Published on *The National Law Review* https://natlawreview.com

CFPB Issues Update to 2016 Advisory on Elder Financial Abuse

Article By:

John L. Culhane, Jr.

The CFPB has issued an update to its 2016 advisory that contained recommendations for banks and credit unions on how to prevent, recognize, report, and respond to financial exploitation of older Americans.

The 2016 advisory's recommendations addressed six categories, one of which was the reporting of suspected elder financial exploitation (EFE) to relevant federal, state, and local authorities. This category is the focus of the update, which "reiterates key recommendations regarding reporting from the [2016 advisory] because many financial institutions remain unsure of whether to report suspected financial exploitation due to privacy concerns."

Specifically, in the update, the CFPB "reiterates its 2016 recommendation that financial institutions report suspected EFE to all appropriate local, state, or federal responders, regardless of whether reporting is mandatory or voluntary under state or federal law." As did the 2016 advisory, the update references the guidance issued in 2013 by the CFPB and seven other financial regulators to clarify that financial institutions are generally able to report suspected EFE to the appropriate authorities without violating federal privacy laws. In addition to reiterating key recommendations in the 2016 advisory, the update "provides new information on reporting based on federal and state legislative changes."

The information in the update includes the following:

- The CFPB notes that when its 2016 advisory was issued, about half of the states required financial institutions or a subset of financial professionals to report suspected EFE to adult protective services (APS), law enforcement or both. The update includes a chart identifying mandatory state EFE reporting requirements and notes that since the 2016 advisory was issued, Ohio adopted such a requirement.

- The CFPB notes that several states include depository institutions among the institutions and qualified individuals that are allowed by state law to delay disbursement of funds when there is suspected EFE. The update includes a chart identifying state statutes that authorize transaction holds related to EFE

- The CFPB discusses the federal Senior Safe Act which became effective in June 2018 and provides that financial institutions are not liable for disclosing suspected EFE to covered agencies if the institution has trained its employees on identifying EFE. It also discusses the CFPB's 2019 analysis of Suspicious Activity Reports (SARs) and reiterates its 2016 recommendation that financial institutions file SARs when they suspect EFE.

- In the 2016 advisory, the CFPB recommended that financial institutions expedite documentation requests and provide financial records at no charge to APS, law enforcement, or other investigatory agencies in EFE cases. The update discusses state laws that require or permit financial institutions to produce records relevant to suspected EFE to APS, law enforcement, or investigatory agencies when requested and contains a chart identifying state statutes involving the disclosure of financial records related to EFE.

When the 2016 advisory was issued, the CFPB indicated its recommendations were not issued as "guidance" or otherwise framed as requirements but represented the CFPB's expectations for "best practices." In the update, the CFPB continues to refer to the recommendations as "voluntary best practices to assist financial institutions" and states that they all "remain vital today."

Elder financial abuse prevention can be viewed to fall within a financial institution's general obligation to limit unauthorized use of customer accounts as well as its general privacy and data security responsibilities. As a result, a financial institution that fails to implement a robust elder financial abuse prevention program risks becoming the target of a CFPB enforcement action for engaging in unfair, deceptive, or abusive acts or practices. In addition, given that the CFPB's new leadership has identified EFE as a priority area, it would not be surprising if CFPB examiners, when examining banks and credit unions subject to CFPB supervision, look at such institutions' programs for preventing EFE and use the CFPB's recommendations in evaluating the programs.

National Law Review, Volume IX, Number 199