



Jul 13, 2020

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# A Primer for Kentucky's Financial Institutions About Properly Handling Suspected Elder Financial Abuse

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One of the most important areas for banks and credit unions to master is the handling of situations of suspected elder financial exploitation. While other deposit operations matters can involve larger sums, elder financial abuse presents serious risks to the institution's reputation and employee morale. And it escapes no one's attention that an increasing number of our financial institutions' most valued retail banking relationships are with individuals who are reaching an age where diminished capacity may become a problem. Unfortunately, the bad actors of the world also recognize this reality.

Responding correctly to a situation of elder financial abuse is both the right thing to do and is the law. Kentucky is a "mandatory reporting state," meaning that suspected elder financial exploitation must be reported. See KRS §209.030. Your staff likely knows about this law already. Thus, it is very important that financial institutions not only adopt a written protocol for making required notifications – to the Cabinet for Health and Family Services, the Department of Financial Institutions and police authorities, as appropriate; but also that those procedures be effectively communicated to all customer-facing employees, so that each will know how their customer observations and concerns will be heard, vetted and ultimately addressed. Consider reminding staff that it is the financial institution's responsibility to make required notifications about "its" customers and members. Further, an employee who reports outside of protocol can leave the institution and themselves personally exposed to liability and may possibly result in the elder member/customer receiving less than ideal protections.

Kentucky institutions must be aware of the important new laws in this area. At the state level, KRS §365.245, commonly known as Kentucky's "Protection from Financial Exploitation Act," became effective in July of 2018. Among its provisions, Kentucky's financial institutions may now notify "[a]ny third party that is (a) reasonably

associated with the specified adult; or (b) otherwise permitted by law.” See KRS §365.245(2)(a). This new statutory authority provides flexibility to banks and credit unions in the investigation and the development of responses to suspected elder financial abuse. This Kentucky law characterizes reports, if made by financial institutions under Kentucky law to the proper agencies, as confidential and not subject to Kentucky’s Open Records Act. The statute continues with a corresponding restriction that financial institutions should not disclose the identity of the customer to others outside its organization, once a report has been made, and should not inform the person or persons suspected of perpetrating financial exploitation or other abuse about notifications made under Kentucky law.

Kentucky’s Protection from Financial Exploitation Act also provides financial institutions with new tools for addressing financial abuse. Provided that a report has been made under KRS §209.030, banks and credit unions now have the authority to place a temporary hold on a transaction or disbursement requested from an account. In the event this temporary hold is implemented, oral or written notification must be given, within two business days, to all persons authorized on the subject account and to such other persons who the elder customer/member has granted permission for the institution to contact, if anyone. These statutory temporary holds will expire on the earlier of (a) the determination by the bank or credit union that the transaction or disbursement will not result in financial exploitation; (b) no longer than 15 days after the temporary hold was placed, or 25 days in the event the bank or credit union forms a reasonable belief that financial exploitation has occurred, is occurring or will be attempted in the future; or (c) upon dissolution by a court or government agency of competent jurisdiction. It is important to note that Kentucky’s statute provides immunity to banks and credit unions from administrative and civil liability, but only so long as they exercise good faith in making the disclosure, placing a temporary hold and/or providing access to third-parties of banking records pursuant to this Act.

At the federal law level, Kentucky’s banks and credit unions also should be familiar with the Senior Safe Act, 12 U.S.C. §3423, and relevant guidance published by the Consumer Financial Protection

Bureau, see for example, “Reporting of Suspected Elder Financial Exploitation by Financial Institutions,” and the federal regulatory agencies’ document titled as “Inner-Agency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults,” dated September 23, 2013.

While brevity prevents exploring any matter in detail, the Senior Safe Act deserves a bit more attention. This federal law affords another layer of immunity for banks and credit unions, *provided* they comply with the Senior Safe Act’s mandates in connection with disclosures of suspected elder financial abuse. Individual officers – some but not all – can also receive individual immunity under this federal law. Capturing that federal immunity is important, so compliance with this Act’s directives is vital. No discussion of this topic from the federal perspective would be complete without the reminder that elder financial exploitation is a suspicious activity event requiring independent reporting under the Bank Secrecy Act, which are to be disclosed in SAR Field 38(d)(Other Suspicious Activities–Elder Financial Exploitation).

The rules in this area are consequential and thus important for senior leadership and customer-facing staff to understand and master. This effort should be prioritized as many in our industry anticipate that elder financial exploitation will only increase in the coming years. As more customers and members enter their “golden years” there will be increasing opportunities for nefarious conduct by wrongdoers in our communities.

To combat this growing risk, compliance officers understand this often means training and periodic re-training. Frost Brown Todd is available to assist your financial institution with on-site or web-based training, and, as needed, case-by-case analysis of specific instances of suspected elder financial exploitation. For more information, contact [Bill Repasky](#) or any of Frost Brown Todd’s lawyers practicing with the firm’s [Financial Services](#) industry team.

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