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ELDER FINANCIAL EXPLOITATION - FINCEN ADVISORY

I. INTRODUCTION

The Financial Crimes Enforcement Network (FinCEN) has issued an advisory to alert financial institutions to the rising trend of elder financial exploitation (EFE) targeting older adults and to highlight new EFE typologies and red flags since FinCEN issued the first EFE advisory in 2011. For purposes of the advisory, EFE is defined as the illegal or improper use of an older adult's funds, property, or assets. Additional information regarding trends and typologies of EFE and associated payments, as well as case studies on elder theft and elder scams are contained within the recent FinCEN advisory which may be viewed at <https://www.fincen.gov/sites/default/files/advisory/2022-06-15/FinCEN%20Advisory%20Elder%20Financial%20Exploitation%20FINAL%20508.pdf> (pages 3-8).

II. BEHAVIORAL AND FINANCIAL RED FLAGS

A. Behavioral Red Flags

Victims of EFE may have limited and irregular contact with others. For some, their only outside contact may involve visiting or communicating with their local financial institution, including at the bank branch, check-cashing counter, or MSB. Therefore, it is critical for customer-facing staff to identify and consider the behavioral red flags when conducting transactions involving their older customers, particularly suspicious behavior that also involves the financial red flags highlighted below. Such information should be incorporated into SAR filings and reported to law enforcement as appropriate. Financial institutions are reminded that behavioral red flags of EFE and the names of staff who witnessed them should be included in the SAR narrative to assist future law enforcement investigations. Behavioral red flags of EFE may include:

- An older customer's account shows sudden and unusual changes in contact information or new connections to emails, phone numbers, or accounts that may originate overseas.
- An older customer with known physical, emotional, and cognitive impairment has unexplainable or unusual account activity.

- An older customer appears distressed, submissive, fearful, anxious to follow others' directions related to their financial accounts, or unable to answer basic questions about account activity.
- An older customer mentions how an online friend or romantic partner is asking them to receive and forward money to one or more individuals on their behalf or open a bank account for a "business opportunity."
- During a transaction, an older customer appears to be taking direction from someone with whom they are speaking on a cell phone, and the older customer seems nervous, leery, or unwilling to hang up.
- An older customer is agitated or frenzied about the need to send money immediately in the face of a purported emergency of a loved one, but the money would be sent to the account of a seemingly unconnected third-party business or individual.
- A caregiver or other individual shows excessive interest in the older customer's finances or assets, does not allow the older customer to speak for himself or herself, or is reluctant to leave the older customer's side during conversations.
- An older customer shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker.
- The financial institution is unable to speak directly with the older customer, despite repeated attempts to contact him or her.
- A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of an older customer without proper documentation.
- An older customer's financial management changes suddenly, such as through a change of power of attorney, trust, or estate planning vehicles, to a different family member or a new individual, particularly if such changes appear to be done under undue influence, coercion, or forgery or the customer has diminished cognitive abilities and is unable to agree to or understand the consequences of the new arrangement.
- An older customer lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters.

B. Financial Red Flags

Identification of financial red flags of EFE and the associated payments are critical to detecting, preventing, and reporting suspicious activity potentially indicative of EFE. In addition to the financial red flags set out in DOJ and CFPB notices, financial red flags of EFE may include:

- Dormant accounts with large balances begin to show constant withdrawals. An older customer purchases large numbers of gift cards or prepaid access cards.
- An older customer suddenly begins discussing and buying CVC.
- An older customer sends multiple checks or wire transfers with descriptors in the memo line such as "tech support services," "winnings," or "taxes."

- Uncharacteristic, sudden, abnormally frequent, or significant withdrawals of cash or transfers of assets from an older customer's account.
- An older customer receives and transfers money interstate or abroad to recipients with whom they have no in-person relationship, and the explanation seems suspicious or indicative of a scam or money mule scheme.
- Frequent large withdrawals, including daily maximum currency withdrawals from an ATM.
- Sudden or frequent non-sufficient fund activity.
- Uncharacteristic nonpayment for services, which may indicate a loss of funds or of access to funds. Debit transactions that are inconsistent for the older customer.
- Uncharacteristic attempts to wire large sums of money.
- Closing of CDs or accounts without regard to penalties.

III. SUSPICIOUS ACTIVITY REPORTING

The FinCEN advisory also contains a refresher on the suspicious activity reporting and other relevant BSA reporting requirements which may be viewed at <https://www.fincen.gov/sites/default/files/advisory/2022-06-15/FinCEN%20Advisory%20Elder%20Financial%20Exploitation%20FINAL%20508.pdf> (pages 11-15).

The foregoing Compliance Update is for informational purposes only, and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.