

Elder Financial Exploitation Litigation, Risks, and Compliance

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Introduction



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Agenda



What is
EFE?



Litigation



Compliance



Case
Studies

What is EFE?



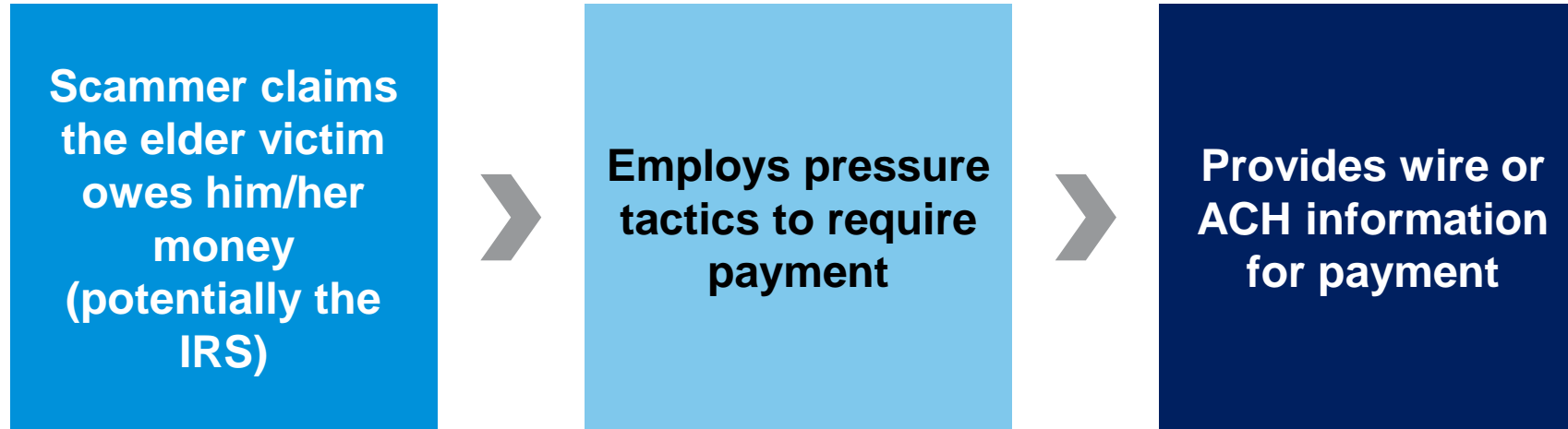
Elder Financial Exploitation

The illegal or improper use of an older person's funds, property or assets, has emerged as one of the most significant frauds against individual persons.

CFPB and FinCEN, "Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation" (2017)

Litigation Fact Pattern Example

Imposter Scam



Litigation Fact Pattern Example

Unwind Transaction Scam

Scammer claims the elder victim completed a transaction by accident



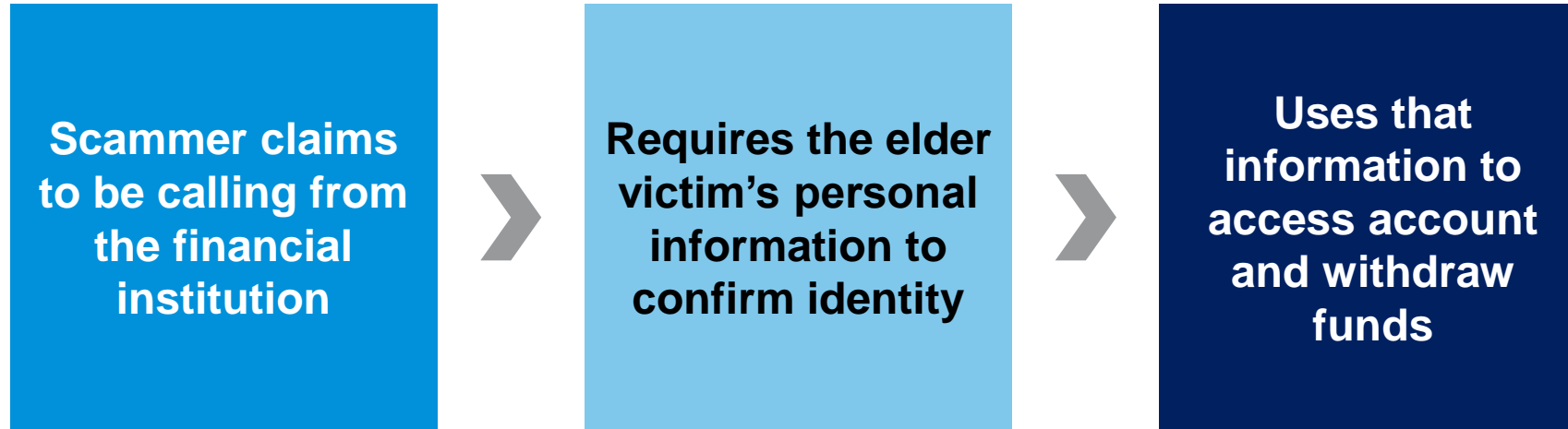
To “unwind” the transaction, the elder victim needs to take steps to “reverse” the transaction.



Provides instructions as to how to “reverse” the transaction, which would sound far-fetched to many people.

Litigation Fact Pattern Example

Financial Institution Representative Scam



Litigation

What do the legal claims look like?

Negligence

Breach of Contract

Breach of Implied Duty of Good Faith and Fair Dealing

State Consumer Protection Claim

Contours of a Negligence Claim

Key Issues



Did the financial institution owe the consumer or family member a duty?



Did the financial institution breach that duty?



Were there material intervening causes?



Causation



Damages

Contours of a Breach of Contract Claim

Key Issues



Did the financial institution owe the consumer or family member a contractual duty?



Did the financial institution breach that contractual duty?



Causation



Damages

Contours of Breach of Implied Covenant

Key Issues



Did the financial institution owe the consumer or family member an implied contractual duty?



Did the financial institution have discretion when exercising that contractual duty?



Did the financial institution exercise its discretion in bad faith?



Causation



Damages

Contours of State Consumer Protection Claim

Examples:

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful...may bring an action individually, but not in a representative capacity, to recover actual damages. S.C. Code Ann. § 39-5-140(a).

Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. Fla. Ann. Stat. 501.204.

- A person who is willfully using, or has willfully used, a method, act, or practice in violation of this part which victimizes or attempts to victimize a senior citizen or a person who has a disability is liable for a civil penalty of not more than \$15,000 for each such violation if she or he knew or should have known that her or his conduct was unfair or deceptive. Fla. Ann. Stat. 501.2077.

Contours of State Consumer Protection Claim

Key Issues

Can the plaintiff assert the claim in a representative capacity?

Was the conduct deceptive (usually not)

Was the conduct immoral, unethical, oppressive?

Did the conduct offend established public policy?

Did the conduct violate an existing statutory duty?

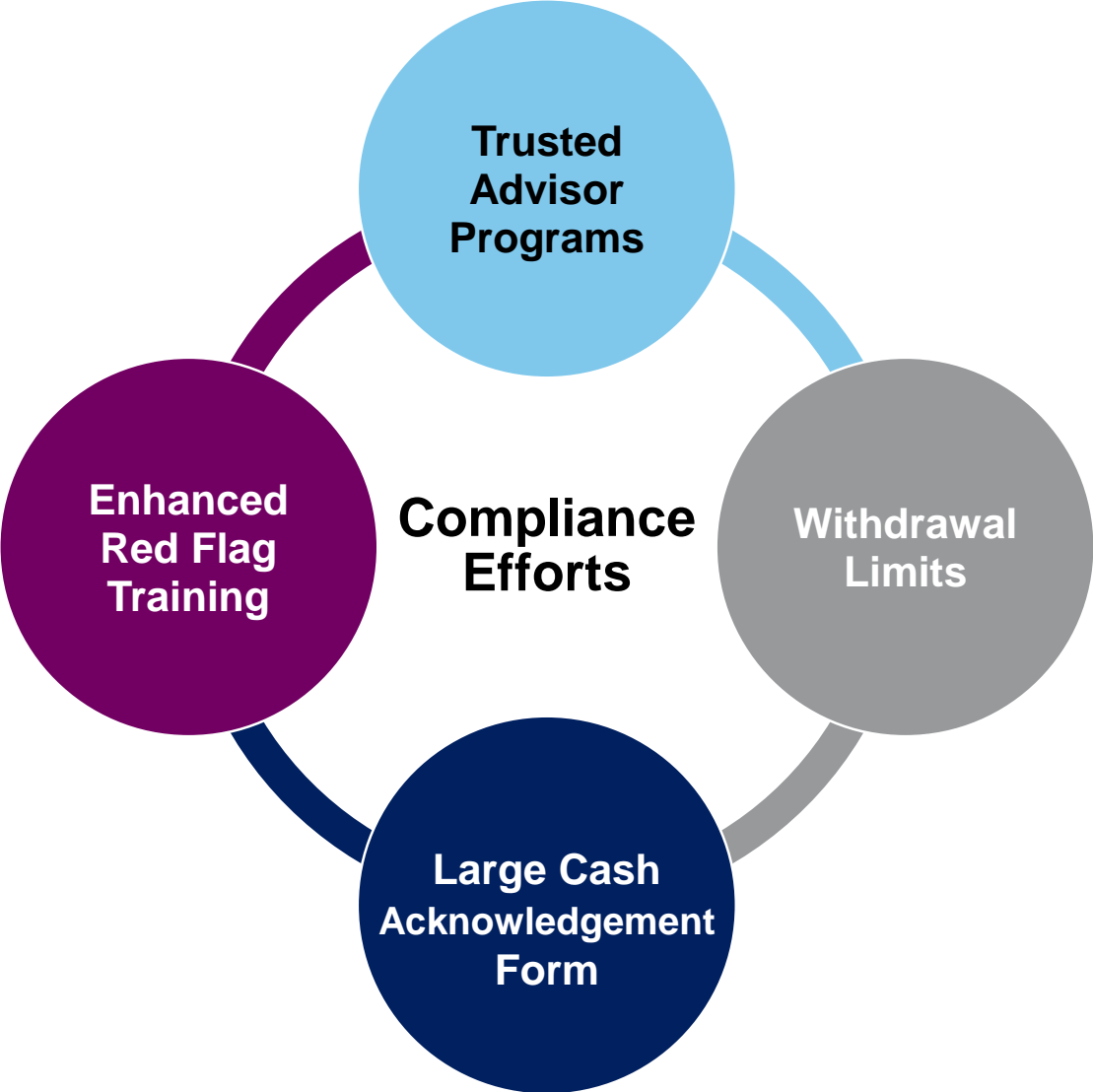
Key Discovery Issues in EFE Claims



- 1. Review of financial institution’s written policies.**
- 2. Did the employees follow the written policies**
- 3. Were there “red flags” in the transaction?**
 - Unusual / abnormal transactions
 - New joint account owners / authorized users
 - Signs of undue influence; anxiousness
 - Third party involvement
- 4. How did the financial institution react to the red flags?**
 - Did the financial institution report the transactions?
 - Navigating SARs

Compliance

Compliance efforts to combat litigation issues



FinCEN Financial Trend Analysis (2024)

- April 2024, FinCEN issued a Financial Trend Analysis focusing on patterns/trends involving Elder Financial Exploitation (EFE).
- FinCEN examined BSA reports for a recent one-year period that referenced the relevant EFE Advisory from 2022 or checked “Elder Financial Exploitation” as a suspicious activity type.
- **155,415 filings** over this period indicating roughly **\$27 billion** in EFE-related suspicious activity.



FinCEN Financial Trend Analysis (2024)

- FinCEN noted “the critical role of financial institutions in helping to identify, prevent, and report suspected Elder Financial Exploitation.”
- FinCEN has continued to receive EFE BSA reports, averaging 15,993 per month between June 15, 2023 and January 15, 2024.
- Banks have submitted the vast majority of EFE-related BSA filings.



FinCEN Financial Trend Analysis (2024)

EFE typically consists of two subcategories:

- **Elder scams**, identified in approximately 80% of the EFE BSA reports that FinCEN analyzed, involve the transfer of money to a stranger or imposter for a promised benefit that the older adult does not receive.
- In **elder theft**, identified in approximately 20% of the reports, an otherwise trusted person steals an older adult's assets, funds, or income.

Among other conclusions, FinCEN's analysis revealed that:

1. Most elder scam-related BSA filings referenced "account takeover" by a perpetrator unknown to the victim; and
2. That **adult children** were the most frequent elder theft-related perpetrators



FinCEN Financial Trend Analysis (2024)

In addition to filing a Suspicious Activity Report, FinCEN recommends:

1. that FIs refer customers who may be victims of EFE to [Department of Justice's National Elder Fraud Hotline](#) at 833-FRAUD-11 for assistance with reporting suspected fraud to appropriate government agencies
2. that EFE victims file incident reports to the [FBI's Internet Crime Complaint Center \(IC3\)](#) and the [Federal Trade Commission](#).

Additional educational resources:

- [Consumer Financial Protection Bureau's Office for Older Americans](#)
- [Department of Justice's resources provided as part of World Elder Abuse Awareness Day, which is June 15.](#)



EFE Red Flags

Behavioral Red Flags (FinCEN 2022 Advisory)

- 1 An older customer's account shows sudden and unusual changes in contact information or new connections to emails, phone numbers, or accounts that may originate overseas.
- 2 An older customer with known physical, emotional, and cognitive impairment has unexplainable or unusual account activity.
- 3 An older customer appears distressed, submissive, fearful, anxious to follow others' directions related to their financial accounts, or unable to answer basic questions about account activity.
- 4 An older customer mentions how an online friend or romantic partner is asking them to receive and forward money to one or more individuals on their behalf or open a bank account for a "business opportunity."
- 5 During a transaction, an older customer appears to be taking direction from someone with whom they are speaking on a cell phone, and the older customer seems nervous, leery, or unwilling to hang up.
- 6 An older customer is agitated or frenzied about the need to send money immediately in the face of a purported emergency of a loved one, but the money would be sent to the account of a seemingly unconnected third-party business or individual.
- 7 A caregiver or other individual shows excessive interest in the older customer's finances or assets, does not allow the older customer to speak for himself or herself, or is reluctant to leave the older customer's side during conversations.
- 8 An older customer shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker.
- 9 The financial institution is unable to speak directly with the older customer, despite repeated attempts to contact him or her.
- 10 A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of an older customer without proper documentation.

- 11 An older customer's financial management changes suddenly, such as through a change of power of attorney, trust, or estate planning vehicles, to a different family member or a new individual, particularly if such changes appear to be done under undue influence, coercion, or forgery or the customer has diminished cognitive abilities and is unable to agree to or understand the consequences of the new arrangement.
- 12 An older customer lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters.

EFE Red Flags

Financial Red Flags (FinCEN 2022 Advisory)

- 13 Dormant accounts with large balances begin to show constant withdrawals.
- 14 An older customer purchases large numbers of gift cards or prepaid access cards.
- 15 An older customer suddenly begins discussing and buying CVC.
- 16 An older customer sends multiple checks or wire transfers with descriptors in the memo line such as “tech support services,” “winnings,” or “taxes.”
- 17 Uncharacteristic, sudden, abnormally frequent, or significant withdrawals of cash or transfers of assets from an older customer’s account.
- 18 An older customer receives and transfers money interstate or abroad to recipients with whom they have no in-person relationship, and the explanation seems suspicious or indicative of a scam or money mule scheme.
- 19 Frequent large withdrawals, including daily maximum currency withdrawals from an ATM.
- 20 Sudden or frequent non-sufficient fund activity.
- 21 Uncharacteristic nonpayment for services, which may indicate a loss of funds or of access to funds.
- 22 Debit transactions that are inconsistent for the older customer.
- 23 Uncharacteristic attempts to wire large sums of money.
- 24 Closing of CDs or accounts without regard to penalties.

Additional red flags in DOJ and CFPB notices:

- **DOJ:** [Red Flags of Elder Abuse](#)
- **CFPB:** [“Recommendations and Report for Financial Institutions on Preventing and Responding to Elder Financial Exploitation”](#)

Case Studies

Recent Case Study



Attorney General's Office CID and subpoena

CID/subpoena focused on a specific elderly couple who were victims of third-party fraud.

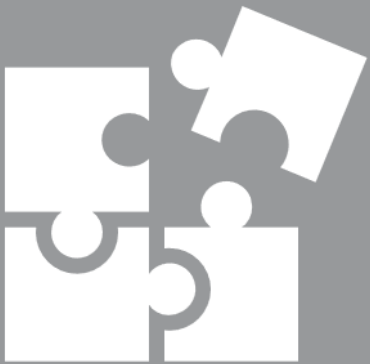
Customers had failed to timely report the fraud, and claim was denied.

AG sought information specific to the elderly couple's accounts and records related to the complaint and escalation.

AG also sought

1. all relevant elder and vulnerable adult policies and procedures, and
2. all EFE complaints from that state for the past 5 years.

Recent Case Study



Checks stolen by someone the victims had invited into their home.

On the surface, a general case of theft and check fraud (regardless of victim's age)

However, because victims were elderly, AG saw this as an elder abuse issue worth investigating with the bank.

Facts

- Policies/procedures
- FinCEN red flags

Lessons Learned



AML alerts triggered on third-party perpetrator's account as to the deposits.

- EFE red flags?

Does your system alert to withdrawals from elder accounts via round-dollar checks, or large dollar-value checks atypical of that customer?

Know the red flags of EFE and allow those to inform employee training, compliance framework, and system monitoring.

Lessons Learned



File SARs when needed. Failure to file SARs can lead to enforcement

- Can also be indicative of larger failure to maintain an adequate AML program.

Tools to detect/prevent elder financial exploitation:

- Training on red flags
- Robust policies/procedures
- Compliance/risk framework – does anyone “own” EFE?
- Customer education
- AI monitoring?

Q+A

Thank you



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