PENNSYLVANIA
BANKERS ASSOCIATION

TESTIMONY on ELDER FINANCIAL EXPLOITATION
before the
PA HOUSE of REPRESENTATIVES' AGING AND OLDER ADULT SERVICES COMMITTEE
December 11, 2013

I am Michael Allen here today on behalf of the Pennsylvania Bankers Association. PBA represents 154 banking institutions of all sizes operating in this Commonwealth. I chair PBA's state Government Relations Policy Committee and serve on its Board of Directors. I am Executive Vice President and Chief Operating Officer of PEOPLESBANK, a Codorus Valley Company. We are a $1.1 billion institution with 244 employees.

PBA appreciates the opportunity to submit comments and participate in today's hearing on elder financial exploitation. Banks are dedicated to protecting all of their customers, but we are especially aware of the needs of our senior citizens.

We provide financial literacy training and our branch and telephone support staffs are available to consult with customers who have concerns about questionable transactions they have been asked to undertake by strangers, or even members of their own families.

In addition, banks employ reasonable measures to detect and respond to potential exploitation of our older customers while striving to preserve their safety, security, privacy and dignity. Some banks can afford sophisticated account monitoring systems to detect potential elder financial abuse; the vast majority simply cannot. Therefore, employee and customer education are our principal means to detect and prevent abuse.

In March of 2012, the American Bankers Association's online elder abuse course was made available at no charge to ABA-member institutions. My bank uses this course to train our employees who need this skill. In addition to offering the online training course, ABA has also provided resources that its members can use to educate their customers about fraud including statement stuffers, brochures, and press releases.

Despite the banking industry's best efforts to educate our seniors and those who care for them about the potential for elder financial abuse, for a variety of reasons, including isolation and declining physical and mental capacities, certain seniors remain vulnerable.

Among the more common types of elder financial exploitation by strangers are fake accident or grandparent telephone scams; lottery/prize scams; unsolicited work offered for their residences and autos; and reverse mortgage scams where seniors are charged for information the federal government provides free of charge.

Even sadder are cases of family member or acquaintance elder abuse such as obtaining money or other assets through undue influence, misrepresentation or fraud; abuse by agents acting under powers of attorney; misappropriation of assets through improper account access device use; and financial pressure applied to a senior who is dependent upon the housing or services a caregiver provides.

When we suspect or confirm instances of senior financial exploitation, banks are required by federal law to file Suspicious Activity Reports (SARs)[1] with the Financial Crime Enforcement Network known as FINCEN, a division of the United States Treasury:

> Consistent with the standard for reporting suspicious activity …if a financial institution knows, suspects, or has reason to suspect that a transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, the financial institution should then file a Suspicious Activity Report.[2]

Compliance with federal regulations, including Suspicious Activity Reporting compliance, is an element of banks' federal examinations, so please be assured that we take it very seriously.

It is our understanding that FINCEN works with states to share information filed through SARs where indicated. Banks are also encouraged by their federal regulators to report suspicious activity to state and local law enforcement authorities which in the case of elder abuse in Pennsylvania would include Area Agencies on Aging.

PBA has been working with the Departments of Banking & Securities and Aging, your Chairman and staff to develop amendments to the PA Older Adult Protective Services Act to give financial institutions, the Department of Aging, and Area Agencies on Aging better tools to deal with elder financial exploitation, and to ensure that the SAR process provides the information to the department and triple As necessary to investigate and take action against cases of financial exploitation. PA should also consider whether the OAPSA and the Adult Protective Services Act should be merged with the focus on vulnerability v. age.

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[1] http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_015.htm

[2] http://www.fincen.gov/statutes_regs/guidance/html/fin-2011-a003.html

PBA encourages the training of triple As and other local law enforcement agencies' staffs in the investigation of potential elder financial abuse. Our member banks' security officers can assist with this.

Detecting and reporting elder financial abuse is not simple or straightforward. Please allow me a few moments to share a recent case in another state involving one of PBA's members:

> A mother granted power of attorney (POA) to her son who lives with and helps take care of her. The POA provides the son full authority to conduct transactions on the mother's brokerage and bank accounts. The POA also gives the son the power to make gifts of the mother's property to himself on an annual basis not to exceed the then current federal gift tax annual exclusion amount (currently $14,000 per year).
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> The son has been liquidating the mother's assets from her brokerage account and transferring the proceeds to the mother's bank account. The son has withdrawn funds to properly pay the mother's bills. The son has also withdrawn funds to pay for his personal credit card bills, purchase a motorcycle, and pay for motorcycle maintenance and other personal expenses. Investigation reveals the amount the son has withdrawn for his personal use during the past 2 years and current year exceeds the annual gift tax exclusion amount for each year.
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> The bank filed a suspected elder abuse report with the state's Adult Protective Services authorities who will not tell the bank anything about the status of their investigation.
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> The issue the bank now faces is what to do when the son seeks to withdraw funds from his mother's bank account?
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> Should the bank deny the son the ability to withdraw any more funds for this year because he has exceeded the annual limit on personal gifts under the POA[3]? If the bank denies withdrawals the son can't withdraw funds to pay his mother's bills and living expenses, either. As of January 1, would the bank then have to allow the son to again make withdrawals even though they appear to be for his personal use?
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> In this case, should the bank contact the mother and ask her about the son's transactions? If the bank contacts the mother, it assumes she will talk to her son. If the mother is dependent on the son's care as the bank assumes, is she then at risk for physical or emotional damage at the hand of her son?
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> While waiting for the APS to respond, should the bank monitor the mother's account and make decisions on which expenses are proper for the son to pay? Recall that this is merely a deposit account; the bank is not a fiduciary in this case. Even if the bank assumed an oversight role, how could it determine what is a proper expense? If the son is paying his

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[3] It could be the neither the principal nor the agent in this case understand what the annual gift tax limit is or how it operates in the context of this agency relationship.

personal credit card bill, could it be that he used his credit card to pay one of his mother's bills (like the co-pay at the doctor's office) and is merely reimbursing himself?

The bank in this case is now "stuck" as to how to proceed unless and until the state Adult Protective Service provides it with information which – to date – it has not.

Cases like that I just outlined for you are not uncommon. Elder financial abuse is not always easy to detect and prevent. PBA urges that any legislation your Committee considers require Pennsylvania's Area Agencies on Aging to share appropriate information with reporting financial institutions and provide them with immunity if they refuse to conduct questionable transactions.

Thanks again for the opportunity to be here as your Committee seeks to learn more about elder financial exploitation. I look forward to our dialogue.