Testimony before the

Pennsylvania House Aging & Adult Services Committee

February 15, 2012

Presented by

Julie Nepveu
Senior Attorney
AARP Foundation Litigation

and

Diana Noel
Senior Legislative Representative
AARP State Advocacy & Strategy Integration

Mr. Chairman and Members of the Committee:

My name is Julie Nepveu and this is my colleague is Diana Noel. We will be testifying on behalf of AARP Pennsylvania. Thank you for giving AARP the opportunity to testify at this informational meeting on elder abuse and older adults' protective services As the largest nonprofit, nonpartisan organization representing rhe interests of Americans age 50 and older and their families, AARP appreciates this opportunity to appear before the Committee to offer our views on elder fraud and abuse.

AARP has a long history of fighting for protections against financial exploitation of seniors and has been on the forefront of advocacy in support of federal and state laws and regulations that prevent this type of abuse. Elder abuse, like many other forms of domestic abuse, is an often hidden phenomenon that affects hundreds of thousands of older Americans. State adult protective services (APS) laws generally provide safeguards for adults who cannot protect themselves from physical and emotional abuse, neglect, intimidation, or financial exploitation. Many of these statutes specifically target older people age 60 or 65 and over, but some states provide the same protections for all adults who are incapacitated or otherwise vulnerable.

<u>AARP Policy:</u>

AARP supports strong legal protections against financial exploitation and abuse. We believe that incapacitated and vulnerable adults deserve effective protective services that address ail forms of exploitation and abuse.

AARP believes that states should enact and enforce laws that:

- fully fund adult protective services (APS);
- make **it** a criminal offense, with enhanced penalties, to abuse, neglect, or exploit a vulnerable individual;
- provide victims and their legal representatives adequate civil procedures and remedies against perpetrators of abuse, neglect, or exploitation (including a shift in the burden of proof, award of attorney's fees and costs, expedited hearings, and posthumous recoveries for pain and suffering), and,
- make institutions liable for criminal and civil penaltiesfor victimization of those in their care.

Additionally, protecting seniors against power of attorney and guardianship abuse has become increasingly important, and AARP encourages state efforts to strengthen these protections in state law. AARP supports the Uniform Law Commission's model legislation on power of attorney and guardianship. We believe that enactment of these standards will help curb elder financial abuse by providing protections against and remedies for abuse, as well as provide uniformity and mechanisms to resolve disputes among states.

Today, we would like to use our time to touch on a few important aspects for the committee to consider:

- Scope and types of Elder Financial Abuse
- Characteristics of older persons that make them vulnerable to financial exploitation
- Guardianship and Power of Attorney
- Legislative activity in other states to protect older persons fromfinancial abuse.

Scope of Financial Fraud and Abuse

According to the June 2011 study of elder financial abuse, the annual financial loss by victims of elder financial abuse is estimated to be $2.9 billion nationwide, up 12% from the 2008 figure? Elder financial abuse is by far the greatest crime committed against those ages 65 and older.

This figure is likely to be grossly understated because financial loss is seriously underreported. Moreover, older Amerrcans are disproportionately affected by financial fraud. Although older people make up just 12 percent of the population, they constitute a full 30 percent of the victims of consumer fraud crime. Women, who make up an increasingly larger percentage of the older population by virtue of a longer life expectancy, are the majority of the victims.

The AARP Public Policy Institute published the report "APS: Increased Demand and Decreased Funds" in March 2011that found 24 states and the District of Columbia reported an increase in calls to APS in FY 2010, each attributing the increase to financial exploitation.[2] Other abuses include (ranked highest to lowest): physical abuse, neglect, emotional abuse and sexual abuse.

Although there were increases in calls, the response time may have lagged, if there were responsesat all, because of flat or decreased funding to agencies tasked to in deal wrth elder abuse. In FY 2010, 16 states maintained APS spending, 5 states decreased spending, and 3 (Alaska, Idaho and Nevada) increased APS spending. For FY 2011, 16 states reported an intent to maintain spending, 4 to decrease spending and 2 (Alaska and Idaho) planned on increasing spending.

In a March 2011 reportthe U.S. Government Accountability Office (GAO) found that the extent of elder abuse estimated that 14.1 percent of noninstitutionalized older adults had experienced physical, psychological, or sexual abuse; neglect; or financial

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[1] Metlife Mature Markets Institute, *The Metlife Study on Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders* (June *2011).*

[2] Wendy Fox-Grage, *Adult Protective Services: Increased Demand and Decreased Funds; AARP* Public Policy Institute (March 2011), available at http://www.aarp.org/health/health-care-reform/info-03-2011/fs212-aps html; http://assets.aarp.org/rgcenter/ppi/ltc/f5212-ltc.pdf

exploitation in the past year.[3] Nationally, state APS face increased chatlenges as elder abuse caseloads are on the rise. Resources have not kept up with these increases, impactingagency's ability to adequately respond to elder abuse cases. In fact, in FY 2009 Pennsylvania **APS** reported receiving 15,000 reports on elder abuse cases and the agency investigated 9,000 and substantiated 2,500 cases.

<u>Characteristics of Older Persons that Make Them Vulnerable to Financial Exploitation</u>

Various tactics are well known to both con artists and regulators as being particularly effective in targeting and deceiving older people based on their vulnerabilities.[4]

1. Older people fear outliving their finances, making them especially susceptible to fear-based marketing strategies

The June 2011 study reported, "In almost all instances.. .the goals of financial abuse perpetrators were achieved through deceit, threats, and emotional manipulation of the elder.'" Older people are particularly vulnerable to fear based marketing strategies, especially relating to complex or confusing concepts such as probate or financial and investment products.[6] While all "investors experience the pain of a financial loss much more acutely than they feel the pleasure of the same size gain – and by a factor of about 2-1," the magnitude of the loss is even more greatly exaggerated for older people who tend to "weight losses about 10 times more heavily than gains."[7]

Older people are also particularly vulnerable to affinity based marketing schemes, in which an abuser uses a trusted relationship to take advantage of a person financially Victims of affinity scams are frequently unaware they are being scamrned and often do not report "feeling scammed" until after learning that what they had been sold is not in fact as advertised.[8]

2. Older people have diminished financial decision-making capacity

Many older people are ill-equipped to make appropriate Investment and financial decisions without assistance due to a relative lack of financial literacy and the

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[3] Government Accountability Office, *Elder Justice: Stronger Federal Leadership* Could Enhance National Response to *Elder Abuse* (March 2011), available at http://www.gao gov/assets/320/316224.pdf.

[4] 5ee NASD Foundation, *Fraud Study Final* Report, 9 (May 12, 2006).

[5] Metlife, The Metlife Study on Elder Financial Abuse, supra, note 1

[6] See Nevin E Adams, *Annuities Get A* BehavioralFinance Makeover, Asset Int'l, Inc. (May 17, 2010), available *at* http://www.standard.com/finpros/newsletter/annuity_news/previous/2010-07/story5.html

[7] *Id.*

[8] See Ryan Hall, Richard Hall and Marcia Chapman, *Exploitation of the* Elderly: Undue Influence *as* a Form of *Elder Abuse,* 13 Clinical Geriatrics32 (Feb. 2005).

increasingly complex financial services marketplace. AARP research shows that, "With age, adults experience substantial diminution in cognitive function that affects financial decision making. Evidence indicates that, after peaking in middle age, the ability to make effective financial decisions declines."[9] Amorrg those skills that decline significantly with age are numeracy and basic math skills required to navigate daily activities or to understand simple charts, tables, and basic measures of risk and loss.[10]

Unfortunately, research also shows that older consumers are likely to be unaware of their declining financial decision-making capacity, which occurs with age even absent any sign of dementia or Alzheimer's. *Id.* "[B]y the time people reach their 80s, mote than half will suffer from either dementia or other 'significant' cognitive deficits."" Such cognitive decline makes older consumers more vulnerable, as they have a lesser understanding of what they own and how best to manage their income and assets.

Despite needing to make decisions about increasingly complex products and services, many older people do not have even the most rudimentary knowledge needed to make informed Investment decisions.[12] Older people often rely heavily on financial advisors due to limited financial literacy and the complexity of the investment products being sold. This makes them more vulnerable to fraud, especially in the sales of annuities and other Insurance products.[13] The sale of inappropriate annuities to people over age 65 has been "identified as subject to the greatest abuse" by the National Association of Insurance Commissioners.[14]

3. Older people fear losing independence, which contributes to underreporting of fraud and makes them particularly susceptible to isolation techniques.

Fear of losing their independence and control over their finances, whether real or perceived, may contribute to the reluctance older people have shown to report fraud and abuse or to pursue a remedy. Many consumers do not know how or to whom to complain even if they do want to report abuse or seek a remedy.

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[9] Naomi Karp, T. Ryan Wilson, Protecting Older Investors. The Challenge of *Diminished Capacity*, 11, AARP Public Policy Institute (Nov. 2011)
[10] *Id.*
[11] Agarwal. S Driscoll, J Gabaix, X., and Laibson, D The age of reason: *Financial decisions* over the *life-cycle* and *implications* for regulafion, 2, Brookings Papers on Economic Activity, 51-117 (2009).
[12] See Annamaria Lusardi, Olivia 5. Mitchell, and Vilsa Curto, *Financial* Literacy *and Financial Sophistication* Among Older Americans, Nat'l Bur of Econ. Res., Working Paper No 15469 (Dec. 2009), available *at* http://www.nber.org/papers/w15469.pdf
[13] Government Accountability Office, CONSUMER FINANCE, Regulatory Coverage Generally *Exists* far Financial *Planners,* but Consumer Protectton *Issues Remain,* 20, GAO-11-235 (Jan 2011).
[14] Hearing, Senate Select Comm. on Aging (statement of Sandy Praeger, Kansas Ins. Comm. and NAIC Pres.-Elect), 2 (Sept. 5,2007)

Older consumers, in fear of losing their Independence (financial control and decision-making capacity), are particularly susceptible to isolation techniques used by abusers. Isolation gives the abuser – whether it be a family member or acquaintance, sales person, or professional – greater influence over the older person's financial decision-making. Older people "often behave in ways that allow them to save face and maintain personal pride."[15] Despite limitations in financial decision-making or the complexity of the products, "aging consumers may make decisions based on impression management, rather than on self-preserving interests. In other words, aging consumers, in an effort to preserve self-dignity, are hkely to acquiesce to informed consent without being truly informed."[16]

Guardianship & Power of Attorney:

Protecting seniors against power of attorney and guardianship abuse has become more important, and states have fought to strengthen these protections in state law.

State power of attorney and guardianship laws and enforcement vary across the country, and failing to establish and enforce consistent standards can promote systems where vulnerable adults and their families are victimtzed. This can be very expensive in terms of time and money for state systems and the individuals involved, while improved guardianship and power of attorney laws and regulations are generally cost neutral policy improvements.

AARP encourages advance planning for incapacity through the use of durable powers of attorney as well as health cart? advance directives and other legal tools. Durable powers of attorney promote autonomy, avoid guardianship, cut costs and help family members and others make decisions on behalf of incapacitated older adults. Along with these benefits, however, there may be significant drawbacks. Powers of attorney involve little third party oversight and thus have great potential for financial abuse. The power of attorney has been called a "license to steal" – and this concerns us greatly. That why we think it's critical that state laws help prevent, detect and redress power of attorney abuse. AARP supports the Uniform Law Commission – model legislation on power of attorney and guardianship.

One key reason AARP supports these model acts is our concern over elder abuse, neglect and exploitation. These Acts can reduce the incidence of elder abuse in a myriad of ways. These include:

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[15] *See* Merlyn Griffiths *and* Tracy Harmon, *Aging Consumer Vulnerabilities Influencing Factors of Acquiescence to Informed Consent, 45 J.* of Cons. Aff. 445,446 (2011)
[16] *Id*

- removing or enticing a vulnerable person to another state to gain control over a vulnerable person's assets or life decisions through forum shopping;
- permitting a court to consider which jurisdiction can best protect a person subject to abuse;
- facilitating communication between courts in different states about allegations of abuse;
- transferring cases between states to remove individuals from abusive situations;
- providing clarity of termination of POA when the principal dies; and
- creating agent liability for damages.

Solutions in the States

States are aware of thegrowing problems of financial fraud and abuse faeing their burgeoningaging populations and are taking steps to protect them. To date, eleven states and the U.S. Virgin Islands enacted the Uniform Power of Attorney Act and twenty-nine states and the District of Colombia enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

We commend Chairman Hennessey for sponsoring a bill here in Pennsylvania that includes the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. AARP testified in support of the Chairman's bill last fall. The uniform law is also working its way through five other state legislatures – Hawaii, Maine, Mississippi, Pennsylvania and Ohio- during this legislative session. Additionally, the Uniform Power of Attorney Act is pending in the West Virginia legislature.

In addition to guardianship and power of attorney protection, AARP state offices are taking the lead in their states on a variety of legislative proposals aimed at protecting seniors from financial exploitation. Below is a brief description of the legislative activity in four states.

- *Michigan:* Michigan's Senate passed a package of "senior protection" bills which includes penalties for financial exploitation.

- *Mississippi:* SB *2086 is* currently pending in committee and provrdesfor enhanced penalties for fraudulent acts and monetary crimes committed against seniors and persons with disabilities.

- *Vermont:* after receiving negative press and facing a lawsuit due to the number of backlogged cases pending with the state's APS, the Vermont legislature introduced HB 290, which would adopt new rules for the department. The bill passed the House and is pending in the Senate.

- *Virginio:* The Virginia Senate passed a bill (SB 431) last week that will impose criminal penalties for financial exploitation of the elderly.

Financial abuse of seniors can cause injures far beyond the pocketbook. This abuse frequently affects seniors' physical and emotional health. The state in many Instances finds itself trying to pickup the pieces. Yet, efforts to prevent this abuse through the passage of stricter laws is often cost neutral to the states, The enactment of stronger safeguards against the abuse of elders is a win, win, win situation for states, older adults and their families.

Thank you again for hearing our views on elder financial abuse. If you or your staff has any questions, please feel free to contact us at AARP's national office at drroel@aapr.org or 202-434-3764, and jnepveu@aapr.org or 202-434- 2075, in our Pennsylvania office, contact Ivonne Gutierrez-Bucher at, ibucher@aarp.org .