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INSIGHT

Elder Financial Exploitation

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Elder financial exploitation (EFE), as defined by the Financial Crimes Enforcement Network (FinCEN), is "the illegal or improper use of an older adult's funds, property, or assets." EFE can deprive seniors of much-needed resources for retirement and research has linked EFE to additional health problems. Trends in FinCEN data reveal that EFE is growing in terms of total reported instances and as a share of overall reports.

Legislation introduced in the 118th Congress aims to introduce new regulation, provide grants for states to respond to EFE, and establish new offices focused on EFE or modify existing authorities.

Background

The National Elder Mistreatment Study (and also research by Cornell University's Self-Reported Study solely focused on New York state) identified EFE as the most common form of elder abuse. Older adults might be more susceptible to financial abuse due to cognitive decline, lack of familiarity with technology, reliance on caregivers or family members for assistance with managing finances, and reliable income streams from Social Security and other sources. EFE is often perpetrated by a trusted person, such as a caregiver, family member, or friend. Common types of EFE include romance scams, investment scams, and elder thefts including ATM withdrawals and check fraud.

EFE is generally first reported at the state or local level by Adult Protective Services (APS), with teams specializing in EFE, in conjunction with law enforcement. As a result, much of these investigative authorities are decentralized from the federal government. The federal government plays some investigative role: The Secret Service has primary jurisdiction over financial crimes and fraud, and the Department of Justice established a Transnational Elder Fraud Strike Force focused on foreign-originated elder scams. The Consumer Financial Protection Bureau has a statutorily mandated office focused on protecting older Americans' finances (12 U.S.C. §5493).

Financial institutions—meaning firms dealing with financial transactions—have certain obligations related to EFE. About half of states mandate that financial institutions report suspected EFE to APS and/or law enforcement, while nine states require financial institutions to train their employees to recognize EFE. Financial institutions might also institute voluntary measures to prevent EFE, including providing staff training, slowing down payments to allow consumers to verify the legitimacy of transactions, and investments in technology that specialize in fraud detection. Section 303 of P.L. 115-174

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provides financial institutions immunity from any liability if certain employees disclose suspected EFE to APS or law enforcement and allows financial institutions to provide training to detect EFE.

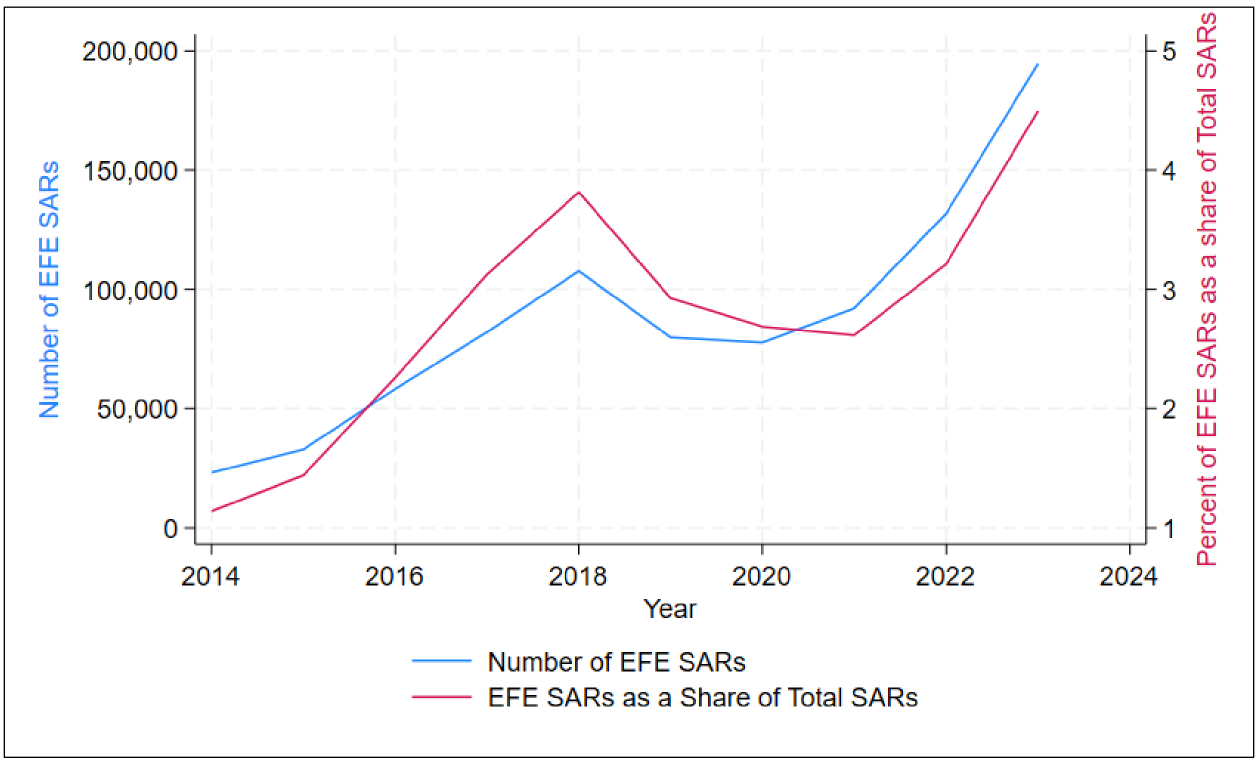
Unauthorized electronic transactions (i.e., transactions not initiated by the consumer) that involve financial institutions fall under the Electronic Fund Transfer Act (15 U.S.C. §1693) if they meet certain criteria. This means that consumer liability is generally limited to $50, with financial institutions liable for the remaining balance. For a transaction authorized by a consumer but induced by a third party under fraudulent circumstances, the liability would generally rest with the consumer and not the financial institution.

EFE Trends

The estimated total amount of EFE perpetrated in a given year varies by source. The Federal Bureau of Investigation reported $3.4 billion in self-reported losses from elders, which is likely an underestimate due to the self-reported nature. AARP estimated that victims of EFE lost $28.3 billion annually. The median amount of EFE scams reported to FinCEN was $33,000, while the mean amount was $129,000. These amounts are higher than those reported by the general population.

Financial firms file Suspicious Activity Reports (SARs) with FinCEN to flag suspected suspicious activity, including scams and fraud. The trends in EFE SARs are depicted in **Figure 1**. The total number of national EFE-related SARs has grown from 35,000 in 2014 to 194,000 in 2023. During this time, these reports as a share of total SARs grew from 1.2% in 2013 to 4.4% in 2023. These SARs could include suspected, but in-the-end unsubstantiated reports of EFE.

Figure 1. Elder Financial Exploitation SARs: National Trends



Source: Public FinCEN SAR data compiled by CRS.

Note: EFE = Elder Financial Exploitation; SAR = Suspicious Activity Report.

Selected Legislation: 118th Congress

New Regulation

Congress could consider revising the role of financial institutions and the actions they could or must take to protect seniors. For example, in the case of a fraudulently induced transfer that is authorized by the consumer, H.R. 9303/S. 4943 would mandate that the sending and receiving financial institutions share the liability—as opposed to the consumer. H.R. 8922 would require issuers of pre-approved credit cards to provide fraud alerts to elderly consumers. S. 1481/H.R. 500 would allow investment companies to delay redeeming mutual funds if they suspect EFE.

Federal Grants

Congress has introduced legislation to provide grants to states for their responses to EFE. H.R. 9480 would allow law enforcement agencies to use eligible federal grants to investigate general or senior financial fraud. S. 4371/H.R. 8478 would provide grants for EFE investigations, enforcement, or consumer education materials. S. 1198/H.R. 2718 would provide grants to states to investigate elder abuse more generally.

Modify Federal Authorities

Congress has introduced legislation to establish new offices focused on EFE or modify existing authorities to investigate EFE. H.R. 2593/S. 955 would establish a new Senior Investor Taskforce within the Securities and Exchange Commission and mandate a new Government Accountability Office report on EFE. This legislation passed the House. H.R. 8023 would require the Federal Trade Commission to report on elder scams, enforcement actions punishing those scams, and policy recommendations to prevent further scams. Separately, H.R. 9358 would transfer federal jurisdiction over financial crimes from the Secret Service to the Department of the Treasury.

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