

National Guidelines for Financial Institutions: Working Together to Protect Older Persons from Financial Abuse

Final Report to the The Huguette Clark Family Fund for Protection of Elders April 2020

Background

The Huguette Clark Family Fund for Protection of Elders funded the National Adult Protective Services Association in 2018 to expand upon the work done through a 2013 grant to create and disseminate the [National Protocol to Implement Federal Guidance on Banks Sharing Client Records to Investigate Elder Financial Exploitation](#). The goals of this recent grant were threefold:

- Further disseminate the protocol previously developed with Clark Family Foundation support to aid in banks and credit unions sharing customer files with Adult Protective Services (APS) in the investigation of cases of elder financial exploitation.
- Create a similar protocol for the securities industry and disseminate it to the APS and securities industry fields.
- Develop a web-based national clearinghouse to provide technical assistance to financial institutions and APS in the use of both protocols.

Steering Committee

It was decided early on that the *Philadelphia Financial Exploitation Prevention Taskforce* would make up the bulk of the steering committee for the effort to expand the standard form to the securities industry. This decision was made for continuity purposes since Joe Snyder is the chair of both groups and Jennifer Spoeri is now the Director of Older Adult Protective Services in Philadelphia. Kathleen Quinn of the National Adult Protective Services Association (NAPSA) and Ron Long of Wells Fargo were also added to the group as they were members of the first steering committee working with banks and credit unions.

The Philadelphia group also had multiple members who were leaders in the senior investor issue group for the Securities Industry and Financial Markets Association (SIFMA). SIFMA is the leading trade association for broker dealers, investment banks and asset managers operating in the U.S. and global capital market.

In addition to NAPSA and Wells Fargo, the steering committee includes representatives from Philadelphia Corporation for Aging (PCA), Lincoln Financial, Lincoln Investment and Vanguard. Wells Fargo was added to the initial group for continuity purposes since they were part of the initial group, along with NAPSA and PCA, that developed the form and protocol for banks and credit unions. SIFMA agreed to comment on the new draft when completed.

Updating and Expanding the Protocol and Form

The first decision made by the steering committee was to use one form for all financial professionals, i.e. to add the securities industry to the existing form, and to update and streamline the protocol. The committee finished their considerably streamlined draft protocol and combined form in late May, and sent to SIFMA for review and comments. Simultaneously, in a meeting at the Securities and Exchange Commission (SEC) dedicated to senior investor issues, the project was mentioned by one of the steering committee members and stirred much interest. The project director was contacted by staff from Financial Industry Regulatory Authority (FINRA) and the Office of Investor Education and Advocacy at the SEC asking if they could comment on the draft. We were also contacted by representatives from North American Securities Administrators Association (NASAA) who were eager to comment as well.

The decision was made to allow the above-named groups to review and comment on a draft that was not to be shared with anyone else. This development gave us additional support and credibility from the major players in the securities world as well as additional distribution points.

We received comments from SIFMA in early July along with comments by NASAA, followed by comments from FINRA. Although we did not receive comments from the SEC initially, there was universal acclaim for the project and most of the changes suggested were cosmetic. The Steering Committee had final discussions and the final protocol and form, which is available at the link below, was completed in September.

<https://www.napsa-now.org/wp-content/uploads/2019/10/Guidelines-Bank-Protocol-and-Form-FINAL.1-September-2019-1.pdf>

Dissemination - Presentations

The following are ways in which the new protocol and form have been disseminated:

- Joe Snyder and Kathleen Quinn presented the new at World Elder Abuse Awareness Day in June, 2019 at the SEC. Approximately 150 people attended the event in person.
- Joe presented the form and protocol at the Federal Reserve Bank in Philadelphia at the World Elder Abuse Awareness Day event, which had an estimated 100 in attendance.
- Joe also presented at a regional conference on aging in Philadelphia in September (estimated 55 persons) and the Adult Protective Services Conference in Austin, Texas in November (estimated 90).

- Joe presented to two different groups of the Delaware Valley Credit Union Association representing risk management and CEO's from Pennsylvania, New Jersey and Delaware.
- We are also shared our work with National Community Reinvestment Coalition (NCRC) through their Age Friendly Banking Coalition and with FINRA's state government association.
- A Steering Committee member presented our form at a SIFMA conference in New York city in November to around 70 participants.

In all, well over 1,000 people, many of them leaders in financial services, the aging network and APS, were educated through in-person presentations.

NAPSA announced the completion of the work and gave access through their front page of their website in October 2019. The National Clearinghouse for Financial Exploitation was announced at the same time with access through NAPSA's website.

Dissemination - Webinar

A webinar sponsored by NAPSA was held on December 12, 2019, which was attended by 136 people from a variety of disciplines. Kathleen Quinn was the moderator and the presenters were Joe Snyder from NAPSA and Ron Long from Wells Fargo Advisors.

The content covered included a brief history of legislation at the federal level covering both APS and financial exploitation. There was a special emphasis on recent developments and the history between the financial services industry and APS.

The construction of our protocols and the expanded form for requesting records were highlighted next, including the composition and work completed by the two steering committees.

Questions were taken during and after the presentation and we ran out of time but Ron and Joe continued to answer questions for the next few weeks until we addressed every issue.

The webinar was posted on the NAPSA website and has been archived here:

<https://vimeo.com/379780667>

<https://www.napsa-now.org/wp-content/uploads/2019/12/2019-12-13-National-Guidelines-for-Financial-Institutions-Slides.pdf>

National Clearinghouse for Financial Exploitation

The National Clearinghouse, announced in October, 2019, is a web-based program in which inquiries are submitted on a form and then answered by distributing to the staff with the most expertise in a particular area. That person then answers the question or reaches out to various experts for the best possible answer.

We have answered inquiries from clients, family members, private attorneys, financial institutions of all stripes, APS program staff at all levels, state, local, federal officials and membership organizations representing all of the above.

Some themes have emerged, such as APS programs being charged for statements and we have been able to give contacts at the bank or point the programs to resources, such as the report from the Consumer Financial Protection Bureau (CFPB) which recommends that institutions send statements timely and not charge APS for records. We have also provided verbiage for APS to use when approaching financial institutions, which has been very effective in getting cooperation.

In addition, state, federal and local legislative aides have reached out for examples of legislation related to financial exploitation and for training materials and videos.

We have been asked for an interpretation on the Senior Safe Act as far as providing greater protection around privacy concerns, and we shared expert opinions as well as the FINRA factsheet.

We have also helped state, federal, and local prosecutors connect with APS programs and financial institutions as well as other resources.

National Survey

The consulting firm Health Benefits ABCs, led by Bill Benson and Kendra Kuehn, was hired to conduct two national surveys regarding our form and the expanded version. The first national survey was completed in April of 2019, the follow-up was distributed 11 months after the initial survey, and the data was submitted in March of 2020. The response rate to the second survey was less than the initial survey. This can be attributed to the effects of COVID-19 dominating the time and efforts of APS programs at this time.

An analysis of the data is presented below:

First survey (April, 2019)

- The first survey received responses from 28 states and 95 counties. **73% reported being aware of the form and 84% of those respondents used the form or a version of the form. 95% of those using the materials used the form, while 25% used the introduction letter and 15% used the reply letter when initially refused.**
- Responding to ease of use of the form with 1 being extremely difficult and 5 being extremely easy, **59 out of 64 respondents rated it a 4 or 5.** Rating the success in obtaining records with 1 being rarely successful and 5 being nearly always successful, **44 out of 64 rated it a 4 or 5.**
- Listing the type of institutions materials were successful with produced a **78% success rate with local banks as the high and 22% rate with national credit unions as the lowest success rate.**

- We next asked where the form was sent by APS staff and **56% were sent to the branch manager, 38% to the risk management department, 29% to the General Processing Unit and 12% to the General Counsel.**

Interestingly, Wells Fargo and Bank of America were cited as being both shining stars and national banks needing more outreach. Investment firms and credit card companies were cited as entities that we should target next. Of course, the investment world was the target of our grant with the new and updated form and credit card companies could be our next partners.

- We next asked respondents what practices contributed to the success of our materials and **45% cited having an ongoing relationship with the banks and 44% cited training and education of the banks while 16% cited having banks on an MDT.** Having an ongoing relationship with banks was a conclusion reached by the PCA/Wachovia in 2007. We were thrilled that the **introduction of our form** was mentioned as a factor contributing to success!
- We examined challenges and barriers to success and received many responses and are going to highlight some of the major ones:
 - **the request is not recognized or ignored,**
 - **records do not come back in a timely manner,**
 - **APS is told a subpoena is required,**
 - **APS is charged for records,**
 - **APS is told it needs the client's release,**
 - **bank is not familiar with Gramm Leach-Bliley Act.**

The Wachovia loss prevention unit was cited as the gold standard of cooperation between APS programs and a financial institution.

We asked respondents why don't you use forms if you know of them?

- **0% responded it's because they already get records while 21% responded that they have another process.**
- **79% fell into the "other" category which included:**
 - **state statute requires a subpoena,**
 - **law enforcement gathers for us,**
 - **the institution has their own form,**
 - **we will be using the form in the future and**
 - **we are waiting for approval to use.**

One comment from the General Counsel of a bank agreed that the form cites the authority under which banks can release the information, but does not cite the authority under which APS can request it. We think the APS statute covers this in most instances.

Second Survey (January 2020)

The second survey received responses from 23 states and 41 counties and the usual reasons for a lower response rate can be considered, as well as recognizing that APS programs were responding to the pandemic during the second time period. We were pleased that so many took the time to respond again.

We found that **64% of respondents were aware of the updated materials and their usage and that 79% of those used the new form or a customized version.** Breaking down the materials use, we found that:

- **86% used the forms,**
- **60% used the introductory letter,**
- **40% used the reply letter and**
- **20% used the letter to request a hold.**

We asked the respondents if they used the updated materials with the relevant state statute and agency letterhead and **70% reported using both, 13% only letterhead and 7% neither.**

Asking again about ease of use with 1 being very difficult to use and 5 being very easy to use, **22 out of 26 rated it 4 or 5 and 20 out of 26 rated it a 4 or 5 as to success in obtaining records** with 1 being rarely successful and 5 being almost always successful.

As far as success with types of institutions, **local banks are still the highest at 83% and national credit unions are still the lowest at 17%.** Respondents are starting to use the updated form with the securities industry and **10% reported success with investment advisors and 7% had success with securities firms.** We expect these numbers to rise as the form gets more use and publicity and is currently being used in the HelpVul project (see below) which is in the pilot phase in 3 states and one major city.

Looking at where the form is being sent, **53% were sent to a branch manager, 53% to risk management, 40% to General Processing Unit, 13% to General Counsel and 20% to an individual financial professional.** We emphasized the General Processing Unit in our webinar and the 20% to individual financial professionals reflects our efforts with the securities industry.

The practices contributing to success reflected some changes with **47% citing an ongoing relationship, 40% citing training and education with financial institutions, and 20% having the financial institution involved with an MDT.**

The challenges and barriers went unchanged including **not recognizing APS authority, timeliness of receiving records and not agreeing with APS interpretation of relevant laws.**

The results of program being aware remained basically unchanged with **0% already receiving records and 10% having another process. Most still fall in the other category with most either in process of adopting or waiting for approval as well on relying on law enforcement.**

HelpVul Project

NAPSA 's Financial Exploitation Advisory Board is part of HelpVul, a US Department of Justice funded project involving the joint collaboration of SIFMA, the University of Texas, EverSafe, a personal financial abuse detection and alert tech company, and Brookdale/Hunter College, which oversees the grant. The purpose of the project is to design a system for financial institutions to make online reports to APS and to communicate with APS about the cases. Missouri, North Carolina, Montana and the City of San Francisco are part of the pilot and the goal is for this to go national.

Our standard form is being used in the pilot and we intend to be part of the project and will update the form as more feedback comes in and we partner with other groups. The credit card industry is a group that makes sense as we continue forward as this was suggested on the webinar and through the Clearinghouse.

Conclusion

We received an email as we were writing the final report from Alan Lawitz, who was retiring as the APS Director in New York after a long and distinguished career. Alan was on the first steering committee and did incredible work bringing the financial services industry and APS together in New York State. When we first shared the form several years ago, cooperation with banks in New York was described as sporadic. Alan's final report to us reported a **98% success rate** in receiving requesting financial records, which is an incredible result. Alan was kind enough to acknowledge our form as having an impact.

This is an example of taking a tool and using initiative and effort to achieve outstanding results. We think this is possible in all states and are confident that we are headed in this direction with continued effort on all our parts.

I would like to thank all of the committee members and organizations who joined us in this effort with a special thanks to Kathleen Quinn, Jennifer Spoeri and Ron Long who were on both steering committees.

I would like to give a special mention and thanks to Linda Mill, my partner at Wachovia, now at Ally Bank, who was the first person in the financial services industry to answer my call. Linda taught me so much and created the gold standard program at Wachovia which made all this possible.