



**EMPLOYEE RETIREMENT INCOME SECURITY ACT
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ELDER FINANCIAL EXPLOITATION: A RISK TO RETIREMENT SECURITY

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Risks to retirement security are many and well documented: greatly increased lifespans; vastly insufficient savings; widespread financial illiteracy; and soaring health care costs among others. But there is one risk that is seldom taken into account when retirement planning and retirement policies are considered: the risk of elder financial exploitation.

How Common is Elder Abuse?

Elder abuse of all types is much more prevalent, much more lethal and much more expensive than previously known:

- Approximately one in ten persons 60 years and older experienced elder abuse, neglect or exploitation within the past twelve months;¹
- Older victims of any type of abuse or neglect are three times more likely to die than their non-abused age cohorts;²
- Abuse victims utilize medical services at higher rates;³

¹ Two recent studies found self reported rates of elder abuse from 7.6% (Lachs) to 10% (Acierno). Both studies utilized randomized telephone surveys, which by their nature exclude persons with dementia or without telephones, as well as victims too afraid to share their stories. The difference in the rates is due to the more restrictive definitions of abuse used in the Lachs study.

Acierno, Ron et al. *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*. 2009. National Institute of Justice.

Lachs, Mark, et al. (2011) *Under the Radar: New York State Elder Abuse Prevalence Study* Final Report. Lifespan of Greater Rochester, Inc.; Weill Cornell Medical Center of Cornell University and New York City Department for the Aging.

² Lachs, M. et al. (1998). *The Mortality of Elder Mistreatment*. Journal of the American Medical Association, Vol 280, No. 5, 428 – 432.

- Elder abuse victims are four times more likely to go into nursing homes;⁴
- Almost one in ten financial abuse victims will turn to Medicaid as a direct result of their own monies being stolen from them.⁵

So the most careful and frugal retiree has about a 10% chance of losing it all, often literally overnight, to fraud. Perhaps as devastating as losing hard won assets, and the resulting precipitous decline in quality of life, is the loss of trust in oneself and in one's fellow human beings. Many older victims are broken not only financially but also psychologically and spiritually.

To put these figures in perspective, the prevalence of coronary heart disease in 2006 was 7.6%,⁶ the exact same rate as Dr. Lachs found for elder abuse. Let us contemplate the attention paid to heart disease vs. that paid to elder abuse, although the latter is also an extremely serious and deadly public health problem. And if elder abuse is ever considered by the policy makers and the general public, it is usually assumed to be a problem associated with nursing homes. Abuse, neglect and exploitation do occur in long term care facilities, committed not only by staff but also by other residents and by residents' family members.⁷ But 97% of persons 60 and over live in their own homes, not in facilities, so the vast majority of elder abuse occurs there.⁸

One reason for this lack of attention is the severe underreporting of elder abuse. In the New York State Elder Abuse Prevalence Study, only one in 24 cases of elder abuse was ever reported to any outside agency; in the case of financial abuse, it was only one in 44. Interviewed persons over 60 reported that financial abuse was the most common form they experienced.

From the above, it is clear that elder abuse is not only a significant criminal, health, and social problem causing untold suffering, it is also a huge, but currently invisible, drain on Medicare and Medicaid, two entitlement programs, which as we know, are under intense scrutiny right now.

³ Koss, M. P., Heslet, L. *Somatic consequences of violence against women* Arch Fam Med 1992. Sep; 1 (1):53-9. Archives of Family Medicine, 1, 53-59. (those who had experienced abuse accessed the health care system 2 to 2.5 times as often).

⁴ Lachs, Mark. Testimony before the Senate Special Committee on Aging. March 2, 2011. Washington, DC.

⁵ Jilene Gunther. *The Utah Cost of Financial Exploitation*. March, 2011. Utah Division of Aging and Adult Services.

⁶ American Heart Association. Heart Attack and Stroke Statistics 2009 Update at a Glance.

<http://www.nanocorthx.com/Articles/HeartDiseaseStrokeStatistics.pdf>.

⁷ Lachs M, Bachman R, Williams CS, O'Leary JR. *Resident-to-resident elder mistreatment and police contact in nursing homes: Findings from a population-based cohort*. J Am Geriatr Soc. 2007;55(6):840-5.

⁸ 2006 – 2007 census data: 1.8 million people live in nursing homes, 52.4 million people are age 60 and older = 3.4% of seniors in LTC.

Increased awareness of elder abuse, preventive steps, reporting, investigation and intervention measures could reduce those costs while protecting the well being and assets of victims.

Pensions are of course the regular payment of monies to mostly elder persons, and represent a significant source of their incomes. These funds are at risk like all others once they are deposited in the beneficiary's bank account or are cashed. Before direct deposit became so commonplace, for example, it was not unusual for persons on Social Security to receive visits by their children or grandchildren on the 3rd of every month to demand money. No doubt the same is true, if less obvious, on the date pension checks are direct deposited.

I should note that younger adults with disabilities are also at risk for financial abuse, so everything said here applies to them as well. In addition, it is important to realize that financial exploitation is often the motivation for physical and emotional abuse and for neglect.

What forms does elder financial abuse take? Who perpetrates elder financial abuse?

- Surprising to many, most elder abuse is committed by the older persons' own family members, most often their adult children or grandchildren.⁹ Trusted friends, neighbors and caregivers are also abusers. Simple theft; threats and intimidation, and forcing the elder to sign over assets are all commonly used tactics. Often the abuser has a drug, alcohol or gambling addiction; some people just feel entitled to take from others for their own benefit. Common excuses include, "she'd want me to have it," "I plan to pay it back," and "it was a gift."
- Misusing a Power of Attorney is an especially common method of stealing an elder's assets. Many agents seem to regard the principal's money as their own. If the principal has dementia, and there is no one around to keep an eye on the situation, the agent can quickly run through considerable amounts of money. Unscrupulous persons sometimes force an older person to execute a power of attorney or have a confused older person sign a power of attorney without understanding what they are doing. There are steps one can take to mitigate this risk; e.g. by requiring the agent to make regular accountings to a third party and by being very specific about the powers granted to the agent, for example, they can pay certain bills but cannot give gifts.

⁹ 90% of elder abuse and neglect incidents are by known perpetrators, usually family members. National Center on Elder Abuse, 1994 The National Elder Abuse Incidence Study: Final Report Washington, DC: Administration for Children and Families & Administration on Aging, US Department of Health and Human Services.

- Elder financial abuse may be perpetrated by trusted advisors: attorneys, financial planners, insurance sales persons and the like. The sale of inappropriate annuities, for example, ones which do not mature until the purchaser is well into his or her 90's or even over 100, is one example, and in many cases these are connected to reverse mortgages or the VA's Aid and Assistance Program.
- A significant amount of financial exploitation is carried out by professional con artists who prey upon vulnerable persons through age old schemes such as pigeon drops and sweetheart scams, to sweepstakes fraud, internet scams and "send your grandchild money" ruses.

Why are older persons at such great risk of financial abuse?

- Health problems may lead to increased dependence on others for care;
- Many older persons fear outliving their money and becoming a burden on their families; such fears may make them more vulnerable to "double your money quick" and other such schemes;
- Isolation is a risk factor for every type of abuse at every age, and many older persons are isolated by factors outside their control: they've outlived their contemporaries; their adult children may live far away; they may lose the ability to drive and/or to walk; etc. In addition, one of the first tactics used by all abusers is to isolate their victims, cutting them off from others who care about them and who might notice what is going on. An abusive adult child, for example, may tell his parent that only he really cares for them and their other children are only interested in their money.
- Family ties, guilt, the needs of a troubled child or grandchild, create conditions where the older person feels obligated, or is coerced, into giving more than they can afford;
- Aging brains may not process information and risk in the same way as younger brains. A subset of older adults, who have no diagnosable neurological or psychiatric disease (i.e. they test as normal on cognitive assessments) may experience disproportionate, age-related decline in neural systems crucial for complex decision-making. Older adults in this category fall prey to the promise of an immediate reward or a simple solution to a complicated problem. They fail to detect the longer-range adverse consequences of their

actions. Finally, they may assume long-term benefits in situations where there are none.¹⁰

- Cognitive decline starts first in the prefrontal cortex, where executive functioning takes place – the ability to plan, to carry out decisions and to understand the consequences of those decisions; persons with mild cognitive impairment (one in three persons 71 and older) make significantly more mistakes on a financial capacity instrument;¹¹ and persons with dementia (almost one in two persons age 85 and older – the fastest growing population group) are obviously unable to manage their own financial (or any other) affairs;
- Older people are “where the money is.” Older persons control a lot of wealth, and even small nest eggs and incomes are attractive to predators. The rewards are potentially great, and the risk of discovery and punishment of any kind is relatively low.

Who responds to elder abuse?

Every state has a state authorized Adult Protective Services (APS) Program which under state law is responsible to receive and respond to reports of elder abuse and abuse of adults with severe disabilities aged 18 – 59. Because there is no federal support for APS, and no federal agency has responsibility for APS, the definitions, eligibility requirements, practice standards, training programs, etc., can differ significantly from state to state, and even from county to county. But in general, APS investigates reports which meet its state’s definition of “vulnerable adult” and intervenes to protect the victims to the extent possible. Victims with cognitive capacity can refuse services while APS can take steps to protect persons who lack capacity.

In all but four states, a wide range of professionals are required to report suspected elder abuse to APS; unfortunately, in only eleven states are banks required to report. Privacy and other concerns can be addressed, as has been done in California, to protect banks which report. I do not know of any state which requires plan administrators to report suspected abuse to APS, but perhaps this should be considered. Certainly it would be beneficial for administrators to be trained to be aware of elder financial abuse and to know how to report it, and to understand the role, responsibilities as well as the limits of Adult Protective Services.

¹⁰ Densburg, Natalie and Harshman, Lyndsay. *Why So Many Seniors Get Swindled: Brain Anomalies and Poor Decision-making in Older Adults*. The Dana Foundation. August 10, 2009
<http://www.dana.org/news/cerebrum/detail.aspx?id=23106>.

¹¹ Kathleen Fackelmann, *Early-Alzheimer's patients flunk financial study*. USA TODAY, March 10, 2008.
http://www.usatoday.com/news/health/2008-03-10-alzheimers-money_N.htm.

NAPSA, with 700 plus members from across the country, represents APS programs, professionals and clients. NAPSA, which hosts the only national conference on elder abuse, abuse of younger adults with disabilities and APS, has been a partner in the Administration on Aging National Center on Elder Abuse. In 2010 NAPSA sponsored the first *National Summit on Elder Financial Exploitation* in San Diego, California; we will hold the second one in Buffalo, New York on September 23, 2011 at the downtown Hyatt Hotel.

What can be done about elder financial abuse?

On a personal level:

- Be aware that it can happen to you and will happen to someone you know. Undoubtedly you can already think of an uncle, a grandparent, a neighbor or a friend who has been taken advantage of in their old age. Your education, experience and wealth may reduce, but do not eliminate, your risk. For example, the parents of a former head of the SEC, Christopher Cox, were swindled out of over \$2 million dollars without him, or apparently they, realizing what was happening until it was too late. There are countless similar stories.
- Take steps to lower your own risk by maintaining and adding to your network of social connections; there is nothing more important.
- Give very careful thought to your durable power of attorney – whom you name; you may want to require certain regular accounting and to set limits on the agent's powers; you should provide a copy of the document to your financial institutions and trusted confidants; always name a successor agent and regularly update and re-issue the document.

On a policy level:

- Increase awareness of the risk among beneficiaries and plan administrators by including information about elder financial abuse in educational materials and presentations; the one in ten chance of losing your money to fraud and abuse should be included as a risk along with data on longevity and inflation.
- Consider training plan administrators on the risk factors and indicators, and what to do when they spot them: flag the account for further investigation; talk with the beneficiary; etc. Perhaps additional safeguards should be considered regarding Powers of Attorney.
- Two efforts in two different systems are worth considering and learning from:

- The **BITS Elder Fraud Prevention Toolkit**, an initiative created by Wachovia Bank and Philadelphia APS. Before Wachovia was bought out by Wells Fargo, they had trained their customer service personnel in 22 states to identify elder financial abuse, to report any suspicions to the loss prevention section which would then investigate (70% of tellers' suspicions were substantiated) and would report cases to APS for investigation and social work. The program saved tens of millions of dollars in older persons' assets and saved an unknown amount of Medicaid and Medicare costs, not to speak of the seniors' well being and quality of life.

The program was adopted by BITS, an arm of the Financial Services Roundtable, and can be implemented free of charge by any bank willing to do so. The materials contain a wealth of information on different types of financial exploitation and red flags to be aware of which may be of interest to pension plan administrators. The toolkit is available at:

<http://www.bitsinfo.org/downloads/Publications%20Page/VulnerableAdultsToolkitPresentationFeb2010.pdf>.

- The **Investor Protection Trust Elder Investment Fraud and Financial Exploitation Program (EIFFE)** which is training physicians and other clinicians to a) be aware of elder financial abuse and the increased risk mild cognitive impairment carries; b) screen for mild cognitive impairment and financial abuse; c) report any abuse uncovered to APS and/or to the state's securities regulators. The "pocket guide" is an excellent starting point to address elder financial exploitation. It is available at: <http://www.investorprotection.org/learn/?fa=eiffe>.

In conclusion, retirees are at risk of elder financial exploitation, and the more awareness can be raised, reporting, investigation and interventions can be supported, and preventive measures implemented, older persons, their assets and the public treasury can be protected. The Department of Labor could contribute to these efforts by raising awareness and promoting appropriate responses by plan administrators and also by promoting beneficiary education. Providing some guidelines on creating powers of attorney, for example, would be a good place to start.

Thank you.