



**Office of Children  
and Family Services**

# **APS Partnerships with your State Regulator of Financial Institutions**

**NAPSA Conference  
Philadelphia, PA  
August 31, 2016**

# Panelists

- **Alan Lawitz, Esq.**

Director, Bureau of Adult Services, New York State Office of Children & Family Services

- **Jared Elost, Esq.**

Assistant Counsel, New York State Department of Financial Services

- **Sheryl Nadell, LHNA**

Maine Department of Health and Human Services

- **Judith M. Shaw, Esq.**

Maine Office of Securities

# New York's Partnership Between the State APS & Financial Services Agencies

## Factors Leading to Partnership:

- Rise in APS Financial Exploitation Cases
- Reluctance of (some) Financial Institutions to report to APS or to cooperate with APS requests for customer information
- APS need to access the specialized expertise, resources and regulatory authority of State regulator of financial institutions both to:
  - a) help train financial professionals how to recognize, prevent and report financial exploitation of vulnerable adults and
  - b) assist APS in complex cases falling within the jurisdiction of such agency

We share a common mission; to protect the consumer and to prevent and address financial exploitation of vulnerable adults. By working together both agencies can better achieve their common mission.

# NYS APS Agency Programs Working With Financial Institutions to Address Financial Exploitation

- a) Worked with New York Bankers Association on *Best Practices on Reporting of Possible Financial Exploitation of the Elderly (2012)*  
<http://www.nyba.com/resources/nyba-best-practices/>
  
- b) Worked with New York Credit Union Associations on *Best Practices on Detecting and Reporting Elder Financial Exploitation (2013)*  
<https://www.nycua.org/docman/more/real-solutions-copy/162-best-practices-guide-on-elder-financial-abuse-0/file>

## Trainings of Financial Professionals

OCFS Bureau of Adult Services developed, arranged and presented several trainings of financial professionals, often in conjunction with associations of financial professionals.

- We partner with State Office for the Aging in Federal ACL Grant that established Enhanced MDTs in pilot regions; part of the grant was to provide trainings to financial professionals
- We have developed Training Tool kits for Local APS to use in Multidisciplinary trainings of financial professionals, with PPT, resource guide and related materials

## Federal Guidance on “Safe Harbors” for Reporting Under Gramm-Leach-Bliley Act (GLBA)

On 9/24/13 Federal Interagency Guidance was issued to financial institutions stating the GLBA provisions permit the sharing of customer information to APS and law enforcement where financial exploitation is suspected.

- Agency signatories: Board of Governors of Federal Reserve System, CFTC, CFPB, FDIC, FTC, NCUA, OCC, and SEC.

<http://www.consumerfinance.gov/newsroom/federal-regulators-issue-guidance-on-reporting-financial-abuse-of-older-adults/>

Express exemptions (aka “safe harbors”) in GLBA (15 USC 6802) permit disclosure of customer bank information to the appropriate authorities:

- “to protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;” or
- “to the extent specifically permitted or required under other provisions of law” such as state Social Services Law and Banking Law;” or
- “to comply with ... state or local laws, rules and other applicable requirements; to comply with a properly authorized civil, criminal or regulatory investigation ... by State or local authorities.”

These exemptions apply in the case of APS and law enforcement investigations of financial exploitation of vulnerable adults.

## Timeline of Initial Contacts Between NYS APS Agency (OCFS) and NYS Financial Services Agency (DFS)

- OCFS initiates contact, sends letter to DFS, requesting meeting (3/12). There are subsequent calls and emails.
- First meeting held (7/12)
- Follow-up to meeting, including information-sharing letters, emails and calls (9-12/12)
- Second meeting (1/13)
- Follow-ups to second meeting and further information-sharing (1-6/13); OCFS requests that DFS invite financial professionals to trainings sponsored by OCFS; DFS helps publicize such trainings
- Discussions about (a) issuing guidance to financial institutions about financial exploitation and the role of APS and (b) conducting joint trainings of financial professionals (2/14-9/14)
- OCFS invites DFS to participate in NYS Adult Abuse Training Institute (8/14)
- Jared Elostá will discuss subsequent contacts and the products of our partnership to date



**Department of  
Financial Services**

# **Fighting Elder Financial Abuse**

**DFS Partnership with Adult Protective Services**

**Maria T. Vullo, Superintendent of Financial Services**

**August 31, 2016**

**Jared Elost, Assistant Counsel,  
Financial Frauds & Consumer Protection**

# The New York State Department of Financial Services

- Department of Financial Services (“DFS”) opened on October 3, 2011
  - Merged the former Insurance Department and Banking Department
  - Provides for single Superintendent of Financial Services
  - Creates the Financial Frauds and Consumer Protection Division (“FFCPD”)
- DFS operates under the New York Financial Services Law (“FSL”)
  - Signed into law March 31, 2011 as part of Governor Cuomo’s 2011-2012 State budget
  - Creates the Financial Frauds and Consumer Protection Division (“FFCPD”)

# Financial Frauds & Consumer Protection Division

- Units that may address suspected elder financial exploitation:
  - Criminal Investigation Unit
  - Civil Investigations Unit
  - Consumer Assistance Unit



# Protecting Elderly New Yorkers from Financial Abuse



# ***DFS Initiative to Prevent Elder Financial Abuse***

- In early 2015, Governor Cuomo directed DFS to redouble its efforts to fight elder financial abuse
- DFS strategy to prevent elder financial abuse:
  - 1) Work with the financial services industry on best practices for preventing, identifying, and reporting potential abuse
  - 2) Respond to consumer complaints and criminal reports
  - 3) Initiate civil or criminal investigations of potential elder financial abuse
  - 4) Educate the public on how to prevent elder financial abuse
  - 5) Collaborate with our partners, including Adult Protective Services, in sharing information and forming effective strategies



# ***DFS Guidance to Financial Institutions***

- In February 2015, DFS issued guidance to New York banks and credit unions regarding best practices for the prevention of elder financial exploitation. The guidance:
  - outlined red flag procedures and best practices for the detection of abuse
  - provided information on reporting abuse to APS or other authorities
  - explained that federal privacy law allows financial institutions to report suspected elder financial abuse to the authorities, and New York law provides these institutions civil immunity for good faith reports of suspected abuse

## ***DFS Consumer Complaints and Criminal Reporting***

- DFS has created a system to quickly identify consumer complaints of elder financial exploitation and assist potential victims in seeking restitution and other relief.
- DFS received over 50 elder financial exploitation complaints between January 1, 2014 and August 1, 2016. DFS has obtained over \$300,000 in restitution for elderly New Yorkers.
- DFS also has a criminal hotline for financial institutions to report suspected elder financial abuse to DFS: 888-372-8369 (888-fraudNY)

# DFS Partnership with Adult Protective Services



## ***DFS Partnership with APS – Progress So Far***

- At least four major achievements in our partnership to prevent elder financial abuse:
  1. Building buy-in from the financial industry
  2. Cross-agency reporting
  3. Strengthening investigations
  4. Sharing multi-disciplinary expertise



## ***DFS Partnership with APS: Bank Trainings***

- Fall 2015: Three trainings for New York banks and credit unions on how to prevent, identify, and report suspected elder financial abuse
- Locations: Finger Lakes region, Albany, and NYC
- Trainers:
  - DFS, OCFS, a local APS unit, local law enforcement, and a local non-profit service provider
- More than 150 people from 65 institutions attended

## ***DFS Partnership with APS: Cross-Agency Reporting***

- DFS reports potential elder abuse cases to APS and vice versa
  - When APS reports potential abuse to DFS, DFS can mediate with financial institutions and seek consumer restitution or prompt remedial action
  - APS can report scams or harmful financial products or services that are targeting seniors & DFS will investigate
  - Key parties (financial institutions, victims, and those who suspect abuse) are encouraged to report to both agencies

## ***DFS Partnership with APS: Investigations***

- When APS refers potential elder abuse to DFS, the Criminal Investigations Unit (CIU) can:
  - Interview witnesses
  - Gather evidence by subpoena or otherwise
  - Develop investigations to present to prosecutors
  - Work with prosecutors on investigations and the prosecution of cases
- APS referrals to DFS may result in action by Civil Investigations:
  - Pursue civil remedies when criminal prosecution is unlikely
  - Investigate intentional fraud or misrepresentation involving a consumer financial product or service



## ***DFS Partnership with APS: Multi-Disciplinary Information Sharing***

- Building a Multi-Disciplinary Approach
  - Trainings of financial institutions was first step
  - APS invited DFS to observe an enhanced multi-disciplinary team
- Lessons learned from Enhanced Multi-Disciplinary Team
  - Fighting elder financial abuse requires a multi-disciplinary approach
  - It requires attention to individual cases
  - It requires agility in responding to potential abuse
  - Cooperation of financial institutions with APS requests is critical—this is where partnering with a financial regulator like DFS can help



## ***DFS Partnership with APS: Multi-Disciplinary Information Sharing***

- Superintendent Vullo's article in June APS Newsletter
- DFS will train Queens APS staff on how DFS functions, complaint-handling, and civil and criminal investigations
  - Trial run for possible webinar of all APS staff in the state
- APS training of DFS staff
  - How to identify elder financial abuse cases
  - When DFS should report to APS
  - How APS investigates cases
  - Confidentiality issues



## ***DFS Partnership with APS: Next Steps***

- Formalize the partnership between APS and DFS
- Trainings of APS and DFS staff
- Brainstorm ways to achieve greater buy-in from the financial industry
- Outreach





# PREVENTING ELDER FINANCIAL EXPLOITATION

## TRAINING FOR FINANCIAL INSTITUTIONS AND FINANCIAL PROFESSIONALS

The New York State Department of Financial Services (DFS) and New York State Office of Children and Family Services (OCFS) invite you to an important training on how to prevent the financial exploitation of the elderly.

Topics to be covered at the training include:

- *Recognizing red flags of elder financial exploitation among your customers*
- How Adult Protective Services (APS) and other community resources can help prevent elder abuse
- The importance of reporting suspected elder abuse to APS, law enforcement, and DFS
- Protections under federal and state law that allow you to report suspected abuse to authorities

Representatives from OCFS and DFS, together with local partners, will be available to discuss with you how financial institutions and financial professionals can work effectively to recognize, prevent and report elder financial exploitation.

### Training locations and dates are as follows:

#### Finger Lakes Region Training

Tuesday, October 20 (1 pm – 3 pm)

Public Training Facility

2914 County Rd. 48, Canandaigua, NY 14424

#### Capital Region Training

Thursday, November 5 (1 pm – 3 pm)

Siena College, Lonnstrum Dining Hall (aka “The Norm”)

515 Loudon Rd, Loudonville, NY 12211

#### Downstate Region Training

THURSDAY, October 29 (1 pm – 3pm)

NYS Department of Financial Service

One State Street, New York, NY 10004

**RSVP by October 10, 2015** via email to [Elder.Protection@dfs.ny.gov](mailto:Elder.Protection@dfs.ny.gov) or call 212-480-2306 Include names and titles of the individuals attending and indicate which training they will attend.



# TRAINING FOR FINANCIAL INSTITUTIONS:

How to  
Recognize \* Prevent \* Report  
Financial Exploitation of

October 29, 2015

New York, New York



Department of  
Financial Services



Office of Children  
and Family Services

This training is presented in conjunction with the Elder Abuse Prevention Interventions federal grant #90EA0004-01-00 from the Administration for Community Living/Administration on Aging awarded to the New York State Office for the Aging.

# ADDRESSING FINANCIAL EXPLOITATION OF VULNERABLE ELDERLY ADULTS

**Alan Lawitz, Esq.**, Director, Bureau of Adult Services  
**New York State Office of Children and Family Services**

**Joy Feigenbaum, Esq.**, Executive Deputy Superintendent, FFCPD  
**New York State Department of Financial Services**

**Catherine A. Christian, Esq.**, Chief, Elder Abuse Unit  
**New York County District Attorney's Office**

**Deborah Holt-Knight**, Acting Deputy Commissioner  
**Adult Protective Services**

**Peg Horan, LMSW**, Elder Abuse Prevention Specialist/MDT Coordinator  
**NYC Elder Abuse Center**

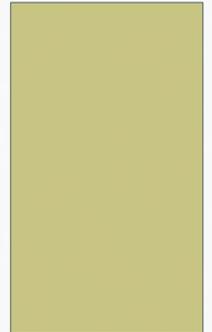
# Agenda



- ❑ Welcome and Introductions
- ❑ Training
  - Defining Financial Exploitation
  - Impact of Financial Exploitation
  - Risk Factors and Types of Financial Exploitation
  - The Role of DFS
  - Steps Financial Institutions Can Take to Prevent Financial Exploitation
  - Federal Safe Harbors and Immunity Under NY Law
  - Adult Protective Services (APS), Community Resources, and the MDTs
  - The Role of Law Enforcement and The District Attorney
  - Confidentiality and Power of Attorney
- ❑ Questions and Answers

# APS PARTNERSHIPS WITH YOUR STATE REGULATOR OF FINANCIAL INSTITUTIONS

SHERYL NADELL, LNHA, MAINE DEPARTMENT OF HEALTH AND HUMAN  
SERVICES  
JUDITH M. SHAW, ADMINISTRATOR, MAINE OFFICE OF SECURITIES



# THE PROBLEM

- Many victims can fall through the cracks because they are not within APS jurisdiction
  - Maybe they have mild cognitive impairment but are not incapacitated or dependent
- Financial exploitation is hard to investigate
  - Document intensive
  - Complex
  - Hard to obtain the records
- Some financial professionals are perpetrators
  - Need to stop the cycle of victimization

# THE SOLUTION

Get to know your financial regulators and form strong working relationships

Options in Maine:

Maine Bureau of Financial Institutions

Maine Bureau of Consumer Credit Protection

Maine Bureau of Insurance

**Maine Office of Securities**

# WHY

Why the Maine Office of Securities?

- Broad authority to subpoena records
- Highly skilled and robust investigative staff
- Can take action administratively or civilly in certain circumstances
- Conduct criminal investigations that are referred to a dedicated Assistant Attorney General

# TWO EXAMPLES

SENIOR\$AFE TRAINING

MAINE FAST

# WHAT IS SENIOR\$AFE

Comprehensive training program for financial institution employees that:

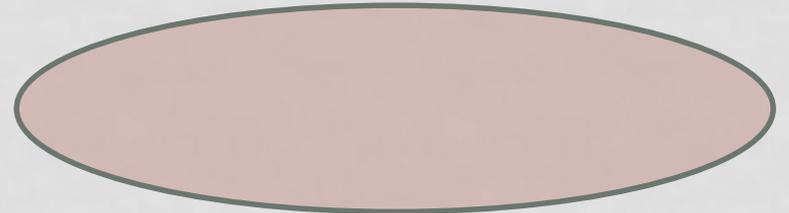
- Teaches employees to identify common red flags
- Recommends action steps for front line staff
- Suggests an internal reporting protocol
- Developed over a two year time period in conjunction with the Maine Council for Elder Abuse Prevention

# RED FLAGS

Types: Suspicious Activity Report  
Adult Protective Services  
Financial Roundtable



Behavioral



Account Activity

# ACTION STEPS

Possible options for front line staff –

- Safer Alternatives
- Reporting Protocol

# HOW TO REPORT

- Focused on managers and supervisors
- Suggestions on developing an internal protocol
- Action steps for responding to reports from front line staff

# KEY COMPONENTS

- Address confidentiality
- Identify steps front line staff might take
- Report (without consent)
  - Federal Reporting (SAR)
  - State Reporting (APS/Office of Securities/Law Enforcement)
- Refer (with consent)
  - Community based resources

# STATE REPORTING

No Wrong Door!

- Get to know Adult Protective Services
- Get a law enforcement contact
- Get to know the Office of Securities

# REFERRALS

## Community Based Resources

- Legal Services for the Elderly
- Area Agencies on Aging
- Domestic Violence/Sexual Assault Hotlines

# TOOLS

- Teller Card
- Reporting and Referral Card
- Senior\$afe Brochure

# RESULTS

- Over 450 bank and credit union personnel trained to date
- More than 60 referrals just to the Office of Securities
- It's more than about money – it's about lives

# MAINE FAST

## Financial Abuse Specialist Team

- Mission: To ensure that financial crimes against older and vulnerable adults in Maine are vigorously and effectively investigated and, where appropriate, prosecuted.

# FAST ACROSS THE COUNTRY

- Started in California – 1997
  - Now in several states including Maine
- Focus can differ:
  - Education and outreach to seniors
  - Training financial institutions and social services agencies
  - Prosecution (the Maine focus)
    - Treat elder financial abuse as a crime

# WHAT LAWS?

- Theft By Deception - "Intent to deprive"  
17-A M.R.S. §354
- Theft By Unauthorized Taking  
17-A M.R.S. §353
- Misuse Of Entrusted Property  
17-A M.R.S. §903
- Undue Influence  
33 M.R.S. §1022

# WHO IS FAST?

- Adult Protective Services
- Office of Attorney General
- Maine Office of Securities
- Legal Services for the Elderly
- District Attorneys
- Law Enforcement
- Long Term Care Ombudsman Program

# WHAT DOES FAST DO?

- Evaluates, when requested, stalled, complex cases
- Caseworker involvement in process with law enforcement
- Law Enforcement/CW presentation
- FAST Recommendations for going forward
- Track the case through to outcome

# MAINE FAST LAUNCH

- Test Case Review - April, 2016
- Go Live - June, 2016

# COMMUNITY PARTNERS

- Financial Institutions
- CPA's
- Faith Community
- Investment Firms
- Hair Dressers, Postal workers, etc.

# THE HOLISTIC SOLUTION

Senior\$afe + FAST =



**ANY**

**QUESTIONS?**

# Contact Information

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