



Suspicious Activity Reports and Their Role in Investigations of Elder Financial Exploitation

NOVEMBER 2, 2017

DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE



OVCTTAC
OFFICE FOR VICTIMS OF CRIME Training and Technical Assistance Center



TECHNICAL OVERVIEW

- ▶ If you are experiencing any technical issues with the audio for this session, please let us know in the chat pod.
- ▶ If you have technical difficulties during the webinar, contact Jason Adams, who is providing technical support for this webinar. His email address is jadams@ovcttac.org.
- ▶ Today's session will be recorded and made available on the training website.

ELDER JUSTICE INITIATIVE

The **mission** is to support and coordinate the Department of Justice's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.

The Initiative does so by—

- Promoting justice for older adults.
- Helping older victims and their families.
- Enhancing state and local efforts through training and resources.
- Supporting research to improve elder abuse policy and practice.



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Elder Justice Initiative Home

- ▶ Older Americans, Families, and Caregivers
- ▶ Financial Exploitation
- ▶ Prosecutors
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- ▶ Victim Specialists
- ▶ Multidisciplinary Teams
- ▶ Researchers
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ELDER JUSTICE INITIATIVE (EJI)

REPORT ABUSE OR FIND HELP

New on ElderJustice.gov

EJI launches the MDT Toolkit and Guide for elder abuse case review MDTs



1 2 3 4

Elder abuse is a complex issue that intersects with many disciplines.

Elder abuse can happen to anyone. It affects people of every ethnic background, gender, and financial status.

PRESENTERS

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John M. Williams, Chief, Training and Outreach, FinCEN, U.S. Department of the Treasury

Peter Gallagher, Deputy Attorney General - Prosecutor, New Jersey Division of Criminal Justice, Financial and Computer Crimes Bureau

Jenefer Duane, Senior Program Analyst, Office for Older Americans, CFPB



Consumer Financial
Protection Bureau



PART I: MEMORANDUM ON FINANCIAL INSTITUTION AND LAW ENFORCEMENT EFFORTS TO COMBAT ELDER FINANCIAL EXPLOITATION

November 2, 2017



Consumer Financial
Protection Bureau



**Naomi Karp, Senior Policy Analyst,
Office for Older Americans, CFPB**



Disclaimer

This presentation is being made by a Consumer Financial Protection Bureau representative on behalf of the Bureau. It does not constitute legal interpretation, guidance, or advice of the Bureau.

About the CFPB



Consumer Financial
Protection Bureau

- The CFPB works to make consumer financial markets work for **consumers, responsible providers, and the economy as a whole.**

CFPB's work



Empower



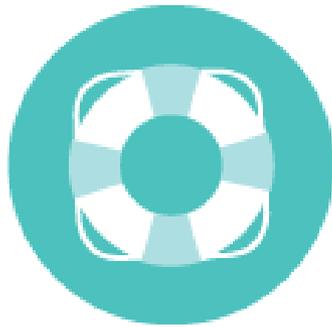
Enforce



Educate

Office for Older Americans

We help older consumers:



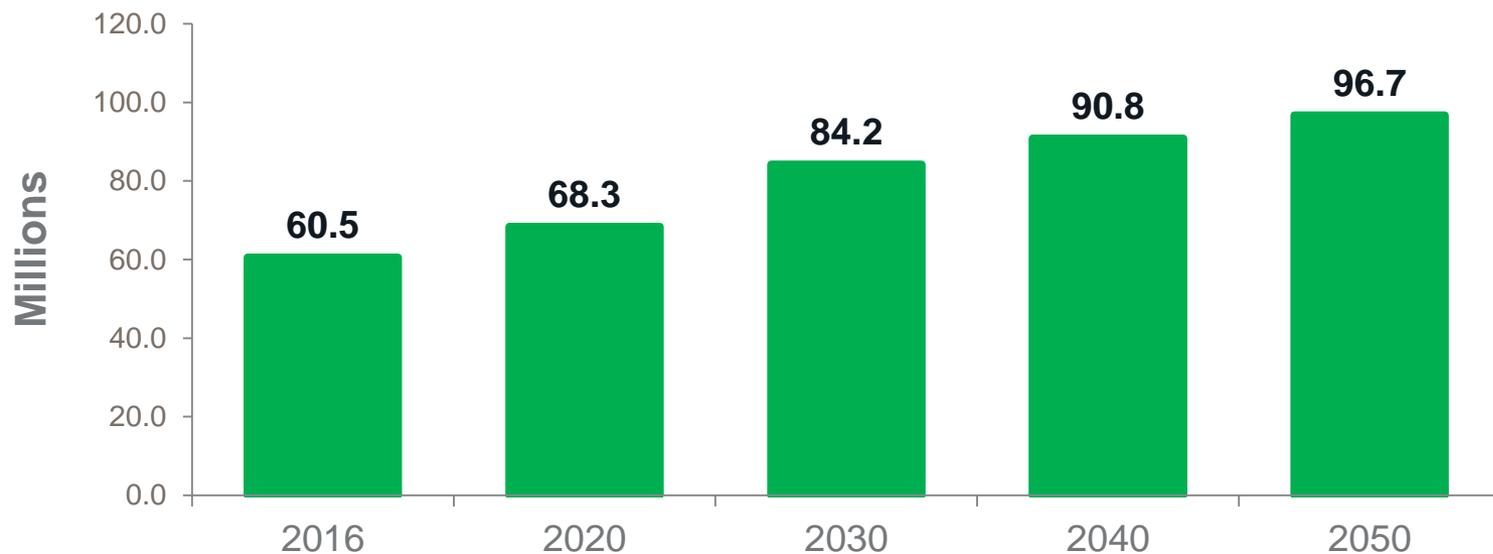
Prevent unfair, deceptive,
and abusive practices aimed
at seniors



Make sound financial
decisions as they age

Learn more about us at consumerfinance.gov/older-americans

A Growing Population



- The number of older consumers 62+ is expected to grow from 60.5 million in 2016 to 96.7 million in 2050.

Source: Census Bureau, National Population Projections

Elder Financial Exploitation

- **Definition:** Illegal or improper use of an older adult's funds, property, or assets
- **Frequency:** Most common form of elder abuse (only a small fraction of incidents are reported)
- **Perpetrators:** Anyone; can include family, caregivers, scammers, financial advisers, home repair contractors, fiduciaries, etc.
- **Attractive targets:** Significant assets or home equity
- **Vulnerabilities:** Isolation, cognitive decline, physical disability, health problems, or recent loss

Red Flags for Elder Financial Exploitation

- Interactions with older adults or caregivers, e.g.,
 - Caregiver or third party does not allow older consumer to speak for him or herself
 - Older consumer associates with new “friends” or strangers
 - Older person expresses excitement over financial opportunity, prize, or windfall
- Account activity, e.g.,
 - Large increases in account activity
 - Uncharacteristic debit transactions (including unusual ATM use)
 - Abrupt changes to financial documents such as POA, joint account
 - Uncharacteristic requests to wire money

Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults

- Issued September 24, 2013, by CFPB and seven other federal regulators with jurisdiction over Gramm-Leach-Bliley Act (GLBA) privacy provisions
- Clarifies that reporting financial abuse of older adults to appropriate authorities does not, in general, violate the privacy provisions of GLBA
- Specific exceptions to the notice and opt-out requirement that may permit information sharing with local, state, or federal agencies to report suspected elder financial exploitation

The Advisory and Report to Financial Institutions on Preventing and Responding to Elder Financial Exploitation

- Released by CFPB on March 23, 2016.
- Office for Older Americans identified best practices to enable financial institutions to prevent elder financial abuse and intervene effectively when it occurs—financial institutions can consider recommendations as they assess their own current practices.
- Advisory does not impose any responsibilities or duties on financial institutions.
- Although the advisory and the report emphasize the importance of compliance with appropriate federal and state laws, they are not intended to interpret federal consumer financial law or any other statute or rule.

The Advisory and Recommendations: Key points

- Protocols
- Training
- Detection
- Reporting
- Protection
- Collaboration

Joint Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation

- Issued by CFPB, FinCEN, and Treasury in August 2017.
- Highlights key role of financial institutions in detecting, responding to, and preventing elder financial exploitation:
 - Filing Suspicious Activity Reports (SAR)
 - Reporting to law enforcement and Adult Protective Services
- Encourages collaboration among financial institutions, law enforcement, and Adult Protective Services.
- Explains law enforcement use of SARs in elder financial exploitation cases:
 - SARs can trigger investigation, support ongoing investigation
 - Explains the restrictions on access and use of SARs
 - Tells law enforcement how to make a SAR-related inquiry

John M. Williams
Chief, Training and Outreach
FinCEN, U.S. Department of the Treasury

OVERVIEW OF BSA/SARS

Bank Secrecy Act (BSA) was enacted by Congress in 1970 to fight money laundering and other financial crimes.

BSA requires many financial institutions to create “paper trails” by keeping records and filing reports on certain transactions.

OVERVIEW OF BSA/SARS

Nation's first and most comprehensive anti-money laundering statute.

A series of reporting and recordkeeping requirements to document suspicious or large cash transactions.

Powerful tool for preventing corruption of the United States' financial system.

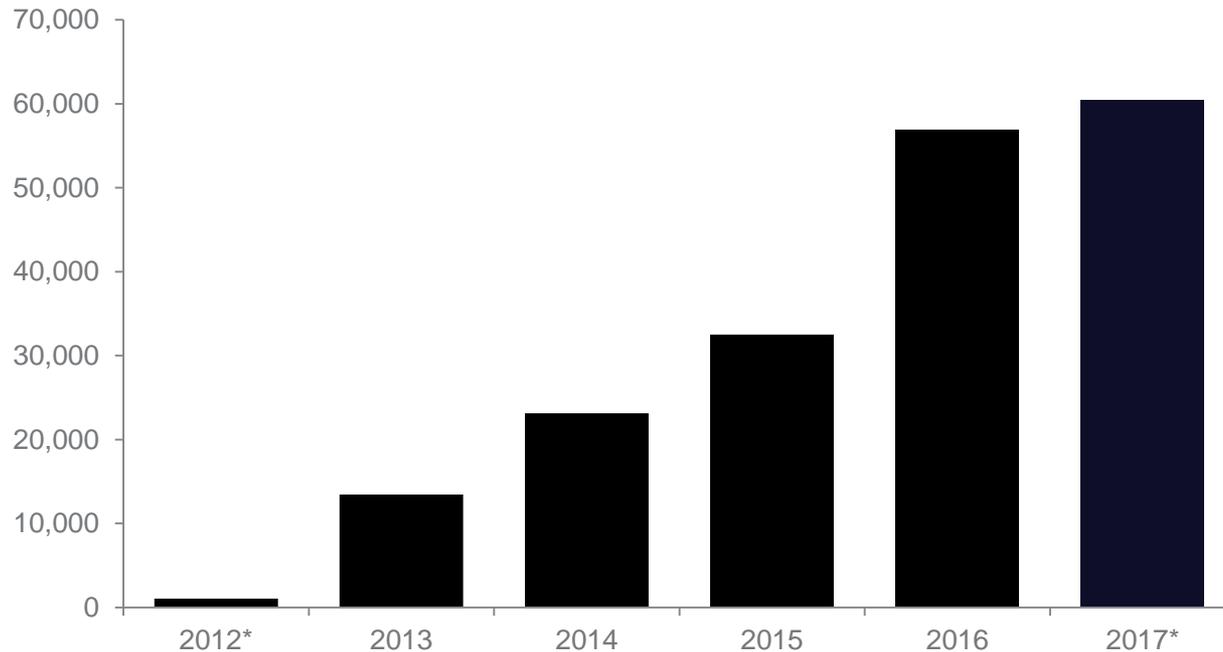
WHAT IS A SUSPICIOUS ACTIVITY REPORT (SAR)?

A mandatory filing by a financial institution to report suspicious transactions.

In 2013, FinCEN implemented an electronic reporting form that contains a “checkbox” so filers can specify that a suspicious transaction concerns *elder financial exploitation*.

TRENDS IN ELDER FINANCIAL EXPLOITATION SARs

Number of Elder Financial Exploitation SARs by year (all filers)



* Partial year data

Source: FinCEN, SAR Stats (as of September 2017)

WHO FILES SARS

Depository institutions

Money Service Businesses (MSB)

Securities, brokers/dealers, mutual funds & futures

Insurance companies

Casinos

Other:

- ▶ Mortgage companies
- ▶ Loan or finance companies (e.g., payday lenders)
- ▶ Dealers in precious metals, stones, or jewels

BSA COMPLIANCE

SAR filings are mandatory according to the following filing thresholds:

- **\$2,500 MSBs**
- **\$5,000 (all filers) for a known subject**
- **\$25,000 (all filers) for an unknown subject**

All filers also may file SARs voluntarily for a suspicious transaction of any dollar amount.

LAW ENFORCEMENT USE OF SARS

A user may use FinCEN data obtained via a SAR consistent with the agency's legal authority and for the purposes of identification, investigation, or prosecution of possible or actual violations of criminal law that fall within the agency's jurisdiction.

Casual browsing of the Portal to run a query on anyone not related to an investigation is not permitted.

LAW ENFORCEMENT USE OF SARs

Law enforcement personnel may use information obtained from a SAR in connection with an official investigation.

FinCEN has agreements with law enforcement in every state as well as most federal law enforcement agencies.

State and Agency Coordinators

LAW ENFORCEMENT USE OF SARs (CONT'D)

SARs may not be:

- ▶ Used in an affidavit to support a warrant
- ▶ Given to anyone outside of the investigation
- ▶ Disclosed in discovery or in press releases

Generally, **cannot** be used in open court.

Safeguarding the confidentiality of SARs is especially important because they describe suspected, not proven, illegal activity.

CONFIDENTIALITY OF SARs

Unauthorized Disclosure of SARs is a Violation of Federal Law

31 U. S. C. Section 5321 – Civil Penalties

31 U.S. C. Section 5322 – Criminal Penalties

SARS AS AN INVESTIGATIVE TOOL

- Supporting documentation may be referenced in a SAR.
- Supporting documents can be requested without a subpoena.
- Potential to “connect the dots” between subjects and victims.
- Can be a proactive tool for early intervention/loss prevention.

CONTACT FINCEN

If a law enforcement investigator has a question on the use and disclosure of a SAR, contact the FinCEN Resource Center.

FRC@fincen.gov

Peter Gallagher
Deputy Attorney General - Prosecutor
New Jersey Division of Criminal Justice, Financial
and Computer Crimes Bureau

HOW IS A SAR CREATED?

Financial institutions in certain industries are *required* to file a SAR when they detect a known or suspected violation of federal law or regulation or a suspicious activity related to money laundering, terrorist financing, or *other criminal activity*.

PRACTICAL CONSIDERATIONS FOR LAW ENFORCEMENT USE OF SARs IN CRIMINAL INVESTIGATION AND PROSECUTION

How law enforcement obtains a SAR

Confidentiality of SARs

Fact patterns and “Let the SARs Be With You”

SARs as an investigative roadmap

Subpoena power

Charge your case

HOW DOES LAW ENFORCEMENT OBTAIN A SAR?

Reactively – Financial institution contacts a law enforcement agency with SAR notification.

Proactively –

- ▶ Law enforcement agency initiates FinCEN query after a criminal investigation is opened.
- ▶ SAR Review Team or law enforcement investigator initiates opening of an investigation based on intel obtained from query.

UNAUTHORIZED DISCLOSURE OF SARS

Violation of Federal Law

Contact FinCEN or your state or agency coordinator for guidance.

FACT PATTERNS & “LET THE SARS BE WITH YOU”

Patterns in Elder Financial Exploitation (EFE) cases:

- ▶ Tell the story
- ▶ Erratic or unusual banking transactions
- ▶ Frequent large withdrawals, including from ATMs
- ▶ Debit transactions in an inconsistent pattern for the elder
- ▶ Wire transfers in large sums of money

SARS – AN INVESTIGATIVE ROADMAP – CONNECTING THE DOTS

- Who
- What
- When
- Where

SUBPOENA POWER

Issue subpoena for bank records for the elder and any suspects

Issue subpoenas for any related entities

Follow the money

CHARGE YOUR CASE

Investigative results will determine the proper charges.

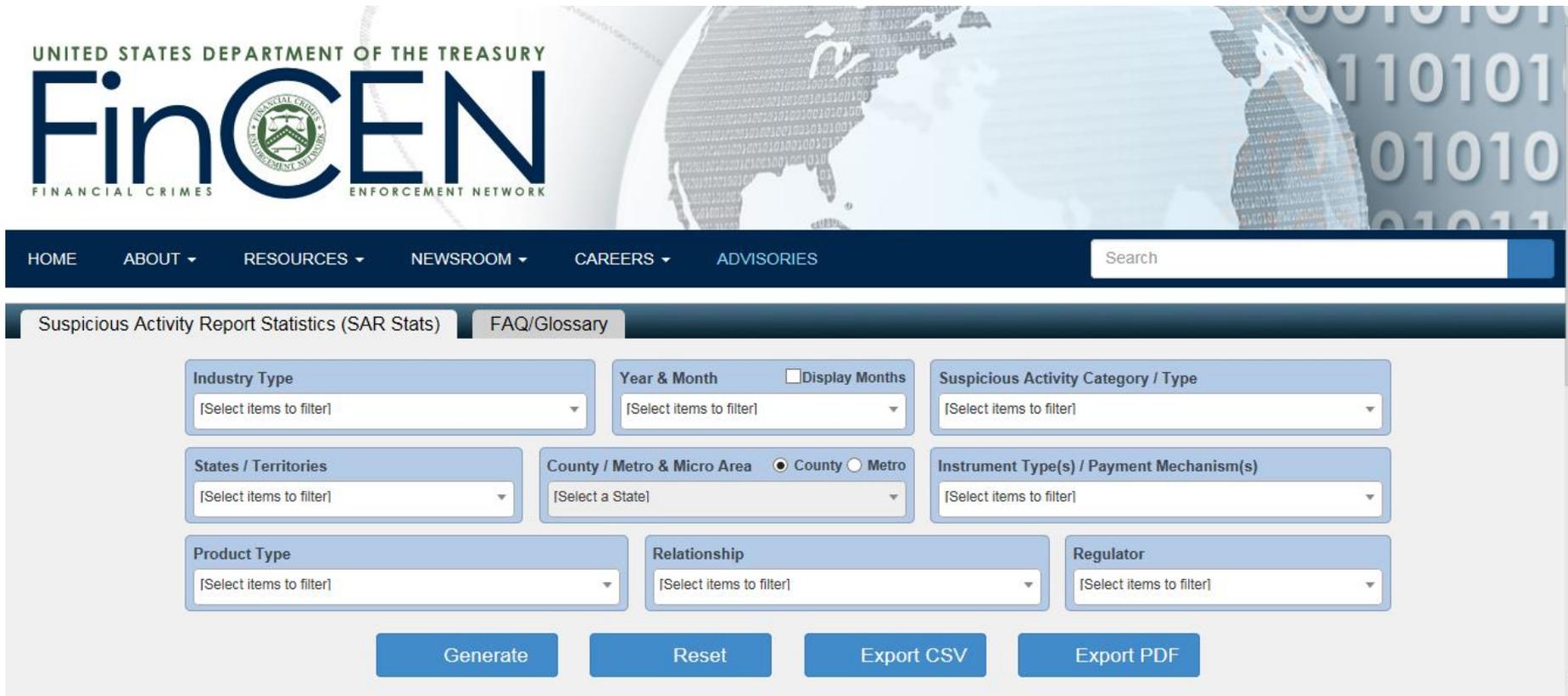
EFE cases often result in the following charges:

- ▷ Theft
- ▷ Fraud
- ▷ Identity theft
- ▷ Theft by deception
- ▷ Misapplication of entrusted property
- ▷ Money laundering

FINCEN SAR DATA BY COUNTY

<https://www.fincen.gov/reports/sar-stats>

Search criteria can be selected and narrowed down.



The screenshot shows the FinCEN website's search interface for Suspicious Activity Report (SAR) statistics. The header includes the FinCEN logo (United States Department of the Treasury, Financial Crimes Enforcement Network) and a navigation menu with links for HOME, ABOUT, RESOURCES, NEWSROOM, CAREERS, and ADVISORIES. A search bar is located in the top right corner. Below the navigation, there are two tabs: "Suspicious Activity Report Statistics (SAR Stats)" and "FAQ/Glossary". The main search area contains several filter boxes:

- Industry Type**: [Select items to filter]
- Year & Month**: [Select items to filter] with a checkbox for "Display Months".
- Suspicious Activity Category / Type**: [Select items to filter]
- States / Territories**: [Select items to filter]
- County / Metro & Micro Area**: [Select a State] with radio buttons for "County" (selected) and "Metro".
- Instrument Type(s) / Payment Mechanism(s)**: [Select items to filter]
- Product Type**: [Select items to filter]
- Relationship**: [Select items to filter]
- Regulator**: [Select items to filter]

At the bottom of the search area, there are four buttons: "Generate", "Reset", "Export CSV", and "Export PDF".

Jenefer Duane

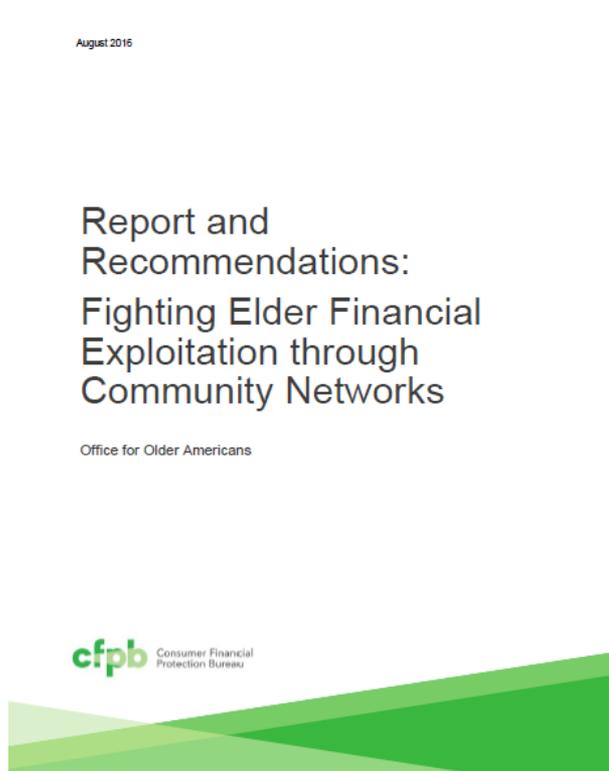
Senior Program Analyst

Office for Older Americans, CFPB

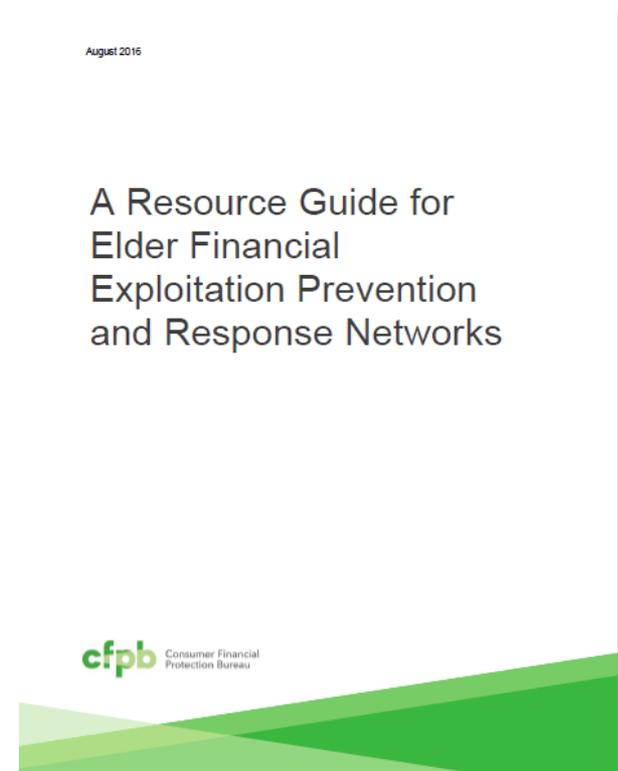


Released on August 23, 2016

Report and Recommendations



Resource Guide



What is a network?

A sustained, and largely voluntary, collaborative effort or partnership that works to prevent, detect, and/or respond to elder financial exploitation.

Network Benefits

- For seniors, professionals, and communities
- Improve response to cases of financial exploitation
- Increase reporting of cases
- Enhance members' skills and capacity to address financial exploitation
- Improve coordination, including the use of community resources

Multidisciplinary Teams (MDT)

- Provide resources, consultation, and advice regarding elder abuse cases
- Bring together experts from multiple disciplines
- Provide education or training to members and the public

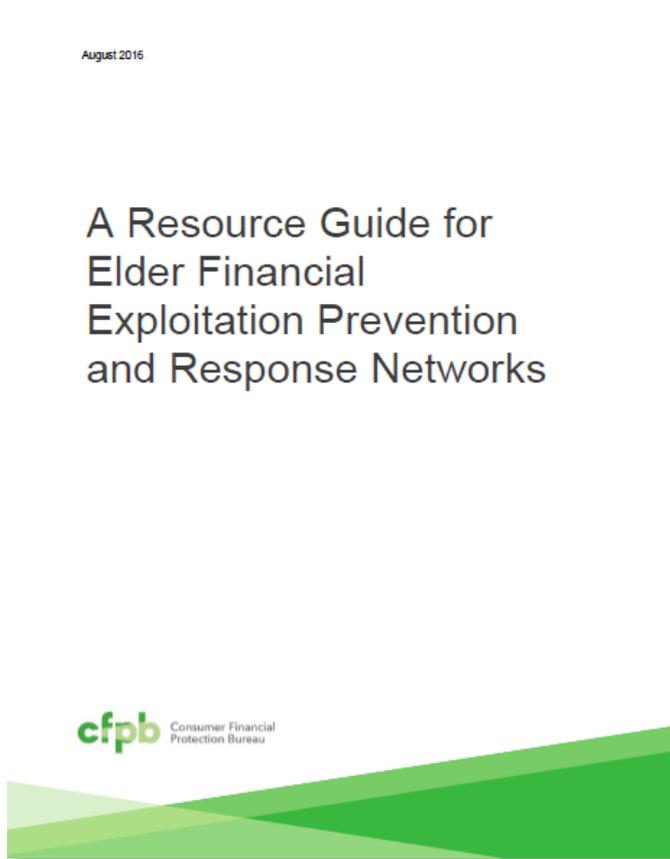
Financial Abuse Specialist Teams (FAST)

- A type of specialized MDT focused on financial exploitation
- Provide consultation and support to agencies that investigate cases of elder financial exploitation
- Members are composed of public agencies, but may include private sector experts

Other Types of Networks

- Often known as task forces or coalitions
- Focus on elder abuse and elder financial exploitation
- Engage in a variety of activities ranging from education to advocacy, and include case consultation and review
- May focus on abuse of vulnerable adults of all ages

Resource Guide for Networks



Tips and resources on:

- Steps for starting a network
- Funding and sustainability
- Traits of successful network coordinators
- Organizing effective meetings
- Education and case review

Money Smart for Older Adults

- An awareness program developed in collaboration with the FDIC
- Content on common issues facing seniors, including how to identify a potential fraud or scam or other forms of exploitation
- Curriculum for trainers
- Resource Guide available in bulk at no charge
- Available in Spanish

Money Smart for Older Adults Module Topics

- Common Types of Elder Financial Exploitation
- Identity Theft
- Medical Identity Theft
- Scams Targeting Homeowners
- Scams Targeting Veterans' Benefits
- Planning for Unexpected Life Events
- How to Be Financially Prepared for Disasters

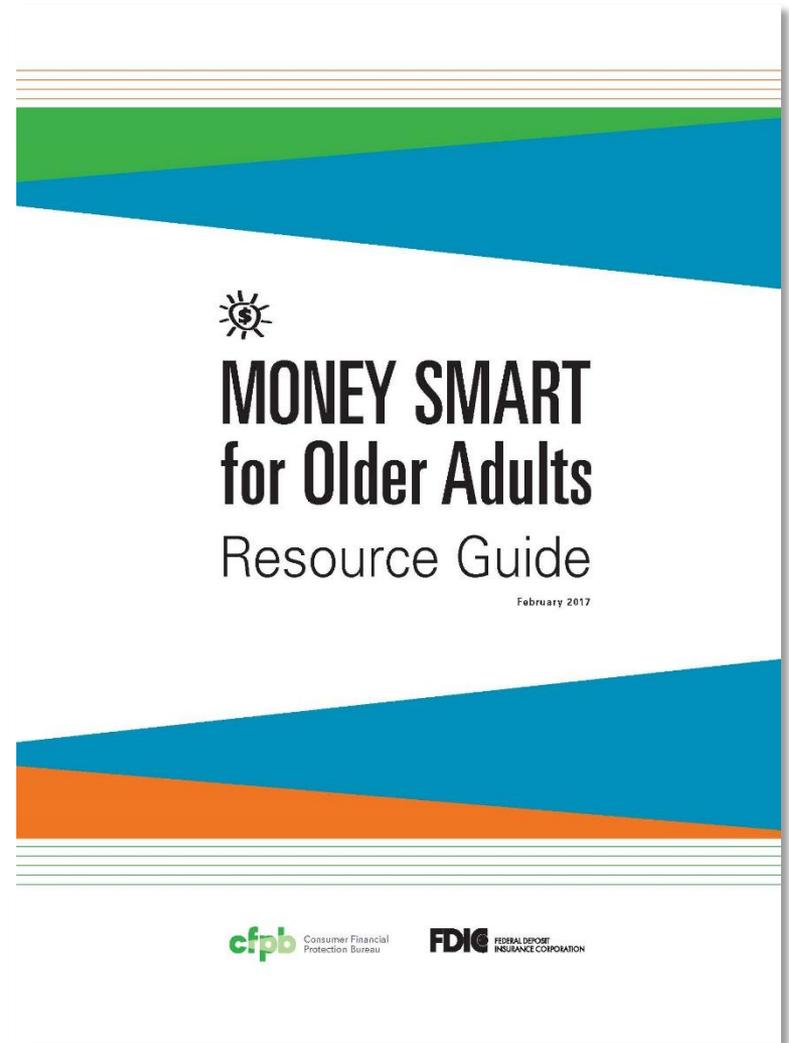
Money Smart for Older Adults

- Instructor Guide and Presentation slides available at

[Fdic.gov/moneysmart](https://www.fdic.gov/moneysmart)

- Order copies of the Resource Guide at

<https://go.usa.gov/xXCvA>



Contact

Link to Memorandum

<https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/memorandum-financial-institution-and-law-enforcement-efforts-combat-elder-financial-exploitation/>

To find a local network:

Contact your Area Agency on Aging

www.eldercare.gov

Office for Older Americans

Email us:

Olderamericans@cfpb.gov

Find resources and join the mailing list:

consumerfinance.gov/practitioner-resources/resources-for-older-adults/

THANK YOU!

QUESTIONS & SUGGESTIONS

can be emailed to

elder.justice@usdoj.gov