the Senior Law Project.
- Law enforcement.
- Financial institutions.
- Non-profit agencies.
- Government agencies (Oregon Department of Justice, Victims Assistance, Social Security Administration, Consumer Financial Protection Bureau Office of Older Americans, U.S. Department of Veterans Affairs and Oregon Construction Contractors Board, for example).
- Senior centers.
- Case managers.
- AARP.
- Community/senior advocacy groups.

Good financial practice advice

- Review bank statements in a timely matter.
- Use direct deposit for checks if possible.
- Do not leave money or valuables in plain view.
- Sign one's own checks. Do not sign "blank checks" where another person can fill in the amount or the recipient name. If one needs someone to help write out checks, ask a third party (not the recipient) to review the check and take it to the financial institution.
- If someone is helping manage one's finances, get a trusted third person to review bank statements.
- Do not sign any document without reading it carefully.
- Do not sign any agreement until a trusted friend, other adviser, or an attorney has reviewed it. If possible, have two advisers review the agreement.
- Do not lend money in return for a general promissory note.
- Do not sign over money or property to anyone in return for care, even a family member or friend, without having the agreement reviewed by an attorney. The agreement must be written. Give someone else a copy.

- Safeguard one's ATM, debit, and credit cards. Notify the financial institution immediately if one is missing.
- Do not give out card information over the telephone unless it is to someone with whom the cardholder regularly does business.
- Do not allow anyone, even a relative, to put his or her name on one's account without the account holder's express consent. Financial institutions can instead set up a separate account in both names with automatic transfer of limited funds.
- Obtain and review one's credit report on an annual basis. A free credit report can be obtained annually online at <https://www.annualcreditreport.com/index.action> or by calling 877-322-8228 and completing a verification process.

Safety tips for use of an automatic teller machine (ATM), debit card, or credit card

- Do not allow anyone else to use one's ATM or debit card.
- Cancel one's ATM or debit card if it is not used.
- Do not give anyone else one's Personal Identification Number (PIN).
- Do not use an easily detectable PIN number (such as a birth date or social security number).
- Do not write one's PIN down or keep one's PIN with one's ATM or debit card (such as in one's wallet or purse).
- Do not use a poorly lit ATM. This is a danger sign because they are designed to be brightly lit for your safety. Report a poorly lit ATM to your financial institution.
- Be aware of people around as you use an ATM. Do not let them watch the entry of a PIN number.
- Put one's money away safely before exiting an ATM area.
- Look around when exiting an ATM area.
- Do not count one's withdrawn cash at the ATM.
- Do not use an ATM or leave a financial institution if one's does not feel safe.
- For ATMs located in a separate locked room, do not open the door of the ATM area to anyone that doesn't have their own ATM access card.
- Do not disclose one's online banking password to anyone. Do not grant unknown individuals in person or remote (via the internet) access to one's computer.
- Check bank statements carefully for unauthorized transactions.

Planning ahead

- Establish relationships with personnel at one's financial institution.
- Cultivate friendships with people of all ages to maintain a strong support network.
- Become familiar with resources in the community designed to help older adults and their families.
- Execute a power of attorney that will grant financial decision making power to a trusted friend, relative, or attorney. Know the person to whom this authority is granted. A power of attorney can be as limited or as broadly defined as one wishes and can be revoked any time. The specific "powers" given to this person should be detailed in writing. Give ones' financial institution a copy. Or as an alternative, consult with one's financial institution about adding an "Agent" or authorized signer to one's account. In Oregon, both a power of attorney and account agent are durable unless otherwise stipulated.
- Consider a trust, which is a legal arrangement where a person or financial institution manages assets for you.
- Put all financial instructions in writing. Be specific.
- Keep accurate and complete financial records.
- Gather all important documents together (wills, insurance policies, and bank account information). Tell a trusted representative where these documents are kept.
- Consider having a health representative (medical power of attorney) and advanced directive so your wishes will be respected should you become incapacitated and need placement or medical treatment.

Personal safety

- Be aware of the risks of living with a person who is a substance abuser, has a history of violence, or is frequently asking to borrow money.
- Have a plan to remain safe and explore different housing options available to you.
- Keep in touch with one's friends.
- Keep control of ones' own phone.
- Open and post ones' own mail.
- If you or someone you know who is 65 or older or is a person with disabilities and is a victim of abuse, call (855) 503-SAFE (7233) or law enforcement.
- Local domestic violence organizations provide help lines, shelter, and advocacy. They serve all ages and both females and males.

Avoid scams

- If a deal seems too good to be true, it probably is.
- Never be rushed into a “deal.” This usually means the person is up to no good. Ask for details in writing and time to review them with a trusted friend, advisor, or attorney.
- Never give out credit card numbers over the phone, in emails, or to websites unless one has initiated the call or order.
- Never give out one’s Social Security number or bank account number over the phone, in emails, or to websites unless one has initiated the call or contact.
- Only give to known charities. If giving to an unfamiliar charity, conduct research before giving. For tips, visit the Federal Trade Commission’s Consumer Information website pages on Before Giving to a Charity at <https://www.consumer.ftc.gov/articles/0074-giving-charity> and Charity Scams at <https://www.consumer.ftc.gov/features/feature-0011-charity-scams>.
- Obtain several estimates before having any renovations or work done.
- As a rule, do not have work done on ones’ home by companies or individuals reaching out and offering deals.
- Do not pay for work in advance.
- Check references, telephone numbers, and home addresses.
- Contractors must be licensed by law. Check license numbers and records with the Oregon Construction Contractors Board at <http://www.oregon.gov/CCB/homeowner/Pages/consumer.aspx>.
- Know to whom one is talking. Verify a situation with another family member before wiring or sending money.
- Register with the Do Not Call Registry at <https://www.donotcall.gov/>.
- Never pay to play in a sweepstake.
- Never pay money to claim a prize.
- Do NOT give out prepaid card serial numbers off the back of the card to someone one does not know.
- Close the door on pushy solicitors.

Questions?

Contact: The Attorney General's Consumer Complaint Line

Phone:

Salem area 503-378-4320

Portland area 503-229-5576

Oregon (toll free) 1-877-877-9392

Email: consumer.hotline@doj.state.or.us

Chapter 9

Community outreach

Other ways financial institutions can help

Many financial institutions have been inspired to provide information to their communities about financial exploitation of older adults. Ideas include

- Develop and distribute educational materials, such as those in Chapter 8, alerting customers to scams and how to recognize the potential for exploitation.
- Conduct seminars or other presentations on elder exploitation.
- Generate media attention highlighting financial exploitation.
- Stay current with trends in financial abuse and techniques for stopping it.
- Offer older customers banking services designed to meet his or her special needs.
- Have open conversations with Estate Planning attorneys to ensure they understand the nuances of customer bank accounts.
- Conduct regularly scheduled visits and limited banking services at places convenient to older adults, including senior centers and housing providers.

Getting this essential information out to communities can be accomplished via a private-public partnership between adult protective services agencies and your financial institution. Please feel free to contact your local agency for support. Speakers and support are generally available.

Beyond protective services, there can be other groups and agencies that could partner with your bank. AARP, local law enforcement, and the Consumer Protection Unit of the Oregon Department of Justice can supply handouts, displays, and often provide speakers.

Appendix A

History of the Oregon Bankers Association Elder Abuse Prevention Project

1995

Attorney General and Oregon Bankers Association (OBA) draft amendments to the Private Financial Records statute. Bill passes providing immunity to banks for reporting elder abuse.

1996

Department of Human Services joins Oregon Bankers Association to conduct a training program to ensure bank employees know about the new law.

1997

A committee was formed by the Oregon Bankers Association, Department of Human Services, Department of Justice, and AARP to explore training initiatives.

1998-1999

A grant from the Office of Victims of Crime, Office of Justice Programs, U.S. Department of Justice was received by the Department of Human Services. The Bank Employee Training Kit was developed and distributed to each Oregon bank branch and Adult Protective Services agency. Kits were also distributed to each state in the United States. Eleven local trainings for bankers were held in various parts of state.

2006

Bank Employee Training Kit was updated and again distributed to each bank branch in Oregon.

2006 – 2007

Nine local trainings for bankers were held throughout Oregon.

2007

Bank Employee Training Kit was again updated and distributed to each bank branch in Oregon.

2008 – 2011

Additional trainings for bankers were held throughout Oregon.

2013

Bank Employee Training Kit was once again updated and distributed using new electronic formats.

2016 – 2018

Oregon Bankers Association and the Oregon Office of Adult Abuse Prevention and Investigation, along with a number of other states, assisted AARP in the development of *BankSafe*, a free online training program designed to help frontline bank employees identify red flags of suspected elder financial exploitation and acquire the skills to prevent and stop it. Oregon bankers helped to design and review *BankSafe* materials throughout the development process.

2018

Bank Employee Training Kit was again updated and distributed in electronic format.

2018

Seven local trainings for bankers were held throughout Oregon.

Appendix B

Additional resources

American Association of Retired Persons (AARP)

AARP's BankSafe free training tool is specifically designed to train financial institution staff in combatting elder financial exploitation. This online training program was developed in partnership with more than 200 experts from banks and credit unions across the country, including Oregon bankers and the Oregon Bankers Association.

<https://www.aarp.org/banksafe>

American Bankers Association

ABA's Safe Banking for Seniors offers free banker resources, which contain presentation lessons, participant activities, communication tools, and promotional materials.

<https://www.aba.com/Engagement/Pages/safe-banking-for-seniors.aspx>

Additionally, in recognition of World Elder Abuse Awareness Day on June 15, 2018, the ABA Foundation released *Protecting Seniors: A Bank Resource Guide for Partnering with Law Enforcement and Adult Protective Services* to help bankers combat financial exploitation of seniors. This a new, free guide is available at:

https://www.aba.com/Engagement/Documents/Protecting-Seniors-Partnership-Guide.pdf?utm_campaign=ABA-SBA-Alliance-Newsletter-20180702&utm_medium=email&utm_source=Eloqua

Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau was created to provide a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace. The financial protections for older Americans page offers resources for consumers as well as training materials for instructors.

<http://www.consumerfinance.gov/older-americans>

FDIC (Federal Deposit Insurance Corporation)

Money Smart for Older Adults is an instructor-led training developed jointly by the FDIC and Consumer Financial Protection Bureau (CFPB) to teach older adults what elder financial exploitation is and why they may be at risk. It is also a tool for bank-community partnerships. For example, bank staff could deliver this information in collaboration with providers of senior services or adult protective services agencies. Available in English and Spanish

https://www.fdic.gov/consumers/consumer/moneysmart/olderadult.html?source=govdelivery&utm_medium=email&utm_source=govdelivery

Federal Trade Commission

The Federal Trade Commission is one of the nation's consumer protection agencies. The FTC's Bureau of Consumer Protection works for the consumer to prevent fraud, deception, and unfair business practices in

the marketplace. In addition, the website offers resources relating to how to protect personal information and how to respond to identity theft.

<https://www.consumer.ftc.gov>

State of Oregon

Department of Human Services, Aging and People with Disabilities

Information about elder abuse and what to do if you believe you or someone is being abused or neglected.

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/ADULT-ABUSE/Pages/index.aspx>

Aging and People with Disabilities/Adult Protective Services Programs – Local Offices

Find the Department of Human Services office providing Adult Protective Services in your area to report suspect abuse, neglect or financial exploitation of an elderly person or an adult with physical disabilities.

<https://www.oregon.gov/DHS/Offices/Pages/Seniors-Disabilities.aspx>

Department of Justice, Consumer Protection

A resource for elder Oregonians and their family members to get help for a number of common concerns.

<https://www.doj.state.or.us/oregon-department-of-justice/office-of-the-attorney-general/spotlight-elder-abuse/>

Division of Financial Regulation

Provides Oregonians with information about financial services, including but not limited to investment (securities), loans, credit, and the prevention of financial scams and identity theft.

<http://dfr.oregon.gov/Pages/index.aspx>

Appendix C

FINANCIAL INSTITUTION ELDER ABUSE OPTIONAL SCREENING FORM

(Please note that use of this form is not required. This form was developed by the Oregon Office of Adult Abuse Prevention and Investigations at the request of bankers simply as a means of expediting the reporting process.)

Financial Institution (FI) Name: _____

Risk Level:

Imminent Danger – Client is at imminent danger for personal harm and/or substantial loss of financial assets

Hazardous Situation – Client is potentially in danger for personal harm and/or substantial loss of financial assets

Chronic/Problematic – Client has been in a chronic situation which is resulting in personal harm and/or loss of financial assets.

Date: _____ Time: _____ Banker Name: _____ Referred to: _____

REPORTED VICTIM (RV)/CLIENT

Name: _____

Address: _____ City/State/Zip: _____

Soc. Sec. #: _____ Phone: _____ DOB: _____ Sex: F M

Additional information on RV: _____

REPORTER/FI CONTACT

ANONYMOUS CONFIDENTIAL

Name: _____

DOB _____ Position at FI: _____

Address: _____ City/State/Zip: _____

Phone: _____ Email: _____

Additional information on RV: _____

REPORTED PERPETRATOR (RP) (Include information on all RPs):

Name(s): _____ Relationship to RV _____

Address: _____ City/State/Zip: _____

Phone: _____ DOB: _____ Soc. Sec. # _____

Additional information on RP: _____

WITNESSES:

	<u>Name</u>	<u>Phone</u>	<u>Relationship to RV or position at FI</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

PRESENTING PROBLEM (Check all that apply): INCIDENT DATE/TIME _____ OR ONGOING

Self-Neglect Neglect Physical Abuse Sexual Abuse Verbal Abuse
 Financial Exploitation Wrongful Restraint Abandonment Involuntary Seclusion

Details of report: _____

Safety Concerns: (check all that apply):

Guns/Weapons Aggressive Pets Family Conflicts Previous APS

To print additional copies of this optional screening form, visit the online toolkit at
www.oregonbankers.com/preventing-elder-financial-exploitation-toolkit.



Oregon Bankers Association
777 13th Street SE, Suite 130
Salem, OR 97301
503-581-3522
www.oregonbankers.com

The Preventing Elder Financial Exploitation: How Financial Institutions Can Help tool kit, including the associated videos, are available on the Oregon Bankers Association website at www.oregonbankers.com/preventing-elder-financial-exploitation-toolkit. Please feel free to duplicate this publication or download and distribute the electronic version.