



National Academy of
Elder Law Attorneys, Inc.

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August 13, 2012

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington DC 20552

Response to Request for Information Regarding Senior Financial Exploitation
Docket Number: CFPB-2012-0018

Dear Ms. Jackson:

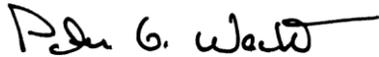
Thank you for providing the National Academy of Elder Law Attorneys (NAELA) an opportunity to provide input on the topic of financial exploitation of elders. NAELA is a professional association consisting of approximately 4,400 attorneys who advocate for the rights of seniors and people with disabilities. Elder law attorneys often come in contact with elderly clients who have experienced abuse, neglect, or exploitation. The financial exploitation of the elderly is an area of grave concern for our members and our organization. As you'll see with the attachments, NAELA has in place Board-approved public policy guidelines focused on Elder Justice; moreover, NAELA was a founding member of the Elder Justice Coalition, which worked to gain passage of the Elder Justice Act as part of the Patient Protection and Affordable Care Act.

In response to the Consumer Financial Protection Bureau's (CFPB) Request for Information, we distributed a survey to a portion of our membership and asked them to share their professional knowledge. The survey consisted of the questions proposed in the CFPB's Request for Information and also gave our members the opportunity to provide their recommendations on how to better protect the elderly from financial exploitation.

Please find attached a summary of our organization's findings and our members' personal recommendations. Also attached is information NAELA compiled in response to the U.S. Government Accountability Office's investigation regarding the financial exploitation of elders that may be of use.

Thank you for your office's efforts to combat the financial exploitation of the elderly. Please contact NAELA public policy advocates Brian Lindberg (brian@consumers.org) or Sadia Sorathia (ssorathia@consumers.org) if there is anything else that we can do to support your important study.

Sincerely,



Peter G. Wacht, CAE
Executive Director



Gregory S. French, CELA, CAP
President

Attachments:

1. Response to Request for Information Regarding Senior Financial Exploitation (Docket Number CFPB-2012-0018)
2. Cover Letter to Kay Brown, U.S. Government Accountability Office
3. Sampling of NAELA Members' Perspectives on Financial Abuse and Exploitation of the Elderly
4. List of NAELA Members to Contact for Additional Information
5. NAELA Public Policy Guidelines on Elder Justice
6. *Bringing National Action to a National Disgrace: The History of the Elder Justice Act.* By Brian W. Lindberg, Charles P. Sabatino, Esq., and Robert B. Blancato
7. Letter to Senate Appropriations Committee
8. Letter to House Appropriations Committee
9. S. 462 Bill Summary

As an organization, NAELA has taken elder abuse, neglect, and exploitation very seriously. On a daily basis our members come in contact with older adults and individuals with special needs and disabilities who have experienced some kind of abuse, neglect, or exploitation. Our members regularly share concerns about the inadequacy of the programs designed to prevent, detect, and address the problems of financial exploitation. The members who responded to our survey highlighted common forms of exploitation in their communities and identified problems facing national and state governments in preventing future exploitation of seniors.

Request for Information Question #3:

NAELA members overwhelmingly believe that existing accountability controls are ineffective in deterring the misuse of senior advisor credentials. No NAELA member who responded to the survey thought the existing accountability controls are effective. Twenty-five percent (25%) of responses stated that the current controls are “somewhat effective,” while seventy-five percent (75%) believed the controls are ineffective.

Not only are the accountability controls ineffective, but NAELA members believe that seniors have a difficult time determining whether the credentials of financial advisors are legitimate. Fifty percent (50%) believed that seniors were ineffective in determining the legitimacy of credentials.

When asked what state or local standards were in place to help seniors determine the validity of financial advisor credentials, sixty percent (60%) of the members surveyed did not know of any such standards.

Request for Information Question #4:

NAELA members believe that seniors are only “somewhat effective” in using available resources to select a financial advisor with appropriate knowledge to address their specific financial needs and requirements. Sixty-four percent (64%) of NAELA members who participated in the survey stated that seniors are only “somewhat effective,” while thirty-two percent (32%) argued that seniors are ineffective in utilizing the available resources to appropriately select a financial advisor. Only one response stated that seniors were effective in selecting financial advisors.

Request for Information Question #7:

More than half of those surveyed identified the misuse of Power of Attorney documents by close friends and family as a common example of elder financial exploitation. A member shared an experience where a client’s family member used a Power of Attorney document to establish credit cards in the client’s name for the family member’s personal use. Another NAELA member stated that “family based financial exploitation is far and away the most common form of abuse. Anything else pales in comparison.” This strong statement

effectively explains the extent and severity of financial abuse by close confidants. In many cases, it is exceedingly difficult for a senior or a person with disabilities to take legal action if he or she has no helpful friend or relative. It becomes even more difficult when the victim's friend or relative is the person who is financially exploiting the victim.

Another common example of financial exploitation is the selling of unnecessary annuities or trusts to seniors by financial advisors. Financial advisors frequently receive a high commission from selling these products. Many times such annuities and trusts are sold with the inaccurate promise that transferring assets will not negatively impact Medicaid eligibility. Further, members raised concern that many of these seniors do not even have capacity to sign such documents.

NAELA members also expressed the concern that these financial advisors often target the elderly in senior housing facilities with the knowledge of these facilities. The fear is that senior facilities, such as assisted living facilities, are "aiding and abetting" these financial advisors without any consequences.

As many members stated, the elderly are often the target of scam artists. Members shared numerous scams that they have witnessed. Two members identified a scam where seniors were sold annuities from people claiming to work for a Veterans' organization when in reality no relationship with any Veterans' organization existed. Other members stated that scam artists impersonate financial advisors and claim to be associated with government agencies in order to encourage seniors to invest in various financial tools. Scam artists also impersonate employees of a charity in order to receive funds from seniors. Home improvement scams are another popular method employed to deceive seniors.

Telephone solicitation is also a common scam targeting the aging population. Solicitors from Jamaica, Canada, and places within the U.S. contact the elderly and tell them that they will receive millions of dollars, cars, boats, and planes if they will first wire or mail various sums of money to the scam artist. These scam artists call repeatedly and engage the seniors in conversation about how much the senior could win and how important it is that they wire the money. The senior is also eventually billed for the international telephone calls, which have added up to \$800 in one month for some seniors. A NAELA member's client reportedly lost approximately \$1 million to these scam artists.

Request for Information Question #8:

Transferring funds in a manner that renders a Veteran ineligible for Medicaid is an unfortunately common example of fraudulent practices that target older military retirees. Selling unnecessary financial tools the Veteran does not need, such as annuities, trusts, and life insurance policies, is another example of deceptive practices facing Veterans.

Twenty-nine percent (29%) of those surveyed cited "scamming" the Veteran during the application process for benefits as a widespread example of financial exploitation of military retirees. One NAELA member stated that some financial advisors charge the Veteran large sums of money to apply for VA benefits even though charging a fee for

assisting with a VA application is illegal. NAELA members also reported that non-accredited advisors deceive Veterans by pretending to be from the Department of Veterans Affairs or a Veterans' assistance program.

Two NAELA members raised the concern of the relationship between these financial advisors and the senior assisted living facilities. They believe that these facilities steer Veterans towards certain financial advisors and, in exchange, the financial advisors pay the facilities a fee. A NAELA member writes that "most common and of most concern is the relationship of assisted living facilities to VA planning firms. The assisted living admissions office recommends to the applicant for residence that they work with the VA planner to obtain A&A benefits [when] the planner's primary goal is to sell an annuity product." Such an arrangement can easily expose Veterans to financial exploitation.

Recommendations:

State and local governments face different obstacles when addressing the financial exploitation of seniors. Some states have stronger state statutes regarding elder abuse. Other states have more resources devoted to their efforts of preventing further abuse. However, seventy-five percent (75%) of NAELA members who participated in the survey stated that state and local governments are ineffective in combating elder financial exploitation. No NAELA member responded that they believed the government is effective in protecting the elderly from financial abuse.

Many NAELA members shared their displeasure with the attitude of state and local governments towards preventing elder financial abuse. Seventeen percent (17%) of those surveyed believed the government has no interest in protecting the elderly. They stressed that the government does not understand the severity of the situation and that the government has adopted a belief that financial exploitation of the elderly is simply a "family dispute" that does not require government intervention.

NAELA members expressed what they believed to be the most common challenges facing state and local governments in combating financial exploitation of the elderly, along with providing their personal recommendations on how to make local and state governments more effective in protecting seniors from financial exploitation.

A. Establish Laws with Stronger and Consistent Enforcement Mechanisms

Members identified the lack of stronger laws as a major factor in state and local governments' failure to protect the elderly from financial exploitation. A NAELA member stated that elder abuse is not even a crime where he or she lives. Although the member failed to mention his or her jurisdiction, the member explained that "the criminal code does not define elder abuse as a crime" but rather it is used only as a factor in sentencing. Another member acknowledged that the lack of elder abuse laws with "teeth" is the reason why scam artists can continue their deceptive practices by merely changing a few identifying details.

The quality of Adult Protective Services (APS) is inconsistent across the nation. Some states do not have jurisdiction to pursue cases that involve private assets or non-government income. A NAELA member reported that APS will not intervene if the exploited adult is in a safe location, even if that “safe location” is an emergency room.

NAELA members stressed that stronger laws with criminal sanctions and financial penalties are required to truly protect the elderly from financial exploitation. According to one NAELA member, “the only measure that will deter misuse is severe financial penalties.” New laws must also have “teeth” that will actually allow state prosecutors to pursue these cases in a consistent manner.

B. Establish Mandatory Reporting Laws

Some NAELA members believe that individuals in various positions of power knew of situations where the elderly were subjected to financial abuse and took no action. Members recommend that instituting stronger mandatory reporting laws is a necessary step towards eliminating elder financial exploitation. Members believe that physicians and employees of banking and financial institutions should be subject to mandatory reporting laws, requiring them to identify deceptive or abusive conduct towards seniors. However, members acknowledge that such a law would face stark opposition from financial companies.

C. Increase Funding for Elder Abuse Programs

One-half of NAELA members surveyed identified the lack of adequate funding for elder abuse programs as one of the most common challenges facing state and local governments in their efforts to combat elder financial exploitation. NAELA members assert that there is a link between the lack of funding and the ineffective training of government departments on how to appropriately respond to elder abuse. Insufficient funding also means that prosecutors must prioritize cases to pursue and oftentimes elder abuse cases are not ranked high on the list of important issues. NAELA members suggest that increased funding for elder abuse programs will directly improve prevention, detection, and response to elder financial exploitation.

D. Support and Strengthen Education Programs

One NAELA member writes, “although some states have elder abuse laws, seniors do not want to turn in family members or financial advisors so they typically suffer in silence.” Members acknowledge that many times seniors do not reach out for help because they do not want to betray loved ones or they feel ashamed about falling for a scam. Members suggest that state and local governments support and strengthen education programs for the elderly and their family members in order to prevent elders from “suffering in silence.” These programs should identify what is financial exploitation, how to identify financial exploitation, and how to prevent and report it.

One NAELA member has been a leader in a model program aiming to protect consumers from scams and fraud. The Elder Consumer Protection Program in Florida provides materials and services, conducts regional and state wide programs, and helps consumers protect themselves from exploitation. This program is an excellent example of how education will better protect the elderly from financial exploitation.

E. Prosecute These Crimes

NAELA members urge states to make elder abuse a higher priority and to allow for the prosecution of these crimes. In Colorado, an Elder Law attorney served as an expert witness on the duties of an agent in an elder financial exploitation case. The defendant was convicted of theft and crimes by a person in authority for stealing \$10,000 by using a Power of Attorney document. Such cases can be tried successfully if the state prioritizes prosecuting these offenders.