WHOSE DIME IS IT ANYWAY? A COMPREHENSIVE LOOK AT FEDERAL AND STATE GOVERNMENT LANDSCAPES FOR SENIOR FINANCIAL EXPLOITATION LAWS CONCERNING FINANCIAL INSTITUTIONS

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Financial exploitation is one of the most common crimes against seniors. Exploitation schemes significantly impact the elderly, both financially and emotionally. As life expectancy and the population increase, so does the risk for further senior financial exploitation. Not only are crimes of this nature rampant across the United States, they are also severely underreported.

Various laws and proposals at the federal and state levels have attempted to curb these crimes; some of which have been successful, and some of which have proven insufficient. Ultimately, financial institutions are in the best position to aid prosecutors and communities in the prevention of financial crimes given their access to relevant information, connections to government, and ability to easily communicate with seniors. Accordingly, it is essential for any proposed legislation to include necessary reporting laws to ensure the financial sector's compliance.

This Note surveys legislation at the state and federal levels that have attempted to solve the issue of senior financial exploitation through the regulation of banks and credit unions. It further recommends a federal solution focused on implementation of reporting laws that mandate financial institutions identify and remedy elderly financial exploitation. The proposed federal laws would motivate state governments to pass their own, ideally, more intensive and preventative legislation.

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I. Introduction

Financial exploitation is one of the largest classes of crimes committed against seniors and is severely underreported.[1] Legislatures recognize that "as many as one out of every five citizens over the age of sixty-have has been victimized by a financial fraud."[2] Repercussions from exploitation schemes can take an emotional and monetary toll on seniors.[3] The estimated monetary loss ranges from $2.9 billion to $36.5 billion per year for all seniors.[4] The effects of this exploitation cost the United States $2.6 billion in 2016 alone.[5] These amounts could increase if no action is taken because people are living longer and the population is growing.[6] In 1990, 31 million of America's 250 million citizens were age sixty-five and older.[7] In 2012, 43.1 million people in America were over the age of sixty-five,[8] and by 2050, 83.7 million people will belong to this age group, constituting more than 22% of the projected population.[9] Senior financial exploitation happens to elderly persons in the sixty-five and older age group across socioeconomic classes, ranging

1. *See* CONSUMER FIN. PROT. BUREAU, REPORT AND RECOMMENDATIONS: FIGHTING ELDER FINANCIAL EXPLOITATION THROUGH COMMUNITY NETWORKS 24 (2016), https://files.consumerfinance.gov/f/documents/082016_cfpb_Networks_Study_Report.pdf [hereinafter CFPB REPORT: COMMUNITY NETWORKS] (noting that for a period of eleven years, the Oklahoma County District's Attorney Office had prosecuted 225 cases of elder financial exploitation and only four cases that were classified as elder abuse cases).

2. 163 CONG. REC. S447–13 (daily ed. Jan. 24, 2017) (referring to Mike Rothman's letter to the U.S. Senate Special Committee on Aging).

3. *APS Statistics*, ILL. DEP'T ON AGING, https://www.illinois.gov/aging/ProtectionAdvocacy/Pages/APS-Statistics.aspx (last visited Sept. 26, 2018) [hereinafter *APS Statistics*] ("Victims generally experience more than one type of abuse. For example, the highest form of abuse reported, financial exploitation, is highly associated with emotional abuse.").

4. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 9–10.

5. Monica J. Franklin, *Senior Moments: Protecting Older Adults from Financial Exploitation: Proposed Federal Laws and Regulations*, 52 TENN. B.J. 26, 26 (2016) [hereinafter Franklin]; *see also* Women's Inst. for a Secure Ret., *Just the Facts Senior Financial Fraud and Abuse*, NAT'L ADULT PROTECTIVE SERVICES ASS'N (2016), http://www.napsa-now.org/wp-content/uploads/2016/11/senior-scams-financial-fraud-and-abuse-2016.pdf ("These figures do not account for the tens of billions of dollars spent on indirect costs for medical care, social services, and legal costs, or for the pain and suffering of the victims.").

6. Jill C. Skabronski, *Elder Abuse: Washington's Response to a Growing Epidemic*, 31 GONZ. L. REV. 627, 628 (1996) [hereinafter Skabronski].

7. *Id.*

8. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 10.

9. Skabronski, *supra* note 6, at 628 (estimating that in 2010 there will be 39 million people who were sixty-five years or older and in 2050 there will be 65 million people in that age range).

from the middle class to the affluent.[10] Despite the large number of people affected by financial exploitation, "the elder justice cause remains a tiny blip on the national radar screen, in comparison to other victim abuse movements."[11]

Proposals for new legislation at both the federal and state levels aim to curb the many methods perpetrators use to exploit seniors in America.[12] In addition, volunteer community movements focused on fighting senior financial exploitation have assembled across the country.[13] Volunteer efforts are a step in the right direction and are improved by the involvement of financial institutions because "[c]ombating elder abuse and financial exploitation requires education, identification, reporting, investigating, and prosecution. It requires many eyes and ears within our communities."[14] Financial institutions can help prosecutors and community networks prevent senior financial exploitation because of their interaction with seniors and their families, knowledge of financial patterns, and connections they can form with law enforcement agencies and prosecutors.[15]

This Note focuses on the different legislation at the state and federal levels directed at aiding financial institutions in reducing the amount of senior financial exploitation. This Note also discusses the best jurisdictional interplay to accomplish this goal. Part II examines the crime of senior financial exploitation and the gray areas it produces for victims and the actors who aim to prevent the crime. Part III outlines how state and federal governments have responded to the issue and highlights the strengths and weaknesses of the different approaches. Parts IV and V propose enacting federal legislation that states and local governments can model their own legislation after with the ultimate result of compliance between financial institutions, law enforcement, and prosecutors.

10. David R. Spiegel, *Protection for Abused Seniors: Cause or Afterthought?*, 46 FAM. L. Q. 169, 170 (2012) [hereinafter Spiegel].

11. *Id.*

12. *Id.* at 170–71.

13. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 11.

14. *Broken Trust: Combating Financial Exploitation of Vulnerable Seniors: Hearing Before the Spec. Comm. on Aging*, 114th Cong. 7 (2015), https://www.aging.senate.gov/imo/media/doc/SCA_Shaw_2_4_15.pdf [hereinafter Shaw Hearing] (statement from Judith M. Shaw, Maine Securities Administrator and Co-chair of the Maine Council for Elder Abuse Prevention).

15. *Id.*

II. Background

The vulnerabilities of seniors and the ways they are taken advantage of illustrate the need for incorporating financial institutions in a solution to the issue of financial exploitation. Isolation from independence or loss of loved ones can create situations for financial exploitation.[16] Additionally, "[o]lder consumers are attractive targets for financial abuse because they may have significant assets or equity in their homes and usually have a regular source of income such as Social Security or a pension."[17] With the median net worth for consumers over the age of sixty-five at $170,500 in 2011,[18] the wealthiest seniors tend to be the most targeted class of victims.[19] However, financial exploitation and its disastrous effects are not exclusive to the wealthy. Negative consequences can come from schemes targeted at middle class seniors because they survive on frugal budgets and cannot rely on sizeable pensions.[20] Further, many seniors experience cognitive impairment:[21] about one third of Americans over age eighty-five have Alzheimer's disease, leaving these seniors particularly vulnerable to financial exploitation. [22]

The financial exploitation of a senior will leave the senior without the financial stability he or she once enjoyed, "[w]hich can lead to in-

16. Reshma Kapadia, *Financial Abuse: The Silent Epidemic*, BARRON'S (Nov. 12, 2016), https://www.barrons.com/articles/financial-abuse-the-silent-epidemic-1478931165 [hereinafter Kapadia].

17. *CFPB Issues Advisory and Report for Financial Institutions on Preventing Elder Financial Abuse*, CONSUMER FIN. PROTECTION BUREAU (Mar. 23, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-advisory-and-report-for-financial-institutions-on-preventing-elder-financial-abuse/ [hereinafter *CFPB Issues Report for Financial Institutions*].

18. CONSUMER FIN. PROT. BUREAU, RECOMMENDATIONS AND REPORT FOR FINANCIAL INSTITUTIONS ON PREVENTING AND RESPONDING TO ELDER FINANCIAL EXPLOITATION 9 (2016), https://files.consumerfinance.gov/f/201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf [hereinafter CFPB REPORT FOR FINANCIAL INSTITUTIONS].

19. *CFPB Issues Report for Financial Institutions*, *supra* note 17.

20. Franklin, *supra* note 5, at 27.

21. CFPB REPORT FOR FINANCIAL INSTITUTIONS, *supra* note 18, at 9.

22. *Alzheimer's Statistics*, ALZHEIMERS.NET (2017), https://www.alzheimers.net/resources/alzheimers-statistics/ (last visited Nov. 19, 2018).

creased reliance on public welfare programs, greater physical problems, and a higher mortality rate."[23] Sadly, perpetrators of this exploitation can be familiar to the exploited senior, like family, fiduciaries, or caregivers.[24] Perpetrators can also include individuals less acquainted with the elderly victim like financial advisers, home repair contractors, or scam artists.[25] However, reports show that exploitation usually comes from someone who is close to the senior.[26] Typically, family members exploit larger sums of money from seniors than strangers do.[27] Further, 47% of senior financial exploitation cases involve adult children of the senior, comprising the largest class of perpetrators of this crime.[28] Spouses account for 19% of senior financial exploitation cases, constituting the second largest class of perpetrators.[29] The close nature of family can make it hard for the victim to recognize the exploitation occurring. Additionally, once the exploitation is discovered, the senior may have a difficult time in attempting to, or may not want to, sue family members.[30] The exploited senior is put in a difficult situation where the senior walks a fine line between helping or hurting his or her family dynamics.[31]

Caregivers compose the third largest class of perpetrators and often mirror the dynamics of child abuse.[32] The other classes of perpetrators have more variation after the caregiver class.[33] Fiduciaries, through power of attorney, and financial advisors have also used their positions

23. James P. Bessolo, *Mandatory Reporting Requirements for Financial Elder Abuse*, 30 L.A. LAW. 23, 24 (2007) [hereinafter Bessolo].

24. *Id.*

25. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 8.

26. 163 CONG. REC. S447–13 (daily ed. Jan. 24, 2017).

27. Kapadia, *supra* note 16.

28. *See* Franklin, *supra* note 5, at 26 ("According to the AARP, sixty percent of all financial abuse and exploitation cases reported nationwide to Adult Protective Services occurred at the hands of a family member."); Margaret Sholian, *An Ethical Dilemma: Attorneys' Duties Not to Reveal Elder Abuse in Washington State*, 90 WASH. L. REV. 1471, 1480 (2015) [hereinafter Sholian].

29. Sholian, *supra* note 28, at 1480.

30. *Id.* at 1481.

31. Kapadia, *supra* note 16.

32. Skabronski, *supra* note 6, at 631–32 (citing "caregiver stress, dependence of the abuser, mental or physical impairment of the elder, domestic violence learned in the home, increased life expectancy, societal attitudes towards the elderly, and external stress" as large factors for elder abuse).

33. *Id.* at 632.

to influence seniors.[34] Investment advisors promote plans for retirement that benefit the advisors at the cost of the senior who changed his or her plan.[35] Seniors can experience dire consequences with their financial security and well-being, no matter the class of the perpetrator.[36] Many cases of financial exploitation can put a senior's financial independence and autonomy at risk.[37] While some cities and counties with large populations of seniors have established collaborative efforts to address the problem, more should be done for seniors everywhere.[38]

III. Analysis

The prevalence of senior financial exploitation stems from the difficulty in detecting abuses of power.[39] In every community there are financial institutions that could help identify the exploitation.[40] While fighting senior financial exploitation requires other parties such as law enforcement and adult protective services,[41] financial institutions can be an even more critical player in opposing and preventing this crime. Financial institutions are able to observe suspicious transactional activity as well as the power dynamics between a senior and his or her perpetrator.[42] If financial institutions can recognize these factors, then they can make "small changes and additions to the current processes already in place . . . ."[43] Evidence of past instances has shown that immediate action from financial institutions has stopped fraudulent schemes and saved seniors thousands of dollars.[44] A financial institution's ability to aptly protect seniors results from a financial institution's

34. Franklin, *supra* note 5, at 26.
35. *Id.*
36. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 8–9.
37. 163 CONG. REC. S447–13 (daily ed. Jan. 24, 2017).
38. Spiegel, *supra* note 10, at 171 (listing the aforementioned locations: Seattle, San Diego, Los Angeles, New York City, Montgomery County, Maryland and Palm Beach, Florida).
39. *CFPB Issues Report for Financial Institutions*, *supra* note 17.
40. CFPB REPORT FOR FINANCIAL INSTITUTIONS, *supra* note 18, at 5–7
41. *Id.* at 4.
42. *Id.* at 5–6.
43. JOHN T. WOOD, DETECTION AND REPORTING OF ELDER FINANCIAL ABUSE 20 (2016) http://files.acams.org/pdfs/2016/Detection_Reporting_of_Elder_Financial_Abuse_J_Wood.pdf [hereinafter WOOD] ("[F]inancial institutions have the unique opportunity to protect the financial stability of some of their most valuable customers . . . while . . . improving the generations that follow.").
44. 163 CONG. REC. S447–13 (daily ed. Jan. 24, 2017) ("[A] senior citizen in Vassalboro, Maine, was looking to wire funds from his account at Maine Savings Federal Credit Union to an out-of-state location, supposedly to bail out a relative who

knowledge of the subject matter, position to observe the crime in action, and ability to detect and procure evidence of fraud.[45] Further, these institutions are familiar with senior customers, who tend to have more assets than younger generations.[46] In short, "[p]revention of financial [exploitation] and prevention of pollution have a striking similarity: just as pollution is best nipped at the point of production, so is much financial [exploitation] - the point of production is at the active bank operations level."[47]

Although financial institutions are a positive influence in the process of fighting senior financial exploitation, they are not always in a position to help. One significant issue is "the lack of resources currently dedicated to this rapidly expanding compliance area, and the consequent inadequacy of existing compliance programs of many industry participants."[48] Even when resources exist to help with compliance in this area, additional measures are seen as troublesome for some financial institutions.[49] This conflict arises when there is a "desire to protect a customer from financial abuse and statutory privacy protection."[50] The Gramm-Leach-Bliley Act[51] is often cited as legislation that prevents financial institutions from disclosing personal financial information.[52] Many financial institutions have inadequate compliance programs in place to detect and report senior financial exploitation.[53] Additionally,

was in jail. Something about this transaction did not sound right to the credit union employee. She asked the customer, and he said he had received a call from an 'official' at the jail—but that 'official' had instructed him not to speak to anyone about this. The 'official,' of course, turned out to be a con artist . . . . Fortunately, the credit union worker recognized this as a scam, and her quick thinking saved her customer from falling victim and losing his savings.").

45. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 33–34.

46. Kevin L. Petrasic et al., *Elder Financial Exploitation: An Increasing Compliance Concern*, 28 J. TAX'N & REG. FIN. INSTITUTIONS, 31 [hereinafter Petrasic].

47. Charles Pratt, *Comment: Banks' Effectiveness at Reporting Financial Abuse of Elders: An Assessment and Recommendations for Improvements in California*, 40 CAL. W. L. REV. 195, 208 (2003) [hereinafter Pratt].

48. Petrasic, *supra* note 46, at 10.

49. WOOD, *supra* note 43, at 2.

50. Pratt, *supra* note 47, at 222.

51. Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801–6809 (2012).

52. CONSUMER FIN. PROT. BUREAU, ADVISORY FOR FINANCIAL INSTITUTIONS ON PREVENTING AND RESPONDING TO ELDER FINANCIAL ABUSE 3 (2016), http://files.consumerfinance.gov/f/201603_cfpb_advisory-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf [hereinafter CFPB ADVISORY FOR FINANCIAL INSTITUTIONS].

53. *Id.*

privacy laws create a reluctance to intervene.[54] Outside of the legal realm, banks operate in the private sector where there tends to be a negative view of government regulation regardless of its purpose.[55]

Despite these obstacles, financial institutions want to help prevent senior financial exploitation.[56] In overcoming these hurdles, many legislatures have passed laws to improve the involvement of financial institutions in combatting senior financial exploitation.[57] Upgraded reporting laws could help banks form efficient response systems that protect seniors while remaining within the legal boundaries of the Gramm-Leach-Bliley Act.[58] The jointly issued "Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults"[59] supports this proposition, stating that "[compliance] with federal, state, and local laws, rules, or other applicable legal requirements" do not violate the Gramm-Leach-Bliley Act.[60] There would likely be a low level of resistance to this proposition because of the concern for reputation in continued compliance with both federal and state laws.[61] Bring-

54. Franklin, *supra* note 5, at 26.
55. Pratt, *supra* note 47, at 218.
56. CFPB Report: Community Networks, *supra* note 1, at 34 ("The iFAST invites financial institutions to join as volunteers in case reviews, and holds annual financial summits for training to improve its relationships with financial institutions.").
57. *Written Testimony to the United States Senate Special Committee on Aging: Hearing Before the Spec. Comm. on Aging U.S. S.*, 114th Cong. 7 (2015) [hereinafter Ulrey Testimony] (citing Page Ulrey who is the Senior Deputy Prosecuting Attorney of the Elder Abuse Team in King County, Washington).
58. CFPB Advisory for Financial Institutions, *supra* note 52, at 3.
59. *Id.*
60. V. Gerard Comizio et. al., *Compliance Risk Management: What Financial Institutions Need to Know About Reporting Elder Financial Exploitation*, Paul Hastings Stay Current 3 (Mar. 2014), https://www.paulhastings.com/docs/default-source/PDFs/stay-current-compliance-risk-management-what-financial-institutions-need-to-know-about-reporting-elder-financial-exploitation.pdf [hereinafter Comizio] (listing the participating agencies as: Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, and Securities and Exchange Commission).
61. Petrasic, *supra* note 46, at 6 ("Even where state laws may be preempted for federally chartered institutions, institutions [sic] such institutions still need to be aware of the significant potential for reputational risk in the event an incident of elder abuse goes unreported and/or unresolved.").

ing financial institutions into the array of options for fighting senior financial exploitation will create a holistic solution to a communal problem.[62]

A. State Level Legislation: Matters and Comparisons

Several states have implemented statutes meant to protect against senior financial exploitation.[63] The range of approaches to fighting senior financial exploitation includes: the identification of groups of protected individuals, persons or entities that are required or explicitly permitted to report, the state of mind that triggers reporting, and the availability of civil or criminal immunity from liability for reporting.[64] As a baseline for reporting to police in most state jurisdictions, "a financial institution normally does not need proof that elder financial exploitation is occurring. Reasonable suspicion is adequate" to trigger reporting duties.[65] However, the main tool most states employ in fighting senior financial exploitation is mandated or permissive reporting.[66]

While all fifty states have some form of reporting laws for elder abuse in general, half of the states enacted statutes that can be applicable to financial institutions or their employees.[67] However, only fourteen states expressly include financial institutions.[68] Among these fourteen states, the divide in legislation is whether financial institutions are mandated or permissive reporters.[69] A few of these jurisdictions, like Washington D.C., have a narrower definition for reporting by financial institutions, only requiring a "financial manager" or "bank manager" to report senior financial exploitation.[70] A minority of states has broadened mandated reporting to persons or agencies that have reasonable

62. Shaw Hearing, *supra* note 14, at 2.
63. Skabronski, *supra* note 6, at 634.
64. Comizio, *supra* note 60, at 1.
65. CFPB Report for Financial Institutions, *supra* note 18, at 25.
66. Skabronski, *supra* note 6, at 634.
67. Petrasic, *supra* note 46, at 6 ("Approximately half of the states in the U.S. require financial institutions and/or their employees to report cases of elder financial abuse.").
68. *See* Survey, *Family Law–Family Protection & Welfare: Adult Protection & Reporting*, LexisNexis (2017) (listing California, Delaware, Washington D.C., Florida, Georgia, Hawaii, Kansas, Mississippi, and New Mexico as jurisdictions that have mandated reporting for financial institutions and Colorado, Iowa, Virginia, and Washington as states that have permissive reporting for financial institutions regarding elder financial exploitation.)
69. Petrasic, *supra* note 46, at 6.
70. CFPB Report for Financial Institutions, *supra* note 18, at 24.

cause to believe financial exploitation of a senior has occurred.[71] All but one state provide immunity in both civil and criminal cases for good faith reporting.[72] States also differ on matters of whom to report to, how to make reports, and when to make reports.[73] The following section explores specific approaches taken by some states in resolving senior financial exploitation.

1. STATES WITH MANDATORY REPORTING LAWS FOR FINANCIAL INSTITUTIONS

a. California

California passed the Financial Elder Abuse Reporting Act in 2005, which implemented a mandatory status for reporting by financial institutions.[74] After the Act's implementation, California experienced a 40% increase in the number of reports made, with financial institutions among the most frequent reporters.[75] In California, seniors have more avenues of protection from financial exploitation through both statutory and common law methods.[76]

With the interests of financial institutions in mind, one amendment to the codified Financial Elder Abuse Reporting Act ensures that

71. Petrasic, *supra* note 46, at 8.
72. *Id.*
73. CFPB REPORT FOR FINANCIAL INSTITUTIONS, *supra* note 18, at 23–25.
74. CAL. WELF. & INST. CODE § 15630.1 (West 2018); *see also* Financial Elder Abuse Reporting Act of 2005, S.B. 1018, 2005 Leg., Reg. Sess. (Cal. 2005) ("Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the local adult protective services agency or the local law enforcement agency.").
75. Bessolo, *supra* note 23, at 23.
76. *California Ruling Raises Risk of Heightened Legal Duty*, CAL. BANKERS ASS'N (Feb. 8, 2010), https://www.calbankers.com/post/2010-cba-regulatory-and-litigation-summary (discussing the effects of *Brown Family Trust v. Wells Fargo Bank* which could give banks fiduciary relationships with its elderly patrons, not contractual relationships).

only "the Attorney General, district attorney, or county counsel" may bring civil suits against financial institutions, which establishes uniformity for suits that financial institutions can expect.[77] For example, in *Das v. Bank of America, N.A.*, the plaintiff was barred from using the California statute to apply a negligence per se claim against the bank for failing to report the exploitation happening to her father.[78] As the court noted, "[t]his language [of the statute] manifests the Legislature's intent to forbid the borrowing of the reporting duty for use as a duty of care or standard of care within a negligence claim."[79] The holding of *Das* ensures that law enforcement and prosecutors will handle incidents of senior financial exploitation that fall under California's statute from the start, thus easing the concerns of financial institutions in the areas of compliance and customer privacy.[80]

California has also concentrated on making reporting as efficient as possible by using online reporting.[81] The spirit of the law has spurred further advocacy of vulnerable seniors as seen with the California Bankers Association proposed bill AB 611.[82] The bill would allow mandated reporters to refuse to honor power of attorney if they believe the person is using the power of their position to financially exploit the dependent senior.[83] Without the authority of this bill, "a mandated reporter is in the untenable position of having to comply with the duty to report abuse but at the same time having to comply with a suspected abuser's demands."[84] The passage of the mandated reporting statute in

77. CAL. WELF. & INST. CODE § 15630.1(g) (West 2018) ("The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. [Any person other than the Attorney General, district attorney, or county counsel shall bring no action under this section. Multiple actions for the civil penalty may not be brought for the same violation.] Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.").

78. Das v. Bank of Am., Nat'l Ass'n, 186 Cal. App. 4th 727, 738 (2010).

79. *Id.*

80. CAL. WELF. & INST. CODE § 15630.1 (West 2018).

81. *Elder Abuse Law Extended: Internet Reporting Now Permitted*, CAL. BANKERS ASS'N (Nov. 2, 2011), http://www.canhr.org/factsheets/abuse_fs/html/fs_elderabuse.htm.

82. *Financial Elder Abuse Law Modified*, CBA REG. COMPLIANCE BULL. (Cal. Bankers Ass'n, Sacramento, C.A.), Oct. 7, 2017, https://www.calbankers.com/sites/main/files/file-attachments/poa-elder_abuse_bill.pdf. [hereinafter CBA REG. COMPLIANCE BULL.].

83. *Id.*

84. *Id.*

2005 has encouraged the financial institution community to become involved in the prevention of senior financial exploitation,[85] and the California Legislature and California Bankers Association's continued relations demonstrate a commitment to protecting seniors in California.

b. Florida

Similarly, Florida implemented a mandatory status for reporting for banks; savings, loan, or credit union officers; trustees; or bank employees, which provides immunity for these actors.[86] Mandated reporting by financial institutions has existed in Florida since the inception of protective laws for seniors.[87] In fact, Florida has "one of the most comprehensive and responsive adult protection investigation systems in the nation."[88] The early establishment of this mandated reporting statute allowed Florida communities to build effective procedures around the law.[89] Florida's approach to fighting senior financial exploitation focuses more on "the importance of training and teamwork than the necessity of mandatory reporting."[90] The statute also enables seniors to sue financial institutions for common law negligence when statutory negligence is unavailable.[91]

In *Ginder v. Bank of America Corp.*, the plaintiff sued her bank for negligence when the bank flagged her transactions as suspicious, but did not alert her to the nature of the transactions.[92] The bank motioned for dismissal of the plaintiff's claims since the statute only required actors to report, and contained no language punishing actors for not reporting.[93] The Court denied the motion, stating:

85. *Id.*

86. FLA. STAT. § 415.1034 (2017) ("(1) Mandatory reporting. (a) Any person, including, but not limited to, any: . . . 8) Bank, savings and loan, or credit union officer, trustee, or employee, who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.") (citations omitted).

87. Pratt, *supra* note 47, at 211.

88. *Id.*

89. *Id.* at 212.

90. *Id.* (stating that Florida is a model for elderly financial abuse for the rest of the country).

91. Ginder v. Bank of America Corp., 2015 U.S. Dist. LEXIS 25562, at *6–7 (Fl. Md. D.C. 2015).

92. *Id.* at *3.

93. *Id.* at *6.

> [I]t is reasonable to infer that BOA, acting as Plaintiff's financial institution, had superior attention, perception, knowledge, intelligence, and judgment in recognizing the risk of not notifying Plaintiff of potentially fraudulent activity or failing to act to prevent future fraudulent activity, especially in light of BOA's numerous Suspicious Activity Reports. Accordingly, the Court is able to reasonably infer under the circumstances of this case that BOA created in itself a duty of care to Plaintiff upon learning of her exploitation and breached that duty by failing to notify Plaintiff of its investigations and by failing to act to prevent future fraud despite its knowledge thereof.[94]

Florida law does provide immunity to reporters if they act in good faith.[95] Thus, the bank in *Ginder* should have reported the activity because the statute provides for immunity. The statute also protects seniors when financial institutions are active or lethargic in their reporting. It is important that Florida provides excellent protections for seniors because it houses the greatest concentrated population of seniors in the United States.[96]

2. STATES WITH NON-MANDATORY REPORTING LAWS FOR FINANCIAL INSTITUTIONS

a. Washington

Washington has a productive statute for prosecuting senior financial exploitation.[97] After a 1985 congressional report on elder abuse,[98] Washington passed the Abuse of Vulnerable Adults Legislation.[99] The statute consists of both mandated and *permissive* reporters.[100] Financial institutions fall under the category of permissive reporters, which ensures that there is no duty to report,[101] and thus no liability if there is a failure to report.[102] The statute facilitates reporting because the immun-

94. *Id.* at *8–9.
95. Fla. Stat. § 415.1036 (2017).
96. Mark Mather et al., *Aging in the United States*, Population Bull. 6 (Dec. 2015), http://www.prb.org/pdf16/aging-us-population-bulletin.pdf.
97. Wash. Rev. Code § 74.34.020 (2017) ("'Permissive Reporter' means any person, including but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults) (citations omitted).
98. Select House Comm. on Aging, 99th Cong., Elder Abuse: A National Disgrace (Comm. Print 1985).
99. Skabronski, *supra* note 6, at 636.
100. *Id.*
101. Sholian, *supra* note 28, at 1490.
102. *Id.*

ity provided by the statute is applicable to all financial institution employees.[103] The statute suggests that Washington's legislature intended to preserve seniors' privilege of decision.[104]

3. PAST AND PRESENT STATES WITHOUT REPORTING LAWS FOR FINANCIAL INSTITUTIONS

a. Oregon

Oregon is also highly regarded for the way it has handled senior financial exploitation, even when financial institutions were not classified as mandatory reporters.[105] While the state now has mandated reporting for financial institutions, the majority of the state's experience in handling senior financial exploitation occurred without requiring financial institutions to report.[106] During that time period, financial institutions constituted one of the top classes of reporters in Oregon.[107] Beginning in the 1990s, the sitting Attorney General of Oregon collaborated with the Oregon Bankers Association ("OBA") in order to produce an effective piece of legislation to combat senior financial exploitation.[108] The final statute did not list financial institutions as mandatory reporters, but the legislation did provide both criminal and civil immunity to anyone who made a report in good faith.[109] Additionally,

103. Comizio, *supra* note 60, at 3.

104. Skabronski, *supra* note 6, at 636–37.

105. Pratt, *supra* note 47, at 220 (citing Terrie M. Lewis, *Fifty Ways to Exploit Your Grandmother: The Status of Financial Abuse in Minnesota*, 28 WM. MITCHEL L. REV. 911, 948 (2001)).

106. H. COMM. ON JUDICIARY, SB 95 C STAFF MEASURE SUMMARY, H.R. 79–95, Reg. Sess., at 1 (Or. 2017), https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureAnalysisDocument/39111 [hereinafter STAFF SUMMARY] (quoting the Bill's objective, which "[r]equires certain securities professionals to report to Department of Consumer and Business Services (DCBS) suspected financial exploitation of elderly persons, incapacitated persons, and persons with disability.").

107. Whitney Woodworth, *Oregon bills seek to protect seniors from financial abuse and exploitation*, STATESMAN J. (May 10, 2017, 9:41 AM), https://www.statesmanjournal.com/story/news/2017/05/09/financial-elder-abusers-target-proposed-bills/101334550/.

108. Pratt, *supra* note 47, at 220–21.

109. OR. REV. STAT. § 124.075 (2016) ("Anyone participating in good faith in the making of a report of elder abuse and who has reasonable grounds for making the report shall have immunity from any criminal or civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.").

the legislation removed liability for the release of information regarding senior financial exploitation and simplified the process of bringing a civil suit for this type of crime.[110]

After the legislation passed, banks and other financial institutions submitted more reports documenting senior financial exploitation.[111] Another remarkable trait of Oregon's treatment of senior financial exploitation is the continuing involvement of the community after the legislation was adopted.[112] A task force consisting of members from the Attorney General's office, the OBA, and the American Association of Retired Persons "help[ed] Adult Protective Services, law enforcement and prosecutors develop cases that these critical stakeholders would not have had the financial expertise to investigate and, ultimately, file otherwise."[113]

In 2013, reports from non-mandatory reporters compromised at least 60% of the total reports made for senior financial exploitation.[114] Cementing Oregon's attitude toward reporting, the new legislation requires security professionals to report suspected senior financial exploitation.[115] The measure will either not affect financial institutions already in compliance with the law or force uninvolved institutions to begin reporting suspicious behavior.[116] The largest changes the statute implemented include shifting punishment application from criminal court to civil court through the use of civil penalties and expanding the definition of "financial institutions."[117]

b. Illinois

Illinois requires training of financial institution employees to detect senior financial exploitation, but the state does not designate financial institutions as mandated reporters.[118] Even without any applicable

110. Pratt, *supra* note 47, at 221.
111. *Id.*
112. *Id.* at 229.
113. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 34.
114. STAFF SUMMARY, *supra* note 106, at 1 ("In 2013, securities professionals were second only to family members in reporting suspected financial exploitation of seniors and vulnerable adults.").
115. *Id.*
116. *Id.*
117. *Id.*
118. 320 ILL. COMP. STAT. 20/3.5 (2018) ("developing by joint rulemaking with the Department of Financial and Professional Regulation minimum training standards which shall be used by financial institutions for their current and new employ-

mandatory or permissive reporting laws, financial institutions in Illinois have made efforts to combat senior financial exploitation.[119] The state used other measures in 2000 to address the problem of senior financial exploitation.[120] For example, the state grouped legal, banking, social service, and advocacy network professionals together at the Governor's request.[121] This initiative still exists in the program known as B*SAFE, which is aimed at detecting, preventing, and reporting senior financial exploitation.[122] This program "educates tellers on potential signs of senior financial exploitation.[123] The program also encourages networking between the bank, local law enforcement, and the Adult Protective Services Provider Agency ("APS")."[124] The Illinois Criminal Justice Information Authority funds the program and keeps guidelines and information available for circulation that are useful to both financial institutions and seniors dealing with financial exploitation.[125]

Local interest has also been shown in counties within Illinois for creating programs to assist seniors.[126] The Cook County organization, Age Options, set up iFast in 2013 in hopes of connecting financial institutions to the community.[127] This program "invites financial institutions to join as volunteers in case reviews, and holds annual financial summits for training and to build its relationships with financial institutions. Bank and credit union attendance at these summits increased from 1 in 2013 to 34 in 2014."[128] Illinois, however, has a gap between

ees with direct customer contact; the Department of Financial and Professional Regulation shall retain sole visitation and enforcement authority under this subsection (g-1); the Department of Financial and Professional Regulation shall provide bi-annual reports to the Department setting forth aggregate statistics on the training programs required under this subsection (g-1).").

119. *Preventing Financial Exploitation*, ILL. DEP'T ON AGING, https://www.illinois.gov/aging/ProtectionAdvocacy/Pages/abuse_financial.aspx (last visited Sept. 25, 2018).

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *About Us*, AGEOPTIONS, http://www.ageoptions.org/about-us_landing page.html (last visited Sept. 25, 2018).

127. *iFast–The Illinois Financial Abuse Specialist Team*, AGEOPTIONS, http://www.ageoptions.org/iFAST.html (last visited Sept. 25, 2018).

128. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 34.

financial institutions and reporting.[129] Despite senior financial exploitation being the largest reported crime, financial institutions make up one of the smallest number of reporters.[130]

B. State Level Benefits and Drawbacks

There are many benefits to fighting senior financial exploitation at the state level. First, if state legislatures want to change reporting laws, they can easily start and finish that process in the state level of government. Local measures can be instated quickly, since there is no need to wait for passage of a federal law to begin tackling the issue.[131] Laws and policies surrounding senior financial exploitation are more familiar to lawmakers at the local level of government given that the protection of seniors tends to be within the state's police power pertaining to family law.[132] Additionally, states can act as the trial stage for new approaches to these types of laws. For example, the Senior $afe Act,[133] discussed in Section C, was implemented in Maine.[134] The partnership of the Maine Department of Health and Human Services, Office of Aging and Disability Services, the Maine Department of Professional and Financial Regulation (which includes the Maine Office of Securities), the Maine Bankers Association, the Maine Credit Union League, Maine's Legal Services for the Elderly, and Maine's five Area Agencies on Aging collaborated to create this program.[135] Analogous federal legislation could benefit from internal protocol within financial institutions and communities, which local and state levels of government can

129. *APS Statistics*, *supra* note 3.

130. *Id.*

131. *See* Shaw Hearing, *supra* note 14, at 7 ("We cannot wait for a universal solution before acting.").

132. Ann Laquer Estin, *Sharing Governance: Family Law in Congress and the States*, 18 Cornell J. L. & Pub. Pol'y 267, 297 (2009) [hereinafter Estin] ("States once relied on the family to address the needs of children and the elderly, and the scope of family law was correspondingly more limited than it is today. The tradition of federal deference to the states on family law issues corresponds to this parallel tradition of state deference to family privacy and autonomy.").

133. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (2018); Amy Bard, *The Senior Safe Act Becomes Law*, Bressler, Amery & Ross, P.C. (June 11, 2018), https://www.bressler.com/the-senior-safe-act-becomes-law.

134. *Maine Securities Administrator Outlines Innovative Program to Combat Senior Financial Exploitation*, North Am. Sec. Administrators Ass'n (Feb. 4, 2015), http://www.nasaa.org/34526/maine-securities-administrator-outlines-innovative-program-to-combat-senior-financial-exploitation/.

135. *Id.*

provide.[136] Creating effective relationships between financial institutions and other players in senior financial exploitation will take time,[137] but the collaboration is a worthwhile investment.

However, there are some drawbacks and resistance to state level statutes and policy. If financial institutions are classified as mandated reporters, they can be prosecuted for failing to report to a proper agency.[138] A new federal law will not supersede this aspect of state law, since the law only preempts state laws that deal with civil or administrative proceedings against individuals or institutions.[139]

Creating legal and lay mechanisms to prevent and prosecute senior financial exploitation can be difficult for rulemaking bodies that represent areas with low populations.[140] External factors should not determine how much assistance a senior receives when they have been financially exploited. In fact, areas with the highest percentages of seniors among their residents are reported to have a lack of networks to fight senior financial exploitation.[141] These areas are often rural therefore "distances and limited resources are often barriers to the development of networks."[142]

While mandatory reporting law is helpful, it can infringe on a senior's life[143] and independence.[144] With some seniors living in multiple states during the year, there can be a legal gray area for financial institutions that operate in multiple states with different levels of compliance,[145] including regularly operating over state lines or nationwide.[146] The states can invoke powerful change at the local levels, but the federal law can supplement problematic areas like jurisdiction and uniformity.[147]

136. *See* Ulrey Testimony, *supra* note 57, at 7 (arguing for the federal government to help develop local infrastructure for responding to elder abuse).
137. Spiegel, *supra* note 10, at 172.
138. Skabronski, *supra* note 6, at 635 ("Some states may also penalize persons who knowingly make false reports of elder abuse . . . . [s]ome states impose penalties on those who retaliate against a person who has reported under APS . . . .").
139. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, § 303(C), 132 Stat. 1296 (2018).
140. *See* CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 27.
141. *Id.* at 28.
142. *Id.* at 29.
143. Skabronski, *supra* note 6, at 638–39.
144. *Id.*
145. *See generally* Petrasic, *supra* note 46.
146. Comizio, *supra* note 60, at 1.
147. *See* Estin, *supra* note 132, at 333.

C. Federal Legislation and Matters

While senior financial exploitation mainly falls under state jurisdiction, actions can also be taken at the federal level to influence financial institutions to prevent this crime.[148] From providing information, passing uniform laws, and functioning in areas that the states cannot,[149] the federal government, on its own and in coordination with the states, can enlist financial institutions to prevent senior financial exploitation.[150]

1. THE ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT

Congress enacted legislation in the spring of 2018 that aims to prevent senior financial exploitation.[151] Section 303 of the Economic Growth, Regulatory Relief, and Consumer Protection Act focuses on removing liability for financial institutions and individuals who are trained to report senior financial exploitation.[152] Section 303 began as an individual bill, The Senior $afe Act of 2017.[153] Senator Susan Collins introduced this bill, which was inspired by a similar program from her home state of Maine.[154] Senior $afe "[h]as three components - training, a consumer brochure, and quick response cards for front-line staffers and managers of banks and credit unions. Senior $afe also establishes a new reporting channel for suspected cases of [senior] financial exploitation in addition to the traditional report to Maine's Adult Protective Services."[155] The program has had success from the start, with 210 bank

148. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-110, ELDER JUSTICE: NATIONAL STRATEGY NEEDED TO EFFECTIVELY COMBAT ELDER FINANCIAL EXPLOITATION 38 (2012), https://www.gao.gov/assets/660/650074.pdf [hereinafter ACCOUNTABILITY OFFICE].

149. *Id.* ("[L]aw enforcement officials in each of the four states GAO reviewed indicated that it is not clear how they should obtain the federal support they need to respond to interstate and international cases.").

150. *Id.*

151. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (2018).

152. *Id*.

153. S. 223, 115th Cong. (2017).

154. 162 Cong. Rec. 56882 (daily ed. Dec. 8, 2016); Victoria Sackett, *New Law Targets Elder Financial Abuse*, AARP (May 24, 2018), https://www.aarp.org/politics-society/government-elections/info-2018/congress-passes-safe-act.html [hereinafter Sackett].

155. *See* Emily Zulz, *Fighting Financial Exploitation of Seniors*, THINKADVISOR (Feb. 6, 2015), https://www.thinkadvisor.com/2015/02/06/fighting-financial-exploitation-of-seniors/?slreturn=20181020200541 [hereinafter Zulz].

and credit union employees receiving training, and with twenty referrals sent to the Office of Securities in Maine.[156] The bill also draws influence from model legislation created by the North American Securities Administrators Association ("NASAA") after observing the Maine Council for Elder Abuse Prevention's Senior $afe financial institution training.[157]

The proposed laws from NASAA and Congress "may differ in some aspects but share a common goal of protecting seniors by increasing the early detection and reporting of financial exploitation targeting this population."[158] The legislation hoped to encourage the training of, and the protection of, appropriate actors from lawsuits for the purpose of increasing reporting:[159]

> [T]he bill aims to protect banks, credit unions, investment advisors, broker-dealers, insurance companies and certain supervisory, compliance and legal employees from civil or administrative liability - as long as they receive training in how to spot and report predatory activity and disclose any possible exploitation of senior citizens to state or federal regulatory and law enforcement entities.[160]

Instead of enacting the bill on its own, Congress decided to add this section to another bill with other provisions for financial regulation.[161] The section focuses on three aspects to prevent senior financial exploitation: immunity, training, and the relationship with state law.[162] The immunity section defines the terms financial institution, covered agency, and exploitation.[163] Financial institutions (and certain individual positions) include: credit unions, depository institutions, investment advisers, broker-dealers, insurance companies, insurance agencies, and transfer agents.[164] Covered agencies include: state financial

156. Shaw Hearing, *supra* note 14.

157. *NASAA Statement on House Passage of the Senior $afe Act of 2016*, North Am. Sec. Administrators Ass'n (July 6, 2016), http://www.nasaa.org/39896/nasaa-statement-house-passage-seniorafe-act-2016/.

158. *Id.*

159. 162 Cong. Rec. S6882 (daily ed. Dec. 8, 2016) (statement of Senator Collins).

160. Melanie Waddell, *Senator Makes New Push for Senior Safe Act*, ThinkAdvisor (Jan. 26, 2017, 2:19 PM) https://www.thinkadvisor.com/2017/01/26/senator-makes-new-push-for-senior-safe-act/?slreturn=20180821181913 (stating that the bill would "ensur[e] that financial advisors and broker-dealers have the ability to report suspicions of financial exploitation whenever they suspect fraudulent behavior without fear of liability.").

161. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (2018).

162. *Id.*

163. *Id.*

164. *Id.*

regulatory agencies, each of the federal agencies represented in the membership of the Financial Institutions Examination Council, securities associations registered under section 15A of the Securities Exchange Act of 1934, the Securities Exchange Commission, law enforcement agencies, and state or local agencies responsible for administering adult protective service laws.[165] Exploitation includes using the senior's resources for monetary or personal benefit, profit, or gain or depriving the senior rightful access to use benefits, resources, belongings, or assets.[166]

The new law mandates immunity from civil and administrative lawsuits for both individuals working for financial institutions and financial institutions themselves.[167] Individuals qualify for immunity if they are trained as section (B) sets out and make a disclosure in good faith and with reasonable care.[168] Financial institutions qualify if the individual employed who made the disclosure was trained as per section (B).[169] The level of protection from lawsuits afforded to these two groups will preempt state law for these situations, but otherwise the state law surrounding this area should remain the same.[170]

The goal behind this legislation is to incentivize quicker reporting since financial institutions are on the frontlines of dealing with senior financial exploitation.[171] The threat of litigation can outweigh the benefits of reporting for financial institutions particularly when family members are involved in the situation.[172] Implementation of immunity for privacy violation claims allows employees of financial institutions to promptly report to any of the covered agencies and feel comfortable when doing so.[173] This set up "strikes an appropriate balance, harnessing the capacity of investment professionals to flag potentially abusive situations while incorporating important safeguards that should help to minimize the risk that this new authority could be exploited to cause

165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.*
171. 162 CONG. REC. S6882 (daily ed. Dec. 8, 2016) (statement of Senator Collins).
172. 163 CONG. REC. S447–13 (daily ed. Jan. 24, 2017) (statement of Senator Collins).
173. *Id.*

additional harm."[174] Reporting to both state securities regulators and Adult Protective Services has the dual benefit of protecting vulnerable seniors from exploitation and preventing unlawful actions from abusive brokers.[175]

2. ACTION THROUGH AGENCIES

Enactment of statutes is not the only way the federal government has fought senior financial exploitation.[176] Federal agencies have also improved protections by creating departments specifically focused on senior financial exploitation.[177] An example includes the Office of Older Americans in the Consumer Financial Protection Bureau ("CFPB"), which was created during the passage of the Dodd-Frank Act.[178] The Office of Older Americans helps educate people who are sixty-two or older in identifying financial exploitation.[179] The CFPB has taken a large initiative to educate and prevent senior financial exploitation through coordination "with stakeholders in several states to create and sustain multi-disciplinary older American protection networks" and the development of "strategies to communicate that the Gramm-Leach-Bliley Act generally does not prohibit companies from reporting suspected [senior] financial exploitation."[180]

Congress also created incentives for states to aid populations of seniors who are financially exploited.[181] The Dodd-Frank provision sets aside $500,000 per fiscal year to individual states or specific entities to identify, investigate, and prosecute cases for misleading financial products towards seniors.[182] However, "[w]hile some experts observed that a nationwide approach to educating the public is needed, federal public awareness activities are not currently conducted as part of a broader coordinated approach, which the Government Accountability Office

174. *See* Letter from Barbara Roper, Dir. of Investor Protection, Consumer Fed'n of Am., to Lynne Egan et al., Chair North Am. Sec. Administrators Ass'n (Nov. 10, 2015), http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/10/Roper111015.pdf.
175. *Id.*
176. *See generally* Petrasic, supra note 46.
177. *Id.*
178. *Id.*
179. Mary Griffin, *Older Americans and the CFPB*, Consumer Fin. Protection Bureau (May 25, 2011), https://www.consumerfinance.gov/about-us/blog/older-americans-and-the-cfpb/.
180. Comizio, *supra* note 60, at 4.
181. Petrasic, *supra* note 46, at 3.
182. *Id.*

believes could help ensure the effective use of federal resources."[183] Financial institutions could be part of the collaborated effort to both recognize and prevent senior financial exploitation.[184] Thus far, the CFPB has only been informative and suggestive of measures towards financial institutions.

D. Federal Benefits and Drawbacks

There are positive factors that result when the federal government's top-down approach to senior financial exploitation is taken. The different avenues that the federal government can assist in making its approach an optimal platform for change are education, prevention, and prosecution.[185] Ranging from the Securities Exchange Commission, to self-regulatory organizations, and to Congress, there are different groups that could implement measures to help protect seniors.[186] The most enticing factor is the lack of cost—the Congressional Budget Office has estimated that the Senior $afe Act would have *no* impact on federal funding.[187] Since the Economic Growth, Regulatory Relief, and Consumer Protection Act adopted this provision, cost should remain the same. The ratio of the money spent implementing the legislation to the capital saved due to better procedures cannot be replicated at any other level of government because this law targets the whole country.[188]

The reach of the federal government would also be useful in cases that fall outside of a state's jurisdiction, like suits involving interstate relations and offshore scams.[189] Further, this federal power could be extremely valuable for less densely populated areas of the country with fewer resources dedicated to combating senior financial exploitation.[190] Since the Economic Growth, Regulatory Relief, and Consumer Protection Act requires training in order to receive immunity for individuals or financial institutions,[191] financial institution employees can better inform seniors about aspects of senior financial exploitation. Therefore,

183. *See generally* ACCOUNTABILITY OFFICE, *supra* note 148.
184. *Id.*
185. Zulz, *supra* note 155.
186. *Id.*
187. Annie Shuppy, *Legislative Week: This Week on the House Floor*, CONG. Q.'S ACTION REP., July 1, 2016.
188. Ulrey Testimony, *supra* note 57, at 13.
189. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 25.
190. *Id.* at 27.
191. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (2018).

federal agency departments can provide more information about this crime and can improve the education of financial institution employees.[192]

There are also negative factors at the federal level when approaching this problem. Efforts to galvanize leadership to address senior issues can be slow at this stage, which could be troubling if more help in this area is needed.[193] The federal legislation also only addresses immunity for financial institutions when reporting.[194] Financial institutions are still not required to report and are only incentivized to do so.[195] In essence, the law focuses on incentivizing instead of penalizing, and time will only tell if that is a more successful approach.[196] With each level of government having positives and negatives, a combined effort in appointing financial institutions might be the best approach to preventing senior financial exploitation. There is precedent for different levels of government coming together in order to protect vulnerable citizens.[197]

192. Ulrey Testimony, *supra* note 57, at 7–8 (stating that for there to be success to start at the federal level and flow to the state level local police, prosecutors, and victims need to be aware of the information that many federal agencies already provide like technical assistance and ongoing training).

193. Brian W. Lindberg et al., *Bringing National Action to a National Disgrace: The History of the Elder Justice Act*, 7 Nat'l Acad. Elder L. Att'ys J., no.1, 2011.

194. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (2018).

195. *Id.*

196. Katherine C. Pearson, *New Senior Safe Act Encourages Reporting Financial Abuse*, WealthManagement.com (May 29, 2018), https://www.wealthmanagement.com/high-net-worth/new-senior-safe-act-encourages-reporting-financial-abuse.

197. *See* Ulrey Testimony, *supra* note 57, at 7; Nina A. Kohn, *Second Childhood: What Child Protection Systems Can Teach Elder Protection Systems*, 14 Stan. L. & Pol'y Rev. 175, 178–82 (2003) [hereinafter Kohn].

IV. Recommendation

The issue of senior financial exploitation requires approaches at both the federal and state levels because "[e]lder abuse is not just about the acts of outliers . . . We all have potential to be victims as well as victimizers. The longer we live, the greater the potential. It's not an easy lesson for a youth-obsessed society to absorb. But it's an increasingly urgent one."[198] Beginning at the state level, legislatures need their reporting laws to include financial institutions. This designation is appropriate because "[t]he enactment of mandatory reporting laws falls within the states' power under the parens patriae doctrine, which is based upon the premise that the state must protect those who cannot protect or speak for themselves."[199] Law at this level can affect power of attorney, which could be used as a weapon against senior financial exploitation.[200]

States could make another possible change by evaluating which standard of reporting is used for financial institutions when observing seniors.[201] Since the Senior $afe Act passed through the Economic Growth, Regulatory Relief, and Consumer Protection Act, states need to implement policies unique to their jurisdiction that are aligned with the law. Even outside of mandatory reporting and other means of assistance, financial institutions can help prevent senior financial exploitation through improved communications with Adult Protective Services, which regularly works with law enforcement agencies and area prosecutors.[202] Positive examples of addressing senior financial exploitation have often come from states such as California and Oregon that have good communication between financial institutions and the state legislature.[203] This needs to be the starting point for states.

At the federal level, the effects of the Economic Growth, Regulatory Relief, and Consumer Protection Act should be observed and analyzed to see if Congress's approach is effective. If incentives by the federal government do not entice financial institutions to report to covered

198. Spiegel, *supra* note 10, at 175.
199. Skabronski, *supra* note 6, at 638.
200. Kapadia, *supra* note 16, at 29.
201. CFPB Advisory for Financial Institutions, *supra* note 52, at 3 (comparing the standard of reasonable suspicion and certainty that would cause a duty to report).
202. Accountability Office, *supra* note 148, at 7.
203. *See* Pratt, *supra* note 47, at 220–21; CBA Reg. Compliance Bull. *supra* note 82.

agencies, then the government's oversight management of financial institution compliance would be a better way to establish effective reporting laws.[204] Congress could enforce reporting through an amendment to the Economic Growth, Regulatory Relief, and Consumer Protection Act or an administrative agency whose dual nature of managing internal operations and promulgating regulations could be beneficial to setting up protocol for senior financial exploitation.[205] Congress has done this before with the enactment of the Child Abuse Prevention and Treatment Act ("CAPTA"),[206] which set federal guidelines that eventually trickled down to state and local levels.[207] Specifically in the area of child protection laws, Congress "has set the national welfare agenda by passing laws, allocating money for programs, and requiring states to comply with federal regulations to receive funding."[208] One example of this was using the Children's Bureau to interact with state public welfare agencies to create better legal protections for children.[209] Congress has a history of producing blueprints for solving family law problems through federal agencies; it should be inclined to follow it again. To do so, Congress would have to identify what made CAPTA successful. Initially promulgated in 1974, CAPTA "encourage[d] states to reform their juvenile courts and foster-care systems through the enticement of federal money."[210] States had to reform or create statutes to achieve these measures. State actions included creating "a child abuse and neglect reporting system; sufficient resources to promptly investigate and effectively deal with allegations of abuse and neglect; methods to preserve the confidentiality of child abuse and neglect records; and the cooperation of law enforcement, courts and human service agencies."[211] The main areas the legislation focused on were improving investigation

204. Sackett, *supra* note 154.
205. 2 Am. Jur. 2d *Administrative Law* § 26 (2018).
206. Ulrey Testimony, *supra* note 57, at 7.
207. Zulz, *supra* note 155 ("[T]he federal government made tremendous strides in building the infrastructure to respond to child abuse, domestic violence and sexual assault, not only at the federal and state level, but also at the local level . . . [t]here is a profound need for similar attention by the federal government to the issue of elder abuse.") (quoting Page Ulrey).
208. Linda D. Elrod, *The Federalization of Family Law*, 36 HUM. RTS. 6, 6 (2009) [hereinafter Elrod].
209. *Id.* at 7 (extending from the legislation of the 1935 Social Security Act which created the Aid to Families with Dependent Children).
210. Gerard F. Glynn, *The Child Abuse Prevention and Treatment Act – Promoting the Unauthorized Practice of Law*, 9 J.L. & FAM. STUD. 53, 54 (2007).
211. *Id.* at 54–55.

and *reporting*.[212] Also, the federal government had duties to be fulfilled in "supporting research, evaluation, technical assistance, and data collection activities; establish[ing] the Office on Child Abuse and Neglect; and establish[ing] a national clearinghouse of information relating to child abuse and neglect."[213]

The legislation's success rests on the cooperation and collaboration of "advocates, researchers, policymakers, and private and public agencies."[214] The statutory language in CAPTA mirrors the community approach that advocates for prevention of senior financial exploitation push for when attempting to bring financial institutions into the fold: "the purpose of this title . . . is to support *community-based* efforts to develop, operate, expand, enhance, and coordinate initiatives, programs, and activities to prevent child abuse and neglect and to support the coordination or resources and activities . . . ."[215] By the end of the 1970s, the United States enjoyed for the first time a nationwide system of government-sponsored child protection.[216] The influential CAPTA included sexual abuse in its definition of maltreatment.[217] By 1976, all states had reporting laws requiring professionals to report sexual abuse.[218] The expanded child protection system, particularly the reporting laws, wrenched sexual abuse from obscurity.[219]

Dependency, social isolation, and limited physical or mental capabilities are similar traits that perpetuate child abuse and senior financial exploitation.[220] The history of CAPTA demonstrates that Congress is willing and able to set up federal legislation in areas the states usually

212. John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 457 (2008) [hereinafter Myers] (emphasis added).
213. *About CAPTA: A Legislative History*, CHILD WELFARE INFO. GETAWAY (Aug. 2017), https://www.childwelfare.gov/pubPDFs/about.pdf#page=1&view=Introduction [hereinafter *About CAPTA*].
214. ADMIN. FOR CHILDREN & FAMILIES, THE CHILD ABUSE PREVENTION AND TREATMENT ACT 40 YEARS OF SAFEGUARDING AMERICA'S CHILDREN iii (2014) https://www.acf.hhs.gov/sites/defar/files/cb/capta_40yrs.pdf [hereinafter 40 YEARS].
215. 42 U.S.C. § 5116 (2012).
216. *About CAPTA*, *supra* note 213.
217. *Id.*
218. 40 YEARS, *supra* note 214, at iii.
219. Myers, *supra* note 212, at 460–61.
220. Kohn, *supra* note 197, at 178–82.

deal with if the problem the proposed legislation addresses is too difficult to resolve or is unresolvable.[221] Just as Congress stepped up to prevent the maltreatment of children, it has started to do so again by protecting seniors against the capricious claws of financial exploitation through the Economic Growth, Regulatory Relief, and Consumer Protection Act. The movement to enlist financial institutions in the fight against senior financial exploitation now has a "central, well-recognized body, which can serve as a focal point for . . . [an] agenda."[222] Clear federal legislation sets this out.

Additionally, the CFPB has expressed interest in helping with senior financial exploitation and should still be consulted: "[t]he CFPB looks forward to continuing to work with financial institutions and seeing a broad spectrum of financial institutions implement its recommendations so that a greater number of older Americans can have later life economic security."[223] The CFPB has already given special attention to financial institutions through recommendations for combating senior financial exploitation in an institution's individual capacity and within an institution's community.[224] The CFPB has existing programs that are focused on senior financial exploitation such as the program Money Smart for Older Americans.[225] While some of these programs are not exclusively created just for financial institutions, they are still useful and effective.[226] The CFPB also puts together helpful and informative reports for families, caretakers, communities, and financial institutions.[227] Some central concepts to CAPTA included, "expand[ing] the

221. Elrod, *supra* note 208, at 6 ("[C]ongressional legislation, decisions of the U.S. Supreme Court, and the participation of the United States in more international treaties have "federalized" more and more areas of family law traditionally left to the states.").

222. Spiegel, *supra* note 10, at 173.

223. CFPB Advisory for Financial Institutions, *supra* note 52, at 7.

224. *See* CFPB Report for Financial Institutions, *supra* note 18, at 2 (explaining that the Consumer Financial Protection's Bureau Office for Older Americans has identified the best practices to assist financial institutions with their efforts to prevent elder financial abuse and effectively intervene when necessary.").

225. CFPB Report: Community Networks, *supra* note 1, at 22.

226. *Id.*

227. *CFPB Issues Report for Financial Institutions*, *supra* note 17; Comizio, *supra* note 60, at 4 ("Developing guides for family members and others with legal authority to handle money for older relatives or friends, but who may not have formal training. The guides will help people understand proper record keeping, good frameworks for investing, and other basics of managing a vulnerable adult's money. They also will help people recognize and respond to financial exploitation . . . . Producing a guide for people who operate group living centers dedicated to serving

types of mandatory reporting of child abuse, provid[ing] a twenty-four hour hotline to report child abuse and neglect, and . . . appoint[ing] guardians *ad litem* in abuse and neglect cases."[228] As a society, we are inclined to protect the most vulnerable people. The United States has adequately aimed to protect children, and it is now time to shield seniors.

The best answer to senior financial exploitation is to have applicable laws at both levels of government. With prior success in influencing change in state statutes, the best course of action for the federal government would be to supplement the Economic Growth, Regulatory Relief, and Consumer Protection Act with state reporting laws. It was the coalescence of multiple factors that produced effective federal and state laws to address the issue of child abuse. The same process can be followed in preventing senior financial exploitation, such as coordinating the incorporation of reporting law options, a bureau that can act as the nucleus of information and research (e.g., the CFPB), and federal legislation specifically targeting senior financial exploitation. States can add an extra level of protection for seniors through listing financial institutions as mandated or permissive reporters. A mandated status on reporting means financial institutions will be required to interact and comply with law enforcement and APS.[229] This procedure has been recommended for better responses to senior financial exploitation.[230] From there, states or local governments can create networks that involve financial institutions and focus on preventing and prosecuting senior financial exploitation cases. The CFPB has recommended such a move.[231] There must be a "no wrong door" approach to reports, and increased communication ensures more addressing of reports or referrals.[232]

V. Conclusion

A common theme arises that, "[i]f there is any lesson to be gleaned from the history of American reform movements . . . it is that a public interest cause with an emotionally resonant message can overcome

older adults, such as nursing homes or assisted living facilities. The CFPB is also establishing partnerships with organizations to help distribute this information.").

228. Elrod, *supra* note 208, at 7.
229. CFPB ADVISORY FOR FINANCIAL INSTITUTIONS, *supra* note 52, at 6.
230. *Id.*
231. CFPB REPORT: COMMUNITY NETWORKS, *supra* note 1, at 41.
232. Shaw Hearing, *supra* note 14, at 3.

seemingly insurmountable obstacles."[233] A crime that feeds off of community perception requires a community to combat it. All levels of representative government need to be involved in helping a vulnerable class of people within the community. Federal legislation is necessary for enforcing laws against financial institutions and for seniors who reside in multiple states. This type of law also has power of moral backing and uniformity.[234] State level legislation assures that seniors' rights are preserved while protecting seniors against financial exploitation. States are in the best position to help their communities since they can enact laws more quickly and draft more specific legislation.

The best solution would be supplementation of state reporting laws with the Economic Growth, Regulatory Relief, and Consumer Protection Act, which only addresses immunity for individual employees of financial institutions and financial institutions. From there, states can either mirror federal legislation or provide more protection for seniors that live within their territory. In having all jurisdictions address senior financial exploitation, financial institutions at every level can ameliorate this type of crime. Financial institutions can join the community in providing the best protection for seniors.[235]

233. Spiegel, *supra* note 10, at 173.
234. Estin, *supra* note 132, at 333 ("Congress is in a unique position to determine and implement common solutions to widely-shared problems. The national government can also speak with greater moral authority.").
235. *See id.* at 296 ("The political process, rather than constitutional adjudication, establishes the balance of state and federal responsibility."); *See also* Zulz, *supra* note 155.