



Federal Reserve Bank of Atlanta *Talk About Payments* Webinar

Preventing Elder Financial Exploitation

Scarlett Heinbuch, Ronald C. Long, and Naomi R. Cahn (with Jean Roark and Jessica Washington)

Scarlett Heinbuch: Welcome, everyone, to our "Preventing Elder Financial Exploitation" webinar. We're really excited to have you here today. I am, as Jean said, Scarlett Heinbuch. I'm in the Retail Payments Risk Forum at the Federal Reserve Bank of Atlanta, and I'm also excited to share with you that we're going to have Ron Long and Naomi Cahn today. Jean, can you go ahead and advance the next slide?

I just want to give you a quick overview of our agenda—the introductions will come in just a moment, but we're going to talk about the overview of elder financial fraud, just to give a broad-based viewpoint of that. We're also going to talk about conservatorships, guardianships, and power of attorneys, and look at those distinctions. And then we're going to have the audience question-and-answer time, which we think is going to really inform a lot of people with a lot of things that people don't know about and want to know more of. Jean, can you do the next slide?

Okay. You've already got me, and as you can see we have Ron Long, who is the head of Aging Client Services with Wells Fargo. And we also have Naomi Cahn, who is the director of the Family Law Center at the University of Virginia. Both of these folks are experts in these areas, and they know all the details and things that you would really want to know about. As usual, we do have our disclaimer, which is the views expressed herein are those of the speakers and participants and do not necessarily reflect the views of the Federal Reserve Bank of Atlanta or the Federal Reserve System. So that's something that we just wanted to say.

Jean, can you go to the next slide?

I always think it's important to define things related to what we're talking about. So when we talk about "elder financial exploitation," the definition is this—and this is from the US Government Accountability Office, and that is the illegal or improper use of an older adult's funds, property, or assets. Using that as our working definition, we're going to move on from there. Jean, can you advance, please?

All right. "The crime of the 21st century"—that is something, a headline that just grabbed me. And this was from the Consumer Financial Protection Bureau's guide, which I have footnoted here. But they said that there's so much going on now with financial exploitation, and particularly in our elder populations. Ron had cited the statistic earlier about nearly 10,000 adults in the United States turning 65 every day. That's a huge number of people aging up on a daily basis, and when you think that these folks are going to be increasing in cohort as the years roll by, that's a lot of people.

When we talk also about financial exploitation, we talk about billions of dollars in losses for those who are 60 plus. And this number is really hard to quantify—which both Ron and Naomi can get into later—for reasons being about tracking and just the difficulty in assessing how serious and large this problem is. And then, conservatorships. We've been hearing about that in the news, and again—these statistics vary very widely. So at this point we're looking at, again, millions of adults, representing \$50 billion in assets—and that includes younger people and those with disabilities, but the majority are elders. And even that \$50 billion estimate is low in many cases. Next slide, please.

And so for today's session, these were the four main questions we really wanted to focus on. Looking at the risks that need to be understood in protecting the elderly from financial exploitation, the difference is again among guardianship, power of attorney, and conservatorship. These are terms that we're hearing more of, but we often don't have clear definitions.

And looking at the gender lens, as well: Are women more at risk for exploitation than men? And what can financial institutions do to identify their elderly customers and protect them? So these are also important questions that Ron and Naomi will answer today. Next slide, please.

I thought it might be helpful to look at a few examples. These are, again, from the Consumer Financial Protection Bureau's guide, but these are pretty typical. You have Mr. R, 77, suffering from Alzheimer's and Parkinson's. A church pastor in this case gained authority to manage this person's care and finances. In our payments realm, we're always looking at red flags, and here were 130 ATM withdrawals made—and then nine months of unpaid nursing home bills racked up. And so the pastor was eventually charged and convicted, but a lot of money was lost.

And then there's Ms. X, age 74, living in a nursing home with dementia. And so a person had power of attorney and stole well over \$100,000. She sold the victim's home to a relative for under market value. And this person was charged with felony theft, fraud, and misuse of a power of attorney. Again, these are typical cases. They're sadly true, but there are so many of them at this point that that's why it's being called "the crime of the century." Next slide. Okay.

And these are the spotlight of conservatorships. Many people have heard about the "Free Britney" movement and her plight, and you can see that her estimated net worth is \$70 million (and that figure varies). Nichelle Nichols, who was Lieutenant Uhura on *Star Trek*, is also embroiled in a conservatorship dispute. Her net worth is an estimated \$8 million dollars. And the movie "I Care a Lot" is based on some true stories, but it's a Hollywood fictionalized account—but again, looking at conservatorships and what happens when elders are targeted, and without having protections in place.

So this is just an introductory overview of what we're going to be talking about today. And now I'm going to turn it over to Ron Long, who's going to kick us off with a polling question. Ron?

Ronald C. Long: Thanks, Scarlett. And I know everybody says, "Why is he the guy to put us to work immediately?" But I will, and also as I go through the polling question, I will give the...*[signal from speaker temporarily lost]*... "In working with a 75-year-old-client when concerns of potential scams or abuse may be at issue, a banker must remember that above all else, it is the customer's money and they can do with it what they want." Think about it, take a couple seconds, and then put in your answer and we'll gather those answers and let everybody know where this group comes up.

One of the things I will say is, the word "banker" in there is pretty important because arguably in the brokerage side of the world, you might get a different view of this question (and answer). So I guess we will give it a few more seconds, and then Jean will let us know what the final tally is. And I could have made this harder on everybody, but I decided to give you an easy one.

So with that we will look at this, and then as we go through this afternoon, I hope we'll be able to give you some clarity into what we have. So I'm looking at the results: 31 percent false, 45 percent true, and then a bunch of folks have no answer, which is fine. Let's go to the next slide. So we'll come back to that, but if you go back in the annals and archives, the term "elder financial abuse" wasn't mentioned that much. But we've been in what I call the 45-year revolution, which probably leads us to where we are today in this conference. So in 1975, look at that number: 55 percent of liquid financial assets and bank deposits. Today, that's flipped completely, almost 73 percent in stocks, bonds, and mutual funds.

Scarlett gave the number of the folks turning 65. In addition to turning 65, they are getting older and older. So more of that money is in transition, will head out of the hands of the boomers into either their kids or into the cruise ships or whatever. We're going to spend this money, and then eventually it's going on.

Another factor is the change from defined-benefit to defined-contribution plans, where before it was all taken care of for you. You simply had to show up at age 65 and your pension was yours. Today, you have to put the money aside yourself and at the same time you hit 65, you must manage it—and you're going to manage it in an environment where interest rates are near zero. There are some of us that actually used to see CD rates that were in the 12 and 13 percent range. We won't see that anytime soon.

I'll point out the internet. The internet is both an industry in which to invest—there are a lot of baby boomers that got Apple stock at \$2. So they were able to ride the success of the internet—and it's a tool that's making investing easier. But it also absolutely has made fraud that much easier as well. Can we go to the next slide, Jean?

Some more statistics here. You see this growing cohort of older folks. I mentioned it a little bit early, but you're older, you have money. There are health disruptions out there. There are some who believe that today's 65-year-old will be healthier at 80 than they are at 65, just because of the number of things out there like CRISPR, gene splicing—things like that.

But we also have this issue of, many of us are going to be living alone through mobility. A lot of the family—it's nice that we lived in this town, but they go and move on leaving mom and dad there. Death leaves one of them alone. And so you also have smaller families—seven of us in my family. You can look to your neighbors left and right, not many folks have seven kids today, and that makes a difference.

So you're going to be living longer, lonely, and with money—that all becomes very tempting for the scammers of the world. In addition, longevity increases the chances of dementia and diminished capacity. Some folks saw a study last year from Johns Hopkins that bad financial decisions exist almost six years before the actual diagnosis of dementia or diminished capacity. So all of these pressures together are putting a lot of responsibility on the elders, the banks, and the brokerage firms. We can go to the next slide, Jean.

This is why I did that disclaimer earlier, because I ask this question, does the banking system itself actually contribute to greater elder financial abuse? I mentioned earlier the difference of folks moving money to nondeposit accounts, but seniors still use deposit accounts a lot. We now insure that against default up to \$250,000, but if more money is in there the bad guys know that, too.

Also, when you walk into your bank, this is more often a transactional system. It's not the same as a brokerage firm, where the personnel has a "know your customer" rule. They engage over a longer period of time. So worry about showing up and someone doesn't really know you, and there are infinite ways to move money out of the hands of that bank account into the hands of bad guys, and you see that here.

And it's the right philosophy, don't get me wrong. But when you're in banking, your duty is—and your philosophy is—to promptly and faithfully execute a client's request. If Ron comes in and says that, "Hey, the Nigerian prince sent me an email, I need to send them \$50,000 to get my million dollars," technically your obligation is to make sure you spell the prince's name correctly because you're supposed to promptly and faithfully execute my request.

There are also some privacy rights out there that have to be obeyed. So having a suspicion about a client falling in love with somebody in Belarus, and you think it's a romance scam, you can't pick up the phone and call that son or daughter. You probably can't pick up the phone and call the other bank—Wells calling JP Morgan or Bank of America—to say, "I have a concern about a common customer." So we need to work on that.

A number of the instruments we send in the bank system vary on recall, but it's almost "fire and forget." Once it's done, that wire goes, there is no, "Oh, I made a big mistake. Can you bring that wire back?" Almost not done, unless with great difficulty. But then—and this is where I look to my colleague Naomi—I put all of this in here, but what do we do? Paternalism is not favored. We want to also make sure as a financial institution, we're respecting the dignity, autonomy, avoiding ageism, when we're working with older clients. So you can see that puts us in a very difficult position. Jean, next slide, please.

So let's go to polling question number two: "Even when the banker knows the name and contact information for a trusted relative, the banker can never breach privacy to contact that person when the banker is concerned about abuse or diminished capacity of an elder customer."

Jean Roark: Ron, I was just going to say, Webex took about 20 extra seconds when we shared the results last time. So I just want to give you that fair warning when I close this poll out.

Long: Okay. so now you're putting me on the spot to fill time. Is that what that is?

Roark: *[laughter]* It is. I'm going to close it now and share those results as soon as they're available.

Long: Okay, that sounds fine. But look at this question, folks. I talked earlier about that privacy challenge. Is the banking system making it easier for the bad guys to exploit individuals, exploit customers and clients? Why wouldn't I be able to pick up the phone and call that daughter in Dallas, that son in Seattle, and say "I need you to fly back in here to St. Louis; I'm very concerned about your dad, and I think you can help"? I wouldn't be able to tell them how much money dad has in the account, or anything like that. But at least I'd be able to say, "Your father is in a tight situation. We need some help."

Okay, we have 52 percent say that this is true, 27 percent false, and we got our 11 percent of folks that don't want to be bothered. Or is that 21 percent? Let's go to the next slide, Jean.

So I did want to talk about some initiatives of the financial industry—it's not just us, but working with our regulators, working with legislators, trying to address some of these questions. Some of the things you saw there in the polling questions. So the first thing is, we've managed to come up with language that both the banking and financial folks agree with, the legislators agree with (and some of those who are working to help elder people in the social work space and what have you), that allows a financial institution to put a temporary hold or delay on a transaction where there's a suspicion of elder financial abuse.

We've also—at least in the brokerage industry, and some banks are starting to do this as well—implemented the concept of a trusted contact form. You sign up for a brokerage account [and] we ask—you don't have to give us the name, but we ask, much like you get asked at the dentist's office or doctor's office if in an emergency, you slip and fall in the lobby. Or you decide that you've won the lottery in Jamaica and you need to send tons of money out, is there somebody we can pick up the phone and call? You give us the name, you give us the permission, you give us the contact information.

Many of the financial institutions are now providing more educational material that helps older customers—and more importantly, their kids—understand these challenges of elder financial abuse. And then the financial industry is doing things like surveys, training modules—you see here, I won't go through all of them, but BankSafe by AARP. The CFPB has a brochure on "Money Smart." SIFMA, which is an industry group for brokerages, [has] a *Senior Investor Protection Playbook*. And this pilot HelpVul is the concept that...like our country, I love the 50-state system, but today it is confusing as to where you go to make a report of elder financial abuse, and how do you do it? Some want it by fax. Some want you to pick up the phone and call. I think there might be one state that asks you to do it by smoke signals.

So it is crazy to have a system like that in the 21st century, where if we have one centralized place, everybody in the country sends it in with all the information, and within two keystrokes it spits it back out to the appropriate state agency because you gave them enough information that the system is able to say that that's a complaint from Charlotte, North Carolina. So it goes to the Mecklenburg County Adult Protective Services agency. Next slide, Jean.

So I wanted to go through this and then I'm going to transfer all of this over to Naomi, because this is a sticky one. But here you see another romance scam scenario. The client makes a large withdrawal, advises the agent he's fallen in love with a new girlfriend overseas, and that money goes. And then the next thing the agent hears is "Bob" has another request for a large withdrawal to a new girlfriend out in Alabama that he's met through the same dating site. I hit you here with these questions: What actions can a financial institution take? What, if anything, could have been done to stop Bob from withdrawing more money after his first request? And Bob has a 40-year-old son, Henri. What legal options are available to Henri?

And with that, why don't I go to you, Naomi, to help us out.

Naomi R. Cahn: Thanks for the handoff. Thanks, Ron. Great, great overview. Great issues. Unfortunately, I am not going to answer those questions—at least, not right now. I'm actually, in what I talk about, going to talk more about what Bob could have done to prevent the agent from even having to have these concerns in the first place. But to do that—next slide—let's step back and let's place financial abuse in context.

There are essentially five types of elder abuse: physical abuse (pretty clear what that is); emotional or psychological abuse; sexual abuse, which is nonconsensual sexual contact of any kind; neglect by others, so abandonment, the desertion of an older person by an individual who has assumed responsibility; and then finally, financial or material exploitation, which of course is what we are focusing on today. So someone may experience just financial or material exploitation, particularly in some of the requests to wire money to a beloved partner in another country whom one has never met. Or to support various other scams. Often there will not be the other types of elder abuse that accompany financial and material exploitation, but sometimes these other types of elder abuse serve as a warning sign for financial or material exploitation.

So when it comes to the next slide, when we're talking about financial or material exploitation, we've already given you some examples of each of these: scams by strangers, scams by professionals, exploitation by family members, and others. In terms of estimates, I think it's a theme of what we're talking about today, we don't have great data on just how often this happens or on just how much money is the subject of elder financial exploitation. This estimate from the CFPB, likely 63,500 cases, a tiny fraction of actual incidents. Financial institutions have reported \$1.7 billion. Again, we flashed up some other statistics during this. This is just from this report—including both actual losses as well as attempts—the average amount lost is \$34,200. Seven percent of the losses are greater than \$100,000, and there's some documentation of the sources of these estimates. Next slide.

In terms of who's actually doing the financial abuse, it depends on the study. I put up here one study that suggests that financial abuse by strangers may be more common than by family members, but the loss appears to be higher when it is not a stranger who is doing the scamming but is instead a family member. This is based on a study, and I've provided the site at the bottom of the slide.

Long: Naomi, if I could interrupt and just connect the two slides for a second. We don't have good numbers also because of this, what we see here: if the abuse is done by family members, many times that person does not want to turn in "Ron," realizing that Ron is my sole source of support and if I turn him in for abusing me, what happens next?

Cahn: Yes. Because someone who is accused of financial abuse can certainly face not just a civil lawsuit to get that person to disgorge any of the money that that person has received, but also might face criminal charges for this form of financial abuse. So, yes, when someone is caught, there can well be legal consequences. Okay, next slide.

So how could—going back to the hypo[thetical] with which Ron left us before he transferred over the PowerPoint—going back to that hypo[thetical], just how can Bob, how can an older person, how can anybody protect themselves against having these kinds of abuses occur? There are a lot of actions that individuals can take that might help in exactly the hypo[theticals] where a banker is put in that very difficult position. So let me go through some of those. And I'll talk about guardianships, which generally are more likely to be imposed when none of these actions have been taken.

Okay. So financial power of attorney. Many of these terms, I'm sure are familiar to many of you, but just to go over them very briefly. A financial power of attorney is a legal document that gives someone else legal authority to make decisions about the principle's money or property. These are called powers of attorney. Obviously, the person who is exercising the authority doesn't need to be an attorney—it could be a family member, a trusted adviser, anyone whom the individual trusts to make financial decisions on their own behalf if they are unable to do so.

So, a power of attorney simply allows someone else to handle their money—they can no longer manage their own finances. There are essentially different types. A durable power of attorney, which some people on the call may have used if they were unable to be present, for example, when signing mortgage documents or something like that. A durable power of attorney becomes effective upon signing. A springing power of attorney allows the individual to manage their own finances as long as they have the ability to make sound decisions and then comes into effect at the time that is set out in that form.

Health care directives take a variety of different forms, but essentially there can be a health care power of attorney, which will turn over to someone else the authority to make decisions with respect to an individual's health. There are various physician orders for life-sustaining treatment, et cetera. There are different ways that an individual can ensure that their health wishes are carried out if they are unable to articulate their own wishes.

Coming back into finances—well, with respect to...I teach a whole course in trusts and estates—there are wills and revocable living trusts. Wills of course only take effect when someone dies, but during lifetime it's possible to set up actually an irrevocable or a revocable trust, and a trust delegates to a trustee the authority to manage all of the assets in the trust. The trustee is subject to fiduciary responsibilities of loyalty to the beneficiary. So a trust is another way—and the person setting up the trust, the settlor, can be the person who is the primary beneficiary so long as there are additional beneficiaries down the road, and can also serve as trustee but can provide for successor trustees if the individual is incapacitated.

And then the last thing I'll talk about—I know it's a favorite of bankers—is multi-party accounts. Very often, there are of course joint accounts, and those are something with which most bankers I am sure are highly familiar. In fact, there may be a presumption that when two people open an account together, it is a joint account with a right of survivorship—that is, either person has authority over the money and when one of them dies, it automatically becomes the property of the other.

There are also convenience accounts, and at the end of the slide deck—we're not going to go over it in detail now—but at the end of the slide deck is an example of the Florida statute that deals with convenience accounts. Essentially convenience accounts just add another signer to the account. That person is not a co-owner but is able to make transfers out of the account. The goal of these convenience accounts is to make it easier for the person setting them up to delegate some financial responsibility to someone else.

Ron, I don't know if you want to say anything about convenience accounts?

Long: I'm not the biggest fan of the convenience account because, to your point, it technically is not the signer's money, but how does a banker know the difference—that that \$1,000 withdrawal was not for medicine but for somebody to play golf at an expensive golf course?

Cahn: Okay, next slide. If someone has not engaged in these planning activities, and sometimes even if someone has, there is also the possibility, when someone becomes incapacitated, of a guardianship or a conservatorship. Some of the earliest slides that Scarlett showed are examples of some of the most recent high-profile conservatorships and guardianships. I'm going to use the terms interchangeably, guardianship or conservatorship. In some states, a guardianship is somebody who guards the person, someone who makes the personal decisions on behalf of the individual subject to the guardianship, while in those states a conservatorship deals with financial assets. In some states, a conservator has both authority over the person—that is what I have up here on the slide, is a guardianship—as well as over financial assets.

Whatever the state language is, a guardian or conservator is a fiduciary responsible for acting in the best interests of the person subject to the guardianship or conservatorship—so a fiduciary responsibility—and that's the definition of the role of a guardian or conservator.

Okay, the next slide is a poll. So please go ahead and get your fingers ready. "Someone subject to a conservatorship loses all rights to manage their own money and health." And let's assume—I just said there are conservatorships of the person, as well as conservatorships of the estate—let's assume this is a conservatorship of the person as well as the estate. So, as you ring in with true or false, I'll just say—although I'm talking very generally about conservatorships and guardianships and powers of attorney and health care directives, this is very highly state specific. There's relatively little federal law in this area. Each state will have its own statutes and procedures with respect to even the language of whether it's called a guardianship or a conservatorship. So it's a very highly state-specific area.

Okay. Have I stalled long enough, Jean, that we have answers yet? Okay, I'll keep talking. So, there are a lot of myths about guardianships and conservatorships. Okay. And here we are. So, "someone subject...loses all rights"—a majority of you said that was true, a minority of you said that was not. Well, let me just say, first of all, an individual subject to a conservatorship always retains the right to challenge that conservatorship. So, I'm leaning towards false on this. In addition, the answer depends—right? lawyers always love to say "it depends"—but, as I said, this is state law and other rights may depend on the guardianship.

For example, a 2017 uniform guardianship law says that an adult subject to a guardianship retains the right to vote and to marry. Virginia's law—and of course, I'm in Virginia—Virginia's law provides that a guardian's duties and authorities shall not extend to decisions addressed in a valid advanced directive or durable power of attorney previously executed by the incapacitated person. So that's where the role of planning can become so useful. Again, that's Virginia—this is all very state-specific—and in other jurisdictions, the individual may retain other rights, such as the right to make a will. It will depend on the state statute, what the default rights are, and it will depend on the particular court order. Okay, next slide, please.

Just to review: as I said, a guardianship court order or conservatorship court order authorizes one person or entity to exercise power over and on behalf of another person. We sometimes call the person subject to the guardianship the "ward"—you might be more familiar with that language (makes me think of Batman and Robin). And as I said, this is also useful for children under the age of 18.

In order for a guardianship to be imposed, a guardianship is a court order or, once a guardianship is imposed, it has to be done through a court. Just about any interested person, including the individual themselves, can file a petition to have a guardianship imposed. There are various protections for the person subject to the petition. Then there is typically—again, varies by state, but then there is typically a court hearing at which a court will issue an order with respect to whether there's a need for the guardianship.

Okay. So that's the very basic process. Again, unlike the others—unlike the powers of attorney that I talked about earlier, for example—this is something that must be done through a court rather than an individual taking responsibility on their own to make these plans. Next slide, please.

A guardianship or a conservatorship, thus, as you can see, is typically an option of last resort, and it's important to define just what the goal of the guardianship actually is. Next slide, please.

There is—particularly in conjunction with the "Free Britney" movement—there has been a great deal of attention that has been paid to problems with existing court monitoring and reporting requirements. A court is supposed to monitor a guardian to ensure that the guardian is carrying out their duties and responsibilities, and that the person subject to the guardianship is receiving the necessary care and protection.

The guardianship system, however, is not perfect, alas. Of course, few things are. And some of the problems are that some people who are under full guardianships need not be. They are often subject to more restrictive arrangements than they need to be simply because it's pretty easy to just impose a kind of cookie cutter model on the guardianship. There are also problems with courts—underfunded, under-resourced courts—and at least in some states, there's a complete lack of data with respect to even the number of guardianships, much less the number that are actually dissolved or where there are abuses. Next slide, please.

In fact, David Godfrey from the ABA Commission on Aging and the Law says no one knows how many adults have had a guardian appointed, the demographics, what determinations the courts have made in deciding a guardian was needed, who the guardians are, what reports are being filed and what those reports show. Or how many complaints there are against guardians. So we know there are problems, but unfortunately, we have no idea of the true scope. So, what can be done? Next slide, please.

All right. I'm so glad I asked, because now we're going to answer. Next slide, please.

There are alternatives to full guardianships. There are limited guardianships. Many states require that less drastic alternatives to guardianships be considered before they are imposed. Substitute decision-making can be both informal or formal. There can be an agreement by which an individual agrees to consult with others in making decisions, and a limited guardianship can be imposed by a court but with extremely curtailed responsibilities for the guardian. Next slide, please.

And now I'm going to hand it back to Ron.

Long: Thanks. And before I start in on deputization, I do want to raise this substitute decision-making, which is a good concept, but, again, when you're in the financial world, we need someone to be responsible for the decision. When you call up and say, "Please sell all of my IBM," I can't have you...we sell it, and then for whatever reason IBM goes through the roof, you can't come back and say, "Well, Ron, you should have known I had some problems, and that was actually not my decision but it was my substituted decision-makers decision. Please give me back my IBM stock." So it needs work. Guardianship is not great, but we need to work through what the alternatives are going to be.

So now let's turn to this deputization concept. I thought it was a great paper. I didn't like the word "deputization," but they essentially described some of the new laws that FINRA, which regulates the securities industry, and a number of states have done—we've shorthanded it to call it the "report and hold law." A financial institution that reports potential elder financial abuse can hold or pause the transaction when they suspect fraud or abuse. Remember, that's counter to what we had in our polling question "I suspect something. Can I hold it up?" Most folks thought, "No, you can't do that."

But now, at least in 38 states—I think it's 36 states for brokerage firms—another 14 of those 36 states allow a bank to make that pause in the transaction where they reasonably suspect fraud or abuse. That bank should also accompany that pause with a report to the state agency—usually adult protective services, sometimes the securities regulator—but saying, "We suspect fraud and abuse, and we are holding up a transaction that just came in."

And another feature of some of the laws, not in every state, but we can now reach out to that trusted contact or other qualified person to advise them both that we put this hold in or that we think the client might need some help. In a couple of states, trusted contact—that means they wrote it out in advance and you have it—but in some states, like Texas, we can reach out even if the client didn't have the foresight to take this protective measure. So in Texas, if we're in the throes of a possible scam and we know the daughter lives in Austin, in Texas, as long as we don't suspect the daughter of being the abuser we can pick up the phone, call the daughter—again, not to talk about the entire account, but to say, "Please come back to Waco, we need you to check in on your mom. Something's going on."

And then look, if you do both of those things, you get qualified immunity, which we love. There are a few attorneys out there that hate the concept. "We're doing this action in good faith. you should not be suing us" or "If you sue us, we should have a defense that's pretty airtight. So that we can get out on summary judgment"—as long as we did it in good faith, crossed the T's and dotted the I's. This is a benefit to the elder community. This is a benefit to the entire community. We're looking to try and halt elder financial abuse. You can incent some of the financial companies to take that step and not worry that they'll get the lawsuit of the century if they reach out and try to pause a transaction or contact a trusted person. Next slide, please.

So I went through that pretty quickly, but these are some of the other federal policies we think are all making a difference: Senior Safe Act is a federal law that says that financial institutions can contact adult protective services. There were some out there that believed, under Gramm–Leach–Bliley, you could only contact law enforcement, or arguably adult protective services, and not law enforcement. So a bank should not pick up the phone and report elder financial abuse. But that was a ludicrous interpretation, didn't think it was real. But we now have federal law that says—whether the prior interpretation was ludicrous or not—any financial institution can reach out to adult protective services.

In the SAR report, they added the "Elder" category, so eventually we're going to get better at finding out the data, but now when you turn in a SAR, you hit the "Elder" box so that at least the folks at FinCEN will know that this was an elder-abuse situation. We had more money aimed at it with the Elder Abuse Prevention and Prosecution Act, and you see some other things here: the CFPB has put out advisories, the FDIC is enhancing training, and all three agencies (and a number of others) are emphasizing the role that financial institutions play in preventing elder financial exploitation.

So all that's to say, the groundwork has been laid that folks look to banks, they look to brokerage firms, to be one of the linchpins in the fight. And while some think they would like to, I think we've long passed the time where a bank can look the other way and say, "Geez, it doesn't look great but I can't do anything. Or I won't do anything. Or I won't make a report."

I think it goes over to you, Scarlett, the next slide?

Heinbuch: Thank you, Ron. Thank you, Naomi. Jean, did you want to give a refresh on the questions?

Roark: Absolutely. If you would like to submit a question, go ahead and select the "QA Panel," which is located at the bottom right-hand corner of the Webex window. Once you get in there, if you just want to select "all panelists," we'll be able to take your questions.

And I'll actually turn it over to Jessica Washington. Jessica, thanks for joining us and sharing the questions from the audience.

Jessica Washington: Sure thing. We do have a couple of questions, and I'll go ahead and get started. "Are there any estimates as to how often physical and emotional abuse is taking place along with financial abuse?"

Long: I don't think there are estimates, but it wouldn't surprise you that they always seem to be in combination. It's almost never a simple, clean, straightforward, "I'm trying to just take your money." Many times, we've had cases like, "Unless you give me money, you won't see the grandkids." So we can see things like that, where the emotional is there—not physical, but you do enough to wear a person down and use that to overtake their ability to manage their own finances.

Cahn: Yes, I think that it's hard to get estimates on any of this because it is all so severely underreported. But again, where it's a stranger, it's more likely to be financial exploitation alone—although there are the "you can't see your grandkids"—versus with family members. One can imagine, particularly if the financial exploitation is happening with someone who lives close to or where the older person is living with that person, emotional abuse can also take the form of isolating the older person, of cutting off various forms of financial support—so getting into the neglect as well as the emotional abuse.

But this is all underreported. It's hard to catch. There are of course state criminal prosecutions in these areas. There are state elder abuse agencies. There's federal work being done that tries to capture these statistics, but we don't really have good estimates, as Ron said.

Washington: Thank you so much. For Ron and Naomi: "Do you see any movement to standardize the reporting and collection of data regarding elder abuse?"

Long: Yes, that was the HelpVul project. It's a project funded by I think the DOJ, where you have that centralized portal to send the reports in and then it goes out from the portal to the various states. The beauty of that is once it's in the portal, you can anonymize PII—personal information—but use that data to find out how many folks in their 80s are being abused versus their 70s, and what have you. If we can get—and I think there are—a couple of folks walking Capitol Hill today to say, "Congress, we realize there's a state-by-state program, but collecting the data, having the reports centralized—we think it's critical to getting that kind of data and information to let us know the extent of the problem, and what we can do to resolve it."

Cahn: Again, this is state by state. right? And so it takes states actually moving forward to collect the data. There is a national center for state courts that has some estimates on some of this. The "I Care A Lot" movie that was referred to at the beginning, all of the attention to Britney Spears—all of that has prompted members of Congress—again, as Ron was saying—as ideologically opposed as Ted Cruz and Elizabeth Warren, who joined the "Free Britney" cause, who have been pushing for conservatorship reform and for more data on legal arrangements.

Again, it would have to be done—because it's not the federal government, because these are state procedures—the federal government could provide incentives, could ensure more compliance with the central repository. So those are the types of reforms that could be implemented.

Long: Yes. And to Naomi's point, the 21-year-old drinking age is because they attached it to those federal highway dollars. A state could make their drinking age 18, but you get zippo from the Fed for repairing your highways each year.

Washington: Staying on that federal note: "Do you think there should be federal legislation permitting a bank to pause a transaction when they suspect that there's diminished capacity, but maybe no proof of fraud?"

Long: I think that's the next frontier, in the Nichelle Nichols reference. We are doing a good job about where there's fraud, but diminished capacity...I don't think we've gotten there. I don't know if it can be a federal rule. It's going to be hard to get it state by state. So most of the laws I talked about, those 36 states, almost none of them talk about pausing if you suspect diminished capacity in the absence of fraud. One always can pause when there's fraud, but just because "Ron" is not all there...

And then remember, we've got a number of groups. Somebody wants us to mention friendly banking, which sounds good and we have to figure out: can it be done? But—and anyone that understands dementia—what you are today, you may not be next week. And I don't know how you make that work.

Cahn: That issue actually comes up a lot when I teach about wills, and "does someone have the legal mental capacity to make a will?" Well, all you need is a lucid moment. And so telling whether someone is mentally incapacitated at a particular time is incredibly difficult. I still—I'm sorry, Ron, you might not like to hear this—I still like going physically into banks and seeing a teller. But even though I like doing that, I don't think a teller, I don't think someone whom I was asking to wire money in person, might know me well enough to be making that determination.

So there are limits. I think it sounds like a great initiative, but the practicalities are quite difficult. How do we know that the person isn't having a lucid moment? And so I think we need more fine tuning as we think through what to do. Maybe a pause is a good idea so long as it doesn't have long-term implications for the individual's financial matters. But I can just imagine the litigation that would result.

Long: You don't have to imagine. It's already happening.

Washington: Thank you. A couple of clarifying questions: "In Texas, should an elder come into the bank if we suspect they are being scammed? Is it okay to reach out to the family and inform them of the issue without discussing detailed account information?"

Long: Yes, in Texas you have that right. Again, you want to say that you reasonably suspect this elder is being abused. And many times you'll do it in the romance scam, where they just think that picture that supposedly resembles George Clooney—it actually is George Clooney's picture, but—the love of their life is in Belarus and they're going to send them money, you should be able to reach out to that daughter or son, even if that customer hasn't added that name to the account, as long as you're not giving the details, you're not giving authority over the account, to that person you reach out to.

Cahn: Let me add, in the legal context—this is not the banking context, but in the legal context—the model rules of professional conduct deal explicitly with when there's a client whose capacity to make adequately considered decisions might be diminished, where a lawyer—and I'm only talking about lawyers, I'm not talking about bankers—but where a lawyer reasonably believes that the client has diminished capacity or is at risk for some form of, say, financial harm, then the lawyer can take what the rules describe

as "reasonably necessary protective action." And that includes consulting with individuals—consulting with Henri, for example, in that hypo[thetical] because Henri might have the ability to take action that would protect the client.

Again, that's just a lawyer-client, it is not a banker-customer, relationship. But that's an example of what the law says is possible, of what the rules of professional conduct say is possible, with respect to an attorney-client relationship.

Washington: Great. Thank you. Staying on that law theme: "Are there statistics of how many elder abuse cases are actually prosecuted?"

Cahn: Not that I know of. Again, this is going to be state by state. It's going to be a question of what each state keeps track of. And of course, when we're talking about elder abuse, we are talking about all kinds of elder abuse and they may not be prosecuted as elder abuse crimes per se. So it's difficult to figure out just what to track, and then to get the statistics that we would like.

Long: Since I've already done the disclaimer, I will say—and I hope we will get better—but there has been a challenge that there are prosecutors who think old people make terrible witnesses. There are prosecutors who think, "Well, the son was going to get the money anyway, what are we?" So you have had a challenge in getting prosecutors to take some of these elder cases. That's not universal, that's not every state, and you will find fabulous prosecutors in many states.

But there has been—and sometimes law enforcement, you'll have an officer show up and holster his gun and say, "Hey, this is a family dispute between the mother and daughter" and walk away. No. It's a crime. It's elder financial abuse, and somebody should step in and stop it.

Washington: Okay, we're in the speed round. I have two more good questions I want to ask you. Well, they're all good, but...I'm kind of putting some together. So about elder abuse and fintech: "Is there more fraud with the innovative fintech products that are out today rather than our traditional financial technology?" And, two parts: "How do we make sure financial technology is digitized for the elderly in such a way that makes them more comfortable or more protected?"

Long: Yes. I don't know the "how," but that's what we need. We need to get fintech to help. I don't know that any particular fintech product is more conducive, but just think about the reach of the internet. A scammer can sit in a foreign country and in three keystrokes touch 10,000 elderly Americans—and maybe only needing five to answer or follow up and send them money. So we think fintech is a problem, but we think fintech should and can be a solution. I just don't know how.

Washington: Excellent. And the last question is: "Are there any state-by-state guides addressing when you can reach out to family members, and what states allow for you to pause transactions?" Is there anything—resources—for our audience today?

Long: You'll have to write me offline, but there is at least one law firm that has a compendium—it's out there, I don't want to get in trouble for a shameless plug, but offline, I'll be happy to send it to anyone that asks.

Heinbuch: Well, also, Jean, if you could advance the next slide, there are resources that we identify, too, that might also provide some insight into those questions. Ron or Naomi?

Long: Yes, I can just say that NASAA—you add an extra "A" to the space people—that's the securities administrators—they may have a compendium of the various laws that tell you when you can reach out.

Heinbuch: Okay, well, these are the resources. I know we're at time now. So I want to go ahead and wrap up. Thank you, Jean. So I want to thank our presenters today. Thank you so much, Ron and Naomi. This is really great information, and I hope the audience found it as helpful as I did. I'm always feeling like we're learning something as we go. So this was just wonderful.

Cahn: Thank you, Scarlett.

Heinbuch: Thank you all very much. We'll follow up later. And for our folks listening today, thank you for attending. We will have the presentation recorded and available in the next week or so. So stay tuned for that.

Jean, did you have any follow up questions or comments?

Roark: Thank you, Scarlett. Well, I just wanted to let everyone know that we'll be sending a survey via email, and that'll be after our event concludes. But we do look forward to getting your feedback. Of course, I want to echo Scarlett and thank our presenters for sharing their time and expertise today, and also say thank you to our attendees for joining us and submitting great questions.

This concludes today's *Talk About Payments* webinar. enjoy the rest of your day.

RELATED LINKS: [Presentation](#) • [Talk About Payments: Eight Questions About Consumer Payments Behavior](#) • [Payments 2020: The Year in Review](#) • [Talk About Payments: Consumer Payments Behavior in a Health Crisis](#)