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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 aimed to introduce new regulation, provide grants for states to respond to EFE, and establish new offices focused on EFE or modify existing authorities. None of these selected bills became law.

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, particularly elder theft, 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 certain kinds of financial crimes and fraud. The Department of Justice (DOJ) established a Transnational Elder Fraud Strike Force focused on foreign-originated elder scams and an Elder Justice Initiative. The DOJ is also statutorily required to publish data on elder abuse investigations, designate an elder justice coordinator in each federal judicial district, and provide certain best practices to prevent elder abuse (P.L. 115-70). From July 2023 through June 2024, the DOJ brought "over 300 enforcement actions against over 700 defendants charged with stealing nearly $700 million from over 225,000 older victims." The Consumer Financial Protection Bureau has a statutorily mandated office focused on protecting older Americans' finances (12 U.S.C. §5493).

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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 are required to file Suspicious Activity Reports with FinCEN to flag suspected suspicious activity, including scams and fraud.

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 fraud detection technology. Section 303 of P.L. 115-174 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. In a previous interagency statement, certain federal regulators pointed out that financial institutions could engage certain activities to prevent EFE including employee training, transaction holds as applicable by state laws, trusted contacts, and consumer outreach, among other interventions.

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, slightly higher than the average amounts for elder theft. These amounts are higher than those reported by the general population.

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 have mandated that the sending and receiving financial institutions share the liability—as opposed to the consumer. H.R. 8922 would have required issuers of preapproved credit cards to provide fraud alerts to elderly consumers. S. 1481/H.R. 500 would have allowed investment companies to delay redeeming mutual funds if they suspect EFE. This bill passed the House.

Federal Grants

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

Modify Federal Authorities

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

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