

**NATIONAL GUIDELINES  
TO IMPLEMENT THE  
*2013 FEDERAL INTERAGENCY  
GUIDANCE ON PRIVACY LAWS AND  
REPORTING FINANCIAL ABUSE OF  
OLDER ADULTS***

DEVELOPED BY THE PHILADELPHIA CORPORATION FOR AGING AND  
THE NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION

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THE HUGUETTE CLARK FAMILY FUND FOR PROTECTION OF ELDER

Updated January 2016



# **National Guidelines to Implement the 2013 Federal Interagency Guidance on Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults**

## **Background**

Elder financial exploitation is a substantial and complex social, justice and health problem. According to recent research:

- 10%, or about 5 million older persons, are abused, neglected and/or exploited each year, many of them in multiple ways.<sup>1</sup>
- Abused seniors are three times more likely to die prematurely.<sup>2</sup>
- Victims and family lose lifetime savings, often almost overnight, and may suffer physical and other types of abuse related to exploitation.
- Financial institutions lose significant amounts in deposits, money which is seldom recovered.
- Almost one in ten financial abuse victims may have to turn to Medicaid as a direct result of their own monies being stolen.<sup>3</sup>
- Only one in 44 elder financial exploitation case is ever reported.<sup>4</sup>
- Cognitive impairment reduces financial capacity, increasing the risk of financial exploitation.

Financial exploitation causes economic losses for Medicare, Medicaid, the financial services industry, caregivers, and families as well as older people themselves; and can lead to impoverishment and homelessness. As older persons are the fastest growing population group, elder abuse is expected to continue to increase in the coming years.<sup>5</sup>

<sup>1</sup> Acierno, R. e. (2010). Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health*, 100(2): 292-297.

<sup>2</sup> Lachs, M.S., Williams, C.S., O'Brien, S., Pillemer, K.A. & Carlson, M.E. (1998). The mortality of elder mistreatment. *Journal of the American Medical Association*, 280 (5), 428-432.

<sup>3</sup> Gunther, J., The Utah Cost of Financial Exploitation. Utah Division of Aging and Adult Services. March, 2011.

<sup>4</sup> Lifespan of Greater Rochester, Weill Cornell Medical Center of Cornell University, New York City Department for the Aging. (2011). Under the Radar: New York State Elder Abuse Prevalence Study, Final Report. Lifespan of Greater Rochester, Inc.

<sup>5</sup> Vincent, G. &. (2010). The Next Four Decades: The Older Population in the United States: 2010 to 2050. Washington DC: US Census Bureau.

## **Adult Protective Services**

Adult Protective Services, or APS, is statutorily authorized under state and tribal law to receive and investigate reports of elder abuse, including financial exploitation, and to protect the victims. In almost all states, APS serves all adults with significant disabilities age 18 and above; in a few states, any older person may be served based on advanced age alone (i.e., it is not necessary for a person over age 60 or 65 to have a disability); and in a few states APS serves older persons only.

APS' responsibilities include investigating the alleged abuse, determining if it is occurring, and working with the client to stop the abuse and to improve the victim's safety and well-being. APS conducts "authorized civil investigations" as mentioned in the privacy law exceptions in the Gramm-Leach-Bliley Act.

In order to carry out these responsibilities, *APS must have access to current, accurate information about the client's financial situation in order to adequately investigate the alleged financial exploitation and to mitigate the client's future risk.*

Twelve states specifically mandate financial institutions to report suspected elder abuse to APS, and another fourteen require "all persons" to report, so bankers and other financial professionals must report in a total of twenty-six states. They may voluntarily report with immunity for good faith in all states.

## **Financial Institutions**

Financial institutions play an important role in preventing and intervening to stop financial exploitation. Banks and investment advisors are in a position to spot suspicious activities in an older person's account; in over half the states financial institutions are required to report suspected abuse; and financial institutions have a duty and a desire to protect their customers' assets. Partnering with APS creates a significant opportunity to prevent and reduce elder financial abuse while also protecting their customers' assets and funds on deposit.

## **Goals of the Guidelines**

1. Clarify that a report of elder financial exploitation to APS by a financial institution necessitates that the institution also provide requested records promptly and completely; i.e. a report is incomplete without the needed records.
2. Promote standardization of practice by both financial institutions and APS in responding to, and cooperating on, financial exploitation cases.
3. Promote standardization of APS requests for client records from financial institutions through the creation and dissemination of a standard form to be used nationwide.
4. Promote knowledge of the federal guidance on reporting elder abuse, these guidelines and the standard form to as many financial institutions as possible throughout the country.
5. Encourage the submission of SARS on elder abuse cases.
6. Facilitate productive working relationships between APS and financial institutions.

## **Guidelines for APS**

The state or local APS Program recognizes:

1. *The responsibility to carry out thorough and timely investigations of reported elder abuse, neglect and exploitation and to intervene to protect the victims and their assets;*
2. The benefits of using the standardized request for records form in order to promote consistency of practice and to increase financial institutions' understanding of the role and authority of APS;
3. The need to be courteous and respectful of the financial institutions' time constraints;
4. The desirability of forming positive working relationships with financial institutions' personnel and educating the financial services industry about APS and its roles and responsibilities.

## **Guidelines for Financial Institutions**

The financial institution recognizes:

1. The serious problem of elder financial exploitation;
2. The bank's responsibility and authority to report suspected elder abuse, neglect and exploitation to APS;
3. The need to provide as much detailed information as possible in the report, including informing APS of the bank branch, specific teller, etc. who raised the concerns;
4. APS' responsibility and authority to investigate reports of elder abuse, neglect and exploitation;
5. The GLBA exceptions which allow the sharing of records pursuant to an authorized civil investigation by a government authority and to prevent fraud;
6. *The institution's responsibility to cooperate with APS in the investigation by providing the alleged victim's account records, as requested, in a timely and complete manner;*
7. The need to be courteous and respectful of APS' time constraints;
8. The desirability of forming positive working relationships with APS personnel and appointing a liaison person to work with APS whenever feasible;

## **Sample Forms**

Sample documents are posted below that include two state examples of the above forms which have been modified/adapted for specific use in both Florida and Oklahoma. Also included are two sample letters: the first can be used to introduce the form and APS to local banks, and the second can be used when financial institutions decline to comply with records requests.



## OFFICIAL REQUEST FOR CUSTOMER RECORDS

Pursuant to Gramm-Leach-Bliley Act (GLBA)(15U.S.C.§6802(e)(8); and 15U.S.C. §6802(e)(3)(B) and Florida Statutes 415.1045(4)(a):

I, \_\_\_\_\_, an Adult Protective Services Investigator operating under the laws of the \_\_\_\_\_, am conducting an authorized investigation of alleged financial exploitation of an older person (vulnerable/dependent adult).

I hereby request records from \_\_\_\_\_ for all accounts relating to \_\_\_\_\_ for the period of \_\_\_\_\_ to \_\_\_\_\_, including but not limited to:

- Bank statements for ALL accounts, including checking, savings, money market, certificates of deposit
- Copies of all checks and withdrawals from the account(s) (front and back) including offsets
- Copies of all deposits and deposit items
- Customer Profile showing all accounts, including opening and/or closing dates All Power of Attorney documents and signature cards
- Statements for any loans, lines of credit, or credit cards and copies of any cash advances
- Other: \_\_\_\_\_

Please provide these records on or before \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Address

\_\_\_\_\_  
Other Agency ID (if applicable)

\_\_\_\_\_

## Gramm-Leach-Bliley Act

### **15U.S.C. §6802-Obligations with respect to disclosures of personal information**

#### (e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(3)(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

### **415.1045 (4) (a), Florida Statutes – Medical, Social, or Financial Records or Documents**

The protective investigator, while investigating a report of abuse, neglect, or exploitation, must have access to, inspect, and copy all medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility which are relevant to the allegations under investigation, unless specifically prohibited by the vulnerable adult who has capacity to consent.

## OFFICIAL REQUEST FOR CUSTOMER RECORDS

**Pursuant to Gramm-Leach-Bliley Act (GLBA)(15U.S.C.§6802(e)(8); and 15U.S.C. §6802(e)(3)(B)) and Oklahoma Protective Services for Vulnerable Adults Act §43A-10-105:**

I, \_\_\_\_\_, an Adult Protective Services Investigator operating under the laws of the \_\_\_\_\_, am conducting an authorized investigation of alleged financial exploitation of an older person (vulnerable/dependent adult).

I hereby request records from \_\_\_\_\_ for all accounts relating to \_\_\_\_\_ for the period of \_\_\_\_\_ to \_\_\_\_\_, including but not limited to:

- Bank statements for ALL accounts, including checking, savings, money market, certificates of deposit
- Copies of all checks and withdrawals from the account(s) (front and back) including offsets
- Copies of all deposits and deposit items
- Customer Profile showing all accounts, including opening and/or closing dates All Power of Attorney documents and signature cards
- Statements for any loans, lines of credit, or credit cards and copies of any cash advances
- Other: \_\_\_\_\_

Please provide these records on or before \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Address

\_\_\_\_\_  
Other Agency ID (if applicable)

\_\_\_\_\_

## **Gramm-Leach-Bliley Act**

### **15U.S.C.§6802-Obligations with respect to disclosures of personal information**

#### **(e) General exceptions**

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(3)(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

**Adult Protective Services (APS) is properly authorized, under the state statute cited below, to carry out civil investigations of elder/vulnerable adult abuse, neglect and financial exploitation.**

### **Oklahoma Protective Services for Vulnerable Adults Act**

#### **§43A-10-105. Investigation of report.**

A. Upon receiving a report of alleged abuse, neglect, or exploitation of a vulnerable adult pursuant to the provisions of the Protective Services for Vulnerable Adults Act, the Department of Human Services shall make a prompt and thorough investigation.

APS AGENCY LETTERHEAD

**OFFICIAL REQUEST FOR CUSTOMER RECORDS**

Pursuant to Gramm-Leach-Bliley Act (GLBA)(15U.S.C.§6802(e)(8); and 15U.S.C. §6802(e)(3)(B)) and XXX State Statute XXX:

I, \_\_\_\_\_, an Adult Protective Services Investigator operating under the laws of the \_\_\_\_\_, am conducting an authorized investigation of alleged financial exploitation of an older person (vulnerable/dependent adult).

I hereby request records from \_\_\_\_\_ for all accounts relating to \_\_\_\_\_ for the period of \_\_\_\_\_ to \_\_\_\_\_, including but not limited to:

- Bank statements for ALL accounts, including checking, savings, money market, certificates of deposit
- Copies of all checks and withdrawals from the account(s) (front and back) including offsets
- Copies of all deposits and deposit items
- Customer Profile showing all accounts, including opening and/or closing dates All Power of Attorney documents and signature cards
- Statements for any loans, lines of credit, or credit cards and copies of any cash advances
- Other: \_\_\_\_\_

Please provide these records on or before \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Address

\_\_\_\_\_  
Other Agency ID (if applicable)

\_\_\_\_\_

## Gramm-Leach-Bliley Act

### **15U.S.C. §6802-Obligations with respect to disclosures of personal information**

#### (e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(3)(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

**Adult Protective Services (APS) is properly authorized, under the state statute cited below, to carry out civil investigations of elder/vulnerable adult abuse, neglect and financial exploitation.**

§

***NOTE TO APS: This letter is to introduce the form to local banks. If you are sending the request to a national bank's central subpoena processing unit just send the form without the letter.***

Agency Letterhead

Date

Bank Official's Name and Address

Dear [Bank Officer]:

I would like to introduce myself and my agency, Adult Protective Services (APS) [full name and location – e.g. if regional office indicate that].

APS is a state [county/other] agency which is authorized under [state statute XXX, provide full citation] to carry out investigations of reported elder and vulnerable [dependent/at-risk] abuse, neglect and financial exploitation.

When investigating financial exploitation, it is often necessary for the investigator to review the client's bank records in a timely manner. Whenever possible, APS obtains the client's consent.

Even without client consent, however, APS is authorized under the federal Gramm-Leach-Bliley Act to obtain a bank customer's records, because APS falls under the law's exceptions in that:

- 1) the purpose of viewing the records is to prevent actual or potential fraud, and
- 2) *APS is authorized under state law to carry out civil investigations.*

Please see the attached standard form created for APS to request a client's bank records. On the reverse side is the Gramm-Leach-Bliley Act language setting forth the exceptions cited above, and also the [your state] APS statutory language regarding APS' authority to conduct civil investigations of elder/vulnerable adult financial exploitation.

Upon receipt of this form from an APS investigator, we hope that your staff will promptly provide the requested records so that a full investigation can be conducted within the program's deadlines. This will help to stop the financial losses to the client and bank and will help APS take other measures to protect the client and their overall well-being.

We look forward to working with you and your staff to protect the assets and well-being of your customers who have been referred to APS for alleged financial abuse. If you have any questions or would like to discuss this further, please contact me at [ ].

Sincerely,

[Signature]

[Your name]

Supervisor [or other title]

**NOTE TO APS: This letter is to reply to a bank which has refused to release records.**

Agency letterhead

Date

Bank Official's Name and Address

RE: Denial of the attached APS Request for Client Records

Dear [Bank Officer]:

In response to your recent correspondence [phone call/etc.], please note that a careful reading of the Gramm-Leach-Bliley Act makes plain that financial institutions are indeed permitted to release client records without the client's permission and without a subpoena under the following conditions:

**15 U.S.C. §6802 - Obligations with respect to disclosures of personal information**

*(e) General exceptions*

**Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—**

**(3)(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;**

**(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law (emphasis added).**

Even without client consent, Adult Protective Services (APS) is authorized under these provisions to obtain a bank customer's records in the course of investigating financial abuse of an older or vulnerable adult, because APS falls under the law's exceptions in that:

1. Its purpose in viewing the records is to "*protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability*"; and
2. APS is authorized under state law to carry out civil investigations of elder/vulnerable [dependent, at-risk] adult abuse, neglect and financial exploitation [insert state statute citation and language from back of form].
3. The requirement for a subpoena is an alternative and not a requirement when complying with a properly authorized civil investigation, to wit: "*to comply with a properly authorized civil . . . investigation OR subpoena OR summons*" (emphasis added).

In light of the clear language in GLBA and APS's statutory authority to conduct a "properly authorized civil . . . investigation", please comply with the attached request for records in the timeframe specified.

Thank you. Working together we can better protect the assets and well-being of our mutual client.

Sincerely,

[Signature]

[Your name]

Supervisor [or other title]

**Attach denied Request for Records form.**