



TESTIMONY
Regarding House Bill 2549
before the
PA HOUSE of REPRESENTATIVES' AGING AND OLDER ADULT SERVICES
COMMITTEE
September 5, 2018

I am Ray Lynch here today on behalf of the Pennsylvania Bankers Association. PA Bankers represents 127 banking institutions of all sizes operating in this Commonwealth. I serve as a member of the Association's Elder Financial Abuse Prevention Working Group. I am a Managing Counsel for the Wells Fargo Legal Department out of our Boston Law Office. Wells Fargo operates 261 branches in PA located primarily in Eastern and Central Pennsylvania with 5,879 employees. Wells Fargo is the second largest bank in Pennsylvania in terms of the number of branches and deposits held. My work includes managing the legal support on deposit account operations (with an emphasis on fraud and elder financial abuse prevention) provided to the Bank's entire branch network in 39 states and the District of Columbia. Prior to working at Wells Fargo, I privately-practiced probate law and then went in-house at community-sized banks the latter of which was acquired by Wells Fargo. My colleagues and I care deeply about serving our institution's older customers and protecting their accounts from fraud and abuse.

PA Bankers Association appreciates the opportunity to submit comments and participate in today's hearing on elder financial exploitation. Banks are dedicated to protecting all their customers, but we are especially aware of the physical and mental limitations that often occur in one's later years requiring our special attention.

Banks provide financial literacy training to customers and the general public and our branch and telephone support staffs are available to consult with customers who have concerns about questionable transactions they have been asked to undertake by strangers, or even members of their own families.

In March of 2012, the American Bankers Association's online elder abuse prevention training course was made available at no charge to ABA-member institutions. It was updated most recently in July of 2018. Some institutions design their own elder abuse prevention training or procure it from other providers. ABA also provides resources to educate bank customers about fraud including statement stuffers, brochures, press releases and website content. A recent ABA

[publication](#)¹ guides financial institutions in partnering with law enforcement and adult protective services.

In addition, banks employ reasonable measures to detect and respond to potential exploitation of our older customers while striving to preserve their safety, security, privacy and dignity. Some banks can afford sophisticated account monitoring systems to detect potential elder financial abuse; the vast majority simply cannot. Therefore, employee and customer education are the principal means to detect and prevent abuse.

Despite the banking industry's best efforts to educate our seniors and those who care for them about the potential for elder financial abuse, for a variety of reasons, including isolation and declining physical and mental capacities, certain seniors remain vulnerable.

Among the more common types of elder financial exploitation by strangers are fake accident or grandparent telephone scams; lottery/prize scams; unsolicited work offered for their residences and autos; reverse mortgage scams where seniors are charged for information the federal government provides free of charge, wire fraud, and mis-use of powers of attorneys by an elder's agents.

Even sadder are cases of family member or acquaintance elder abuse such as obtaining money or other assets through undue influence, misrepresentation or fraud; abuse by agents acting under powers of attorney; misappropriation of assets through improper account access device use; and financial pressure applied to a senior who is dependent upon the housing or services a caregiver provides.

When we suspect or confirm instances of senior financial exploitation, banks are required by federal law to file Suspicious Activity Reports (SARs) with the Financial Crime Enforcement Network known as FinCEN, a division of the United States Treasury.²

Compliance with federal regulations, including Suspicious Activity Reporting compliance, is an element of banks' federal regulatory agency examinations, so please be assured that we take it very seriously.

It is our understanding that FinCEN works with states to share information filed through SARs where indicated. Banks are also encouraged by their federal regulators to report suspicious activity to state and local law enforcement authorities which in the case of elder abuse in Pennsylvania would include Area Agencies on Aging.³

¹ See *Safe Banking for Seniors' Partnership Guide* available at https://www.aba.com/Engagement/Documents/Protecting-Seniors-Partnership-Guide.pdf?utm_campaign=ABA-Newsbytes-061118&utm_medium=email&utm_source=Eloqua

² See, FinCEN, FIN-2011-A003, *Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation* (Feb. 22, 2011), available at <https://www.fincen.gov/sites/default/files/shared/fin-2011-a003.pdf>.

³ See the *Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation*, issued jointly by the Bureau of Consumer Financial Protection, United States Treasury and Financial Crime Enforcement Network (FinCEN) available at https://www.fincen.gov/sites/default/files/2017-08/8-25-2017_FINAL_CFPB%2BTreasury%2BFinCEN%20Joint%20Memo.pdf

Because financial institutions are already subject to a mandate to report significant cases of financial exploitation to FinCEN, the PA Bankers Association is opposed to mandatory reporting. We fear a generalized mandate to report all cases of financial exploitation would overwhelm the capacities of area agencies on aging to conduct investigations and develop plans to protect vulnerable older adults. We are also concerned that any reporting mandate, even if accompanied by provisions to limit when reports are required, would lead to risk-adverse behaviors that generate reports in circumstances in which area agencies on aging are not in a position to take any effective action.

We are also concerned that adopting a reporting mandate will create complex issues regarding when reports are due; whether an institution must first conduct an investigation of potential red-flags before filing reports; how much information must be included in reports; what sanctions should be imposed for failure to file reports; how to effectively coordinate any state reporting requirements with FinCEN's reporting obligations; and how to integrate and coordinate the compliance responsibilities of the Department of Aging with the responsibilities of financial regulatory agencies, such as the Department of Banking and Securities, the Federal Deposit Insurance Corporation, the Office of the Comptroller of Currency, the Federal Reserve Board, the National Credit Union Administration, and the Securities and Exchange Commission.

PA Bankers has been working with the Departments of Banking & Securities and Aging, your Chairman and staff to develop amendments to the PA Older Adult Protective Services Act to give financial institutions, the Commonwealth and its Area Agencies on Aging (triple As) better tools to deal with elder financial exploitation, and to ensure that the SAR process provides the information to the department and triple As necessary to investigate and take action against cases of financial exploitation. Financial institutions are already highly incentivized to protect all of their customers from financial exploitation, especially older adults and other customers with disabilities that impair their ability to protect their own interests. What we need are better tools to combat financial exploitation through the voluntary cooperative efforts of all stakeholders, not a new, complex and costly set of regulatory mandates.

PA Bankers encourages the training of triple As and other local law enforcement agencies' staffs in the investigation of potential elder financial abuse. Our member banks' security officers can assist with this.

Detecting and reporting elder financial abuse is not simple or straightforward. Please allow me a few moments to share a recent case:

Florida law permits financial institutions to petition a court to quickly review an elder's power of attorney and the circumstances surrounding its execution and/or the acts of the attorney-in-fact. Wells Fargo had an elderly customer who signed a power of attorney in favor of a married couple who moved the customer into their home to allegedly provide for her personal and medical care. The couple used the power of attorney to withdraw substantial amounts of funds from the customer's bank account to pay for the time they spent caring for the customer and to pay for the "rent" they charged the customer. The couple prevented the Bank from speaking with the customer to insure she willingly signed the power of attorney and approved of the

amounts charged by the couple. The Bank filed an elder abuse report with the local Adult Protective Service (APS) but was concerned that the couple wanted to withdraw more funds from the customer's account. The Bank knew the local APS agency would need time to review the Bank's report and investigate the matter. The couple threatened to stop providing medical care to the customer if the Bank did not honor their withdrawal requests they made pursuant to the power of attorney (which gave them authority to withdraw money from the customer's account). The Bank took advantage of the Florida law and filed a petition with the local Florida court in which it requested the Court to review the actions of the attorneys-in-fact and the circumstances surrounding the execution of the power of attorney. The Court after reviewing the matter decided to revoke the power of attorney, appoint an Emergency Guardian for the customer, instructed the Guardian to remove the customer from the couple's house and barred the couple from accessing any further assets of the customer or interfere with the Emergency Guardian. At the end of the day, when elder abuse is discovered and there is a fair amount of money involved, the family and public agencies expect the financial institution to act, but PA's current law does not yet provide enough tools.

Cases like that I just outlined for you are not uncommon. Elder financial abuse is not always easy to detect and prevent. Thus, HB 2549 would provide financial institutions, the Department of Aging and triple As additional, critical tools to assist in preventing elder financial abuse, or at the very least identifying and terminating it when it does occur.

I cite the following improvements to the Older Adult Protective Services Act (OAPSA) made by HB 2549:

- The types of "exploitation" that may be reported to and investigated by an area agency on aging are revised to include "financial exploitation," i.e., any "wrongful or unauthorized taking or attempt to take by withholding, appropriation, concealment or use of money, assets or property of an older adult, including any act or omission taken by a person, including through the use of a power of attorney, guardianship, custodian, trustee, personal representative or conservatorship of an older adult or by an individual who stands in a position of trust and confidence with the older adult, including business transactions."
- The types of older adults for whom cases of suspected exploitation may be reported to an area agency on aging are expanded to apply not only to "older adults in need of protective services," but also to apply to "any person, including an employee of a financial institution or fiduciary, having reasonable cause to suspect that an older adult may be a victim of abuse, neglect, exploitation or abandonment." As a result, to be eligible to file a report and to be protected by the immunities associated with the filing of a report, it will no longer be necessary to determine that the older adult (i) is incapacitated and unable to perform or obtain services to maintain physical or mental health; (ii) lacks a responsible caretaker; and (iii) is in imminent risk of danger to his person or property. These requirements of current law may have often acted as an impediment to the filing of reports and investigation of suspect cases of exploitation by area agencies on aging especially because bank employees are not medically trained to determine if a customer is incapacitated and/or investigate these issues.

- Any financial institution with employees in Pennsylvania, or with employees regularly engaging in financial transactions with, or on behalf of, older adults in Pennsylvania is required to adopt and implement a training program for its employees to (i) identify activities that constitute the financial exploitation of older adults; (ii) recognize signs of potential financial exploitation of older adults; (iii) prevent and deter the financial exploitation of older adults, and (iv) respond to suspected cases of financial exploitation of older adults.” The requirements apply broadly not only to banks, savings associations and credit unions, but also to securities brokers and dealers, investment advisers, money transmitters, currency exchangers, issuers of money orders and travelers checks, credit card systems, consumer finance companies, and to any other type of business that the Department of Aging by regulation determines to be engaged in similar activities. To avoid duplicating programs required by other regulatory agencies, however, these training requirements are deemed to be satisfied if a financial institution is subject to supervision and regular examination by a regulatory authority that requires the institution to include in its program for reporting fraud and money laundering training to identify, prevent or deter and respond to suspected cases of financial exploitation of older adults.
- The Department of Aging in cooperation with the Department of Banking and Securities and representatives of the financial services industry is required to establish a model training program that may be used by financial institutions to satisfy the legislation’s training requirements.
- Financial institutions and fiduciaries are granted the power to delay disbursements of funds or transactions to prevent the financial exploitation of older adults. Disbursements and delays may only occur if a report is filed with an area agency on aging or a law enforcement agency and are limited in duration unless extended by a court order or request of an area agency on aging or law enforcement agency.

It is one thing to have the ability to report suspected abuse. It would be even more helpful to be able to prevent it by delaying a disbursement or transaction for a limited period of time until the circumstances can be investigated. It is heart-breaking for bankers to watch an elder’s assets flow out of an account knowing that the time it will take a triple A or law enforcement to investigate makes it unlikely that the funds will be recovered. Similar delay authority has been granted in Alabama, Delaware, Indiana, Louisiana, Maryland, Missouri, Mississippi, Tennessee, Texas and Washington.

- Expanded immunities are provided to financial institutions and fiduciaries reporting cases of suspected financial exploitation or in determining whether to exercise the authority granted to delay disbursements and transactions in order to prevent the financial exploitation of older adults.
- A grant of standing to commence a proceeding in a court of competent jurisdiction with respect to suspected elder abuse.

In complex financial settings in particular, the financial institution might suspect elder financial abuse, but the evidence might not be clear. A financial institution's having the power to seek timely judicial review of the situation could save an elder from financial loss. In most cases, this would be at the financial institution's expense, but it is worth it to prevent a loss. Similar grants of standing are provided by the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the Uniform Power of Attorney Act. To date 32 states have adopted the UPOA's provision granting court standing to a financial institution.

- Area agencies on aging are authorized to share information regarding reports and investigations with financial institutions and fiduciaries needed to determine whether delay disbursements or transactions to prevent the financial exploitation of older adults and to work cooperatively with financial institutions to fiduciaries to develop and implement plans to protect older adults from financial exploitation.
- The Department of Aging is directed to work with the U.S. Treasury Department to determine if a system can be established to make available to area agencies on aging information regarding the suspected financial exploitation of older adults filed in Suspicious Activity Reports ("SARs") with the Financial Crimes Enforcement Network ("FinCEN") under the Federal Bank Secrecy Act. Currently access to information contained in SARs may be shared with states by FinCEN but is limited only to narrowly defined types of law enforcement agencies.

The Pennsylvania Bankers Association supports the enactment of HB 2549. We believe its enactment will make a major contribution to prevent the financial exploitation of older adults and to provide effective remedies when it occurs. I thank you again for the opportunity to present the industry's views. I look forward to our dialogue on the subject of elder financial abuse prevention.