REPORT TO THE VERMONT LEGISLATURE

of the

WORKING GROUP ON PROTECTING OLDER CONSUMERS

January 2013

I. EXECUTIVE SUMMARY

This report contains a set of statutory and non-statutory recommendations to the Vermont Legislature on how to protect older Vermonters and, more generally, all Vermonters, from consumer fraud. The recommendations are those of a stakeholder group formed at the request of the Legislature in the spring of 2012. They include:

- Increasing civil penalties in consumer protection cases filed by the Attorney General where seniors or vulnerable adults are involved.
- Making it easier to obtain treble damages in consumer protection cases filed by seniors or vulnerable adults.
- Lengthening the right-to-cancel period from three days to 15 for all consumers in door-to-door and transient sales.
- Promoting anti-fraud best practices by Vermont banks.
- Improving the communications network for seniors to advance fraud prevention.
- Continuing consideration of fraud prevention strategies through the Financial Exploitation Unit at DAIL.

II. BACKGROUND

In May 2012, the Vermont Legislature enacted a provision that called for the Attorney General's Office, in collaboration with the Department of Disabilities, Aging and Independent Living and other stakeholders, to make recommendations by January 2013 on new legislation to protect older Vermonters. The full text of the provision read,

> PROTECTION OF OLDER CONSUMERS
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> On or before January 15, 2013, in collaboration with appropriate state agencies, including the department of disabilities, aging, and independent living; advocacy organizations; and other interested persons and commercial entities, the attorney general shall submit legislative and policy recommendations and rationales to the house committee on commerce and economic development on the advisability and appropriate age limits for establishing appropriate consumer protections to protect older Vermonters. [Act 136, 2012, sec. 12.]

This legislation arose out of testimony before the House Committee on Commerce and Economic Development concerning H. 437, a bill introduced by Representative Adam Greshin to lengthen the right-to-cancel period for "home solicitation sales" from three days to 15 days for consumers age 70 and over. According to recordings of the hearings on the bill, arguments in favor of the measure included the following[1]:

- Seniors live alone and are targeted more often than others by scammers.
- Seniors need the extra protection, in light of a higher incidence of cognitive deficits.
- An extended RTC time frame would increase the likelihood that a family member, friend, or care giver would have an opportunity to discover an instance of door-to-door fraud.
- At least one other state, North Dakota, has a 15-day RTC period for consumers 65 years of age or older. There, the extended RTC has been effective in protecting seniors, including from itinerant contractors from out of state, and allowing them sufficient time to review detailed contracts; seniors have been very appreciative of the extra protection; and businesses have not complained about the law.

Arguments opposed to the measure included:

- This kind of special treatment may reflect ageism or too much government intervention.
- The special treatment argument could ultimately be used to seniors' disadvantage, for example not allowing some seniors to drive.
- Additional burdens should not be placed on legitimate businesses, which already protect consumers.
- National uniformity is preferable.
- Other ideas might work better, such as providing duplicate sales receipts.
- An extended RTC will not protect against the most fraudulent businesses.

In July 2012, a stakeholder body called the Working Group on Protecting Older Consumers ("the Working Group") was formed in response to Act 136. Assistant Attorney General Elliot Burg organized the Working Group and took responsibility for scheduling

[1] These arguments are summarized as presented and do not necessarily reflect the views of the Working Group.

meetings, proposing agendas, and facilitating group discussion. The members of the Working Group were as follows[2]:

Anne Accettella, UVM
Peter Begin, Mascoma Bank
Elliot Burg, Attorney General's Office
Tom Candon, Vermont Department of Financial Regulation
William Carrigan, Vermont Department of Financial Regulation
Nancy Chiquoine, Wake Robin
Sue Clark, Vermont Department of Financial Regulation
Rebecca Fay, Vermont Legal Aid, Inc.
Aaron Goldberg, elder law attorney
Ken Gordon, Council on Aging for Northeastern Vermont
Adam Greshin, Vermont Representative (Washington 1)
Jack Hall, Vermont Center for Independent Living
Margaret Harmon, Central Vermont Council on Aging
Fred Jones, Vermont Department of Disabilities, Aging & Independent Living (DAIL)
Kathy LaCross, Northfield Savings Bank
Joyce Lemire, Council on Aging for Southeastern Vermont
Christine Martin, Northfield Savings Bank
Virginia Milkey, Community of Vermont Elders (COVE)
Linda Phypers, Wake Robin
Michael Powers, Attorney General's Office
David Reville, AARP
Susan Russell, Central Vermont Council on Aging
Fred Schmidt, UVM
Stuart Schurr, DAIL
Philene Taormina, AARP
Tasha Wallis, Vermont Retail Association
Susan Wehry, Commissioner, DAIL

The Working Group met in Montpelier on July 17, September 6, October 4, and November 14, 2012. Meetings were well-attended, and discussion was animated. The October meeting was also attended by staff from the federal Consumer Financial Protection Bureau (CFPB), including Naomi Karp, an attorney in the CFPB's Office of Older Americans, and Megan Lewis, Senior Counsel for Enforcement Strategy, Northeast Region.

[2] Contact information for the Working Group members is set out in Attachment 1.

Many readings were circulated to the members of the Working Group.[3] Some of the body's work was undertaken by subcommittees, of which there were three—one each to study (1) the question of whether seniors alone, or a broader class of citizens, should benefit from enhanced consumer protections; (2) potential recommendations for changes in Vermont's consumer protection laws; and (3) possible measures to recommend to the Vermont banking community to protect its customers from consumer fraud. Except for the banking subcommittee, the Working Group did not focus on fraud perpetrated upon seniors or vulnerable individuals by family members or care givers, but only on consumer fraud by strangers.

In addition, the Working Group sought input from the public in two ways: through (1) a written survey sent out in September 2012 to senior centers, nursing homes, adult day programs, meals on wheels sites, health and rehabilitation facilities and the Visiting Nurses Association ("the written survey")[4]; and (2) a telephone survey in November 2012 of self-defined seniors who complained to the Attorney General's Consumer Assistance Program ("CAP") in 2006-2012[5] ("the telephone survey").

Major topics of discussion within the Working Group included the following:

- *What are the major consumer issues for seniors or vulnerable consumers?* Some fraudulent practices specifically target older consumers, such as cross-border "grandparent scams." Others may disproportionately target seniors, such as door-to-door paving scams or sweepstakes-type offers. Still others may not target seniors but still affect them seriously. What are the issues of greatest concern?
- *Which consumers should be the subject of enhanced protection?* How should the term "senior" be defined? Is age appropriately used as a marker for other things, such as social isolation or greater vulnerability to fraud, without unfairly typecasting older Vermonters?

[3] A list of these readings appears in Attachment 2.

[4] Attachment 3.

[5] Attachment 4 (summary of results and script).

- *What existing consumer laws, if any, should be enhanced for the specific benefit of seniors or vulnerable consumers?* The Working Group arose out of legislative debate on a bill that would have extended the three-day right to cancel a home solicitation sale to 15 days for Vermonters age 70 and over. Is that a good proposal? Are there other similar proposals that might be considered?
- *Are there non-legislative ways of strengthening systems to protect seniors/vulnerable persons from consumer fraud?* For example, are there approaches involving local banks to protect their customers, or other such non-statutory measures?

III. MAJOR ISSUES FOR OLDER CONSUMERS

Some fraudulent practices specifically target older consumers, such as cross-border "grandparent scams." Others may disproportionately target seniors, such as door-to-door paving scams, or Publishers Clearing House-type offers. Still others may not target seniors more than other people but still affect them seriously. Among the most serious such scams are these[6]:

- **"The grandparent scam."** An older consumer receives a telephone call from a person who sounds like her grandson; he says he is in trouble and needs money wired to him immediately. Often the story is that the grandson has been in a car accident, or has been arrested, in Canada or Mexico, and needs funds for medical care, bail, or car repairs; the caller will often ask that "his parents" not be contacted. But the call is not from the consumer's grandson; it is from a scammer. And once the grandparent sends money, the scammer will probably call back and ask for more.
- **Lottery scams.** A consumer receives a call stating that he has won a lottery or sweepstakes or qualified for a government grant but must send money, usually by wire transfer, to cover "fees," "taxes," or other charges. But in fact, the lottery/sweepstakes/grant does not exist, the consumer has not won anything, and the money is being sent to a scammer.

[6] All of these types of fraud are described on the Federal Trade Commission's website. *See* http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt111.shtm; http://www.ftc.gov/opa/2010/11/onlinedating.shtm; http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt117.shtm; http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre40.shtm; and http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro20.shtm.

- **"Nigerian scams."** A consumer receives an email stating that a wealthy person has died—often in Africa—and that someone in the U.S. is needed to safeguard the deceased's money in a bank account. But there is no such wealthy person; this is just a "come on" to lure the consumer to begin sending money—for "fees," "taxes," or other charges—to the scammer.

- **"Romance scams."** An individual is contacted by a stranger, often claiming to be a young person of the opposite sex, who wants to strike up a correspondence with someone in the U.S. The stranger expresses interest in her "pen pal" and perhaps talks about wanting to come to America to go to school or to meet the other person. Sooner or later there is a heartfelt request for money—to replace a lost airplane ticket, to pay medical bills after a sudden accident, or for some other reason. But it's a scam, and the stranger, if claiming to be a young female, may even be a middle-aged male.

- **Counterfeit check scams.** A consumer who is selling an item online or through the newspaper receives a check for *more* than the asking price. Even if the funds, once deposited, are treated by the bank as "available" for withdrawal, the check is still counterfeit—a fact that is not known for some days or weeks. By then, the consumer has sent a refund to the "buyer" for the excess payment, and that money is in the hands of the scammer. (The use of these counterfeit checks overlaps with other scams, including lotteries, internet auctions, and "secret shopper" scams—this last involving the purported hiring of the consumer to report on how a local business is treating its customers. In all of these cases, the consumer receives an "overpayment" and then is asked to send some amount of money back.)

- **Home improvement scams.** Men in a truck arrive at the consumer's home and say either that some repair is needed (for example, the roof is in bad condition) or that the men have just come from paving a road with left-over asphalt available at a discount. They convince the consumer to agree to have them repair or pave. The price is high, the work often shoddy, and the ultimate cost sometimes inflated above what was agreed to. Payment is usually by check, which the men immediately cash at the consumer's bank.

Consistent with the above, respondents to the written survey reported that prize-related scams were a major problem (9 responses), followed by grandparent scams (6), and Nigerian or other foreign-country scams (2).

IV. APPROPRIATENESS OF AGE AS A BASIS FOR ENHANCING CONSUMER PROTECTIONS

A threshold issue for the Working Group was whether, or to what extent, to recommend to the Legislature that consumer protection laws be enhanced for *older* Vermonters, as opposed to, say, vulnerable adults. That is, is it appropriate, generally or on certain specific topics, to use age as a criterion in applying statutory protections to consumers? As noted above, this issue arose out of testimony to the House Committee on Commerce and Economic Development on H. 437.

Members of the Working Group were initially split on this issue. Some expressed the view that hinging consumer protections on age is inherently ageist; risks creating a slippery slope along which older Vermonters might ultimately be discriminated *against*; is less appropriate than a focus on *vulnerable* persons; and runs counter to how seniors themselves feel. Some also noted that there is no consensus on what constitutes an older adult. Others took the position that there is both a moral and a practical reason for enacting age-based consumer protections, because the incidence of diminished financial capacity increases with age; the older age cohort is growing in America; and seniors have substantial savings that scammers target, including Social Security, pensions, veterans, and other retirement benefits. These three factors together were described as a "perfect storm."[7] It was also noted that in consumer cases brought on behalf of, or for the benefit of, many individuals (such as lawsuits filed by the Attorney General), identifying vulnerable adults is much harder than determining the age of class members.

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[7] *See, e.g.,* "Daniel C. Marson & Charles P. Sabatino, "Financial Capacity in an Aging Society," in Generations (Journal of the American Society on Aging), vol. 36, no. 2 (Summer 2012). One recent study suggests that a diminished response to cues of untrustworthiness may partially underlie older adults' vulnerability to fraud. Investigation into the aging brain is an area of intense interest, with some studies purporting to show cognitive decline with aging and others purporting to show cognitive improvement with aging.

To aid this discussion, the Working Group approved the telephonic survey that CAP conducted and that was directed to consumer complainants who described themselves as seniors. Out of a total of 528 such persons, CAP was able to reach and interview 138, a 26% response rate. Among the findings:

- 61% of the respondents said that they thought that "consumer laws in Vermont should provide greater protection for seniors." Another 17% said that such laws should not provide greater protection for seniors, and 23% were unsure. (A small minority of the 61% nonetheless said they thought it would be difficult to determine which consumers need protection.)
- 55% of the respondents said that the three-day RTC period should be longer for seniors, 45% thought it should be shorter for seniors.
- 51% of the respondents thought monetary penalties in consumer cases should be higher where a senior is involved; 48% thought they should be the same.
- 92% thought that seniors are more likely to be targeted for fraud.

A further source of guidance in this area involves looking to see whether other states have enacted laws that provide enhanced consumer protections for older persons. Although not common, there are such statutes, including the following:

- At least 18 states provide for enhanced penalties for consumer fraud perpetrated against a senior citizen. These laws are described in greater detail in the section of this report that recommends such penalties.
- Alabama, Arkansas, Florida, Illinois, North Carolina and Oklahoma have laws barring consumer reporting agencies from charging fees to persons 65 and older (62 in North Carolina). *See* Ala. Code § 8-35-3, Ark. Code Ann. § 4-112-108(b)(1), Fla. Stat. Ann. § 501.005(13)(b)(1), 815 Ill. Comp. Stat. Ann. Act 505/2MM(n-5), N.C. Gen. Stat. Ann. § 75-63(o) , and Okla. Stat. Ann. tit. 24 § 156(B)(2).
- Georgia allows a person 60 years of age or older (or a disabled person) who has suffered damage as the result of unfair or deceptive conduct to sue for damages, punitive damages, and attorney's fees. It also provides for educational initiatives to inform older citizens about consumer crimes, and a referral procedure to assist elderly victims. *See* Ga. Code Ann. §§ 10-1-850, 853-55.

- Minnesota deems it a gross misdemeanor to engage in consumer fraud that is knowingly directed at a person 65 years of age or older (or a disabled person). *See* Minn. Stat. Ann. § 609.2336 (subdiv. 2).
- Nevada law allows a person 60 years of age or older (or a person with a disability) who suffers damage or injury as the result of a deceptive trade practice to sue to recover damages, punitive damages and attorney's fees. *See* Nev. Rev. Stat. Ann. § 598.0977.
- New Jersey makes it illegal to home-solicit a person 60 years of age or older to enter into a loan encumbering the consumer's primary residence to pay for home improvements where the transaction is part of a pattern or practice. *See* N.J. Rev. Stat. Ann. § 56:8-105. New Jersey also authorizes the development and presentation of educational programs for senior citizens to inform them about consumer protection laws and consumer rights, including laws and rights of particular interest to seniors. *See* N.J. Rev. Stat. Ann. § 56:8-14.5.

In addition, the Vermont Legislature recently amended the state criminal code to authorize the Attorney General to sue for damages on behalf of the state against a person or care giver who, with reckless disregard or with knowledge, violates the existing prohibitions on abusing a vulnerable adult, abusing by unlawful restraint or confinement, neglecting a vulnerable adult, financial exploitation, or exploitation of services. Such damages may range from $5,000 if no bodily injury results to $50,000 if death results. *See* Act 141 (2012), which became effective on July 1, 2012.

V. STATUTORY RECOMMENDATIONS

The Working Group considered three areas for enhancing *statutory* protections for older or vulnerable consumers: (1) the three-day right to cancel a home solicitation sale; (2) civil penalties in suits filed by the Attorney General's Office under the Consumer Protection Act ("CPA"), 9 V.S.A. § 2458, in response to unfair or deceptive acts or practices; and (3) damages in suits filed by private parties under the CPA, 9 V.S.A. § 2461(b), also in response to such conduct. Proposals in each of these areas are set out below.

A. Enlarge the three-day right to cancel to 15 days for all consumers in at-home or transient sales.

The Working Group considered extending the three-day right to cancel (or "RTC") for seniors, seniors and vulnerable consumers, or all consumers. The body's starting point on this issue was the same as the existing law: that sales that take place in a consumer's home, or in a transient location (such as a hotel or motel), warrant greater protection than sales resulting from a consumer's walking into a store. The reasons for this include, in the case of at-home sales, the potential on the part of the seller to "corner" the consumer in his or her own home, and in the case of a transient location, to make the sale and then disappear.[8]

The consensus within the Working Group was to enlarge the three-day right to cancel an at-home or transient sale to 15 days, a time frame that would make it likely that most consumers, including those living alone, would have an opportunity to discuss the sale with a family member or friend before the expiration of the cancellation period. The Working Group also recommends that the RTC be extended for *all* consumers, not just seniors or vulnerable persons, which would obviate the need on the part of the seller to determine, or verify, that the consumer fell into one of those protected categories and thus qualified for the longer cancellation period. This time frame is consistent with the law in North Dakota, which provides for a 15-day RTC period, albeit one limited to consumers 65 years of age or older. *See* N.D. Cent. Code § 51-18-02.[9]

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8 *See* 74 Fed. Reg. 18171 n.4 (Apr. 21, 2009) (among bases for promulgating original RTC rule for home solicitation sales, FTC identified "deceptive tactics for getting in the door," "high pressure sales tactics," and "the nuisance created by the uninvited salesperson" (citing 37 Fed. Reg. 22937-940 (Oct. 26, 1972)).

9 The Working Group received one letter in opposition to the change, from the Direct Selling Association (Attachment 5).

Unlike most states, Vermont also applies the three-day RTC to most telephonic sales.[10] However, the Working Group does not recommend that the extended RTC encompass such sales, given the potential for unintended consequences in the massive telephonic marketplace.[11]

B. Increase consumer protection penalties for seniors and vulnerable adults.

The Working Group also considered increasing the maximum civil penalties for violations of the CPA, 9 V.S.A. § 2458(b), and for violations of an injunction issued by a court under the CPA, 9 V.S.A. § 2461(a), in public actions filed by the Attorney General's Office, from $10,000 to $25,000 per violation.[12] There was discussion over whether to apply these enhanced penalties to all cases, or just to those involving one or more seniors and/or vulnerable persons, echoing the debate described earlier in this report.

However, two added considerations were voiced by the Attorney General's Office with respect to the civil penalty issue. One was a concern that if penalties were increased across the board, that might not affect the amounts actually awarded, because courts have discretion as to the dollar amount of penalties to impose anyway. By contrast, if the maximum penalties were increased only when a senior citizen was harmed, judges might be more likely to focus on that particular factor and include it in their penalty computations.

The second consideration was that while age is a criterion that is easily determined, a consumer's status as a vulnerable person is harder to prove, requiring a much more sophisticated analysis of the person's capabilities.[13] Given that most CPA suits filed by the

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[10] *See* 9 V.S.A. § 2451a(d) (definition of "home solicitation sale").

[11] The Legislature may nonetheless want to consider other ways of addressing telemarketing fraud.

[12] The $10,000 maximum penalty in 9 V.S.A. § 2458(b) was enacted in 1972. *See* Act 235 (1971 Adj. Sess.).

[13] A "vulnerable adult" is defined in 33 V.S.A. § 6902(14) as any person 18 years of age or older who:

Attorney General's Office involve a class of potentially many harmed consumers,[14] the inclusion of age as at least one alternative qualifier for enhanced penalties is important.

At least 18 states now provide for such enhanced civil penalties, as follows:

State	Citation	Normal Penalty	Enhanced Penalty Maximum	Minimum Age	Disability?
AK	Ark. Code Ann. §§ 4-88-113(c), 4-88-202(a)	$10,000	$10,000	60	N
CA	Cal. Bus. & Prof. Code §§ 17206, 17206.1	$2,500	$2,500	65	Y
DE	Del. Code Ann. tit. 6, §§ 2533(e), 2581(a), 2583(b)	$10,000	$10,000	65	Y
FL	Fla. Stat. §§ 501.2075, 501.2077	$10,000	$15,000*	60	Y
GA	Ga. Code Ann. §§ 10-1-397(b)(2)(B), 10-1-851	$5,000	$10,000	60	Y
HI	Haw. Rev. Stat. §§ 480-3.1, 480-13.5(a)	$10,000	$10,000	62	N
IL	815 Ill. Comp. Stat. Ann. 505/7(b), 505/7(c)	$50,000	$10,000	65	N
IA	Iowa Code §§ 714.16(7), 714.16A(1)	$40,000	$5,000	65	N
KS	Kan. Stat. Ann. §§ 50-636(a), 50-677	$10,000	$10,000	60	N
LA	La. Rev. Stat. Ann. §§ 51:1407(B) and (C)	$5,000	$5,000	65	N
MN	Minn. Stat. §§ 8.31, subdiv. 3, 325F.71, subdiv. 2(a)	$25,000	$10,000	62	Y
NV	Nev. Rev. Stat. Ann. §§ 598.0999(2), 598.0973	$5,000	$12,500	60	Y
NY	N.Y. Gen. Bus. Law §§ 350-d, 349-c	$5,000	$10,000	65	N
PA	73 Pa. Cons. Stat. § 201-8(b)	$1,000	$3,000	60	N
TN	Tenn. Code Ann. §§ 47-18-108(b)(3), 47-18-125(a)	$1,000	$10,000*	60	N
TX	Tex. Bus. & Com. Code Ann. §§ 17.47(c)(1), (2)	$20,000	$250,000	65	N
WI	Wis. Stat. §§ 100.26, 100.264	$10,000	$10,000	62	N
WY	Wyo. Stat. Ann. §§ 40-12-111(b), 40-12-113(c)	$10,000	$15,000*	60	Y

*** Denotes penalties that are *in place of* the normal penalty. All others are *in addition to* the normal penalty.**

At the Working Group's November 2012 meeting, a consensus was reached, among the parties present, in favor of recommending to the Legislature that the maximum civil penalties in public actions under the CPA, and in actions to enforce a preexisting injunction under the CPA, be increased to $25,000 per violation based on *either* of two criteria (that is,

(A) is a resident of a facility required to be licensed under chapter 71 of this title;
(B) is a resident of a psychiatric hospital or a psychiatric unit of a hospital;
(C) has been receiving personal care services for more than one month from a home health agency certified by the Vermont department of health or from a person or organization that offers, provides, or arranges for personal care; or
(D) regardless of residence or whether any type of service is received, is impaired due to brain damage, infirmities of aging, or a physical, mental, or developmental disability: (i) that results in some impairment of the individual's ability to provide for his or her own care without assistance, including the provision of food, shelter, clothing, health care, supervision, or management of finances; or (ii) because of the disability or infirmity, the individual has an impaired ability to protect himself or herself from abuse, neglect, or exploitation.)

[14] For example, in one recent case, the Attorney General alleged that some 8,000 Vermonters had been harmed by the defendants' conduct. *See State v. MyInfoGuard, LLC*, No. 320-4-12 (Washington Superior Court Apr. 19, 2012) (Complaint), ¶ 1.

either one would suffice)—age 62 or older, or status as a "vulnerable adult" under state law. The basis for concluding that it is appropriate to use age as a criterion in this context was the identification of several rationales for doing so that do not involve assuming that seniors are less capable, mentally or otherwise, of protecting themselves than other consumers:

- It is harder for seniors than others to recoup significant financial losses.
- The aging "baby boomer" cohort is very large, and has substantial financial resources that make those seniors an inviting target for scammers.[15]
- Seniors are at home than others and are more often targeted by scammers.[16]

The Working Group also reached a consensus that the appropriate age to trigger enhanced penalties is 62, the age at which citizens can first qualify for Social Security and at which many people thus begin to retire (and thus spend weekday time at home).[17]

Here is the proposed change to 9 V.S.A. § 2458(b) (underlined):

> In addition to the foregoing, the attorney general or a state's attorney may request and the court is authorized to render any other temporary or permanent relief, or both, as may be in the public interest including, but not limited to: (1) the imposition of a civil penalty of not more than $10,000.00 for each violation, except that in the event that one or more consumers harmed by a method, act or practice declared by section 2453 of this title to be unlawful [i.e., an unfair or deceptive act or practice] either is a person 62 years of age or older or is a "vulnerable adult" within the meaning of 33 V.S.A. § 6902(14), the attorney general or a state's attorney may request and the court is authorized to impose, a civil penalty of not more than $25,000.00 for each violation …

[15] *See* U.S. Census Bureau, "The Next Four Decades; The Older Population in the United States: 2010 to 2050," http://www.census.gov/prod/2010pubs/p25-1138.pdf ("Between 2010 and 2050, the United States is projected to experience rapid growth in its older population. In 2050, the number of Americans aged 65 and older is projected to be 88.5 million, more than double its projected population of 40.2 million in 2010."). Closer to home, Vermont's older adult population is growing at a faster than average pace than the rest of the country: according to the U.S. Census Bureau, in 2000, Vermont ranked 26th in population age 65 and older, but by 2030, the state is projected to rank 8th. In addition, the fastest growing segment of the population is now 85 years and older, with projections for 2030 showing a 149% increase over 2000 numbers. Vermont Depart. of Disabilities, Aging and Independent Living , *Final Vermont State Plan on Aging for Federal Fiscal Years 2011-2014*, (July 2010), http://www.ddas.vermont.gov/ddas-publications/publications-older-americans-act/publications-older-americans-act-documents/vt-state-plan-on-aging.

[16] In CAP's telephone survey, 92.3% of respondents said that seniors are more likely to be targeted for fraud.

[17] *See* U.S. Social Security Administration, *Retirement Planner: Benefits by Year of Birth*, http://www.socialsecurity.gov/retire2/agereduction.htm.

The parallel change to the section of the CPA that authorizes civil penalties in the face of a violation of an existing consumer protection injunction, 9 V.S.A. § 2461(a), is as follows:

> Any person who violates the terms of an injunction issued under section 2458 of this title shall forfeit and pay to the state a civil penalty of not more than $10,000.00 for each violation<u> except that in the event that one or more consumers harmed by a method, act or practice declared by section 2453 of this title to be unlawful [i.e., an unfair or deceptive act or practice] either is a person 62 years of age or older or is a "vulnerable adult" within the meaning of 33 V.S.A. § 6902(14), the person shall forfeit and pay to the state a civil penalty of not more than $25,000.00 for each violation.</u> …

C. Make it easier for seniors and vulnerable adults to recover exemplary damages under the CPA.

The CPA not only authorizes the Attorney General to take legal action in response to unfair or deceptive acts or practices; 9 V.S.A. § 2461(b) also authorizes private consumers to do so. However, in such cases, the potential monetary sanctions are not civil penalties, but rather (1) the consumer's damages, or the amount paid by the consumer to the business that has been sued, plus (2) exemplary, or punitive, damages of up to three times the amount paid by the consumer. The maximum exemplary damages in any given case is therefore not a set dollar amount, like the current $10,000 cap on civil penalties, but rather depends on how much money the consumer has paid in the challenged transaction. As a result, a different approach is needed to enhance exemplary damages where a victim is older or vulnerable.

The Working Group proposes that in such instances, the *default* for awarding of exemplary damages should change from "no award" to "award," unless there is good cause *not* to do so. Here is the proposed change to 9 V.S.A. § 2461(b) (underlined):

> Any consumer who contracts for goods or services in reliance upon false or fraudulent representations or practices prohibited by section 2453 of this title, or who sustains damages or injury as a result of any false or fraudulent representations or practices prohibited by section 2453 of this title, or prohibited by any rule or regulation made pursuant to section 2453 of this title may sue for

> appropriate equitable relief and may sue and recover from the seller, solicitor or other violator the amount of his damages, or the consideration or the value of the consideration given by the consumer, reasonable attorney's fees, and exemplary damages not exceeding three times the value of the consideration given by the consumer, except that in the event that such consumer either is a person 62 years of age or older or is a "vulnerable adult" within the meaning of 33 V.S.A. § 6902(14), the court shall award such exemplary damages unless there is good cause not to do so.

VI. NON-STATUTORY RECOMMENDATIONS

Many of the scams that most seriously impact seniors—such as fraud that crosses national borders or is perpetrated door-to-door by people from out of state—are grossly underreported and very difficult to prosecute and, where a judgment is entered, to collect on. As a result, other forms of protection beyond statutory changes are needed. In particular, effective strategies of *prevention* are essential. To that end, the Working Group considered the development of anti-fraud "best practices" for local banks, improvements in the communications network for organizations in Vermont that work with seniors, and ideas for "continuing the conversation" beyond the life of the Working Group.

A. Anti-fraud best practices for local banks

In order for consumer fraud to work, a scammer must have a conduit for the transfer of money from the consumer. Sometimes this is a credit or debit card, or a personal check. More often, however, it is a wire transfer sent through Western Union or MoneyGram, which typically requires payment in cash at a local retail establishment that has a dedicated terminal from one of those two companies.[18] Most consumers withdraw money from a bank account to get that cash.

[18] These independent retail businesses are referred to as Western Union or MoneyGram "agents."

In the "grandparent scam," for instance, the consumer is asked by a scammer, in the guise of a grandchild in distress, to wire a large sum of money—often $3,000 or more—to a foreign country, for bail, car repairs, or some other purpose. The grandparent goes to her local bank to withdraw the money and uses the cash to wire the funds.

Local banks are thus in a key position vis-à-vis the consumer: their staff interacts with the consumer before the money is withdrawn, and lost. To the extent that the bank teller, or her manager, recognizes signs of fraud-in-the-making and are trained in ways of engaging the customer in a conversation about the transaction, discouraging the withdrawal, or putting the customer in touch with law enforcement, the bank can play a vital role in protecting its customers from fraud.

The Working Group included two members from the local banking community—Christine Martin from Northfield Savings Bank and Peter Begin from Mascoma Savings Bank. With assistance from others in the group, they undertook to draft a set of anti-fraud Best Practices for use by Vermont banks.[19] Among the topics covered by the draft are these:

- *Identifying "red flags" for fraud*, where a bank customer is in the process of being defrauded.
- *Training of staff* to recognize those "red flags," and to know what to do in those situations.
- *Reporting suspected fraud/exploitation*, including knowing when, how, and to whom to make reports. The bank representatives on the Working Group expressed the sense of their sector that such reporting not be made mandatory, and the Working Group makes no recommendation with respect to that issue.
- *Other steps*, such as offering bank products that might help identify and prevent fraud, undertaking community awareness programs.[20]

[19] These are attached as Attachment 6.

[20] A related area is anti-fraud software, which is generally put in place in conjunction with a bank's anti-money laundering software. This topic is not included in the Best Practices.

The Working Group recommends that the final version of these Best Practices be posted on the Vermont Bankers Association website, and that they otherwise be publicized and offered to banks throughout the state as a starting point for protecting their customers from fraud.

B. Improvements to the communications network for seniors

On at least two occasions during the life of the Working Group, there was a need to reach out to groups, organizations and businesses that interact with seniors—once when information was being sought on types of consumer problems experienced by seniors, and once when an invitation to provide input to the group by telephone was being sent out. Both times, this proved to be a difficult thing to do. Not only was there was no single mailing list; there were also no accurate and comprehensive lists of senior citizen centers or senior housing facilities, and few email addresses in any sector.

The Working Group believes it would be useful to have a database from which to generate "senior alerts." This would have been very valuable during Tropical Storm Irene as well. It would require the creation, and maintenance, of a "senior alert" system, containing both mailing and email addresses, to make consumer protection information available to those who work with seniors in Vermont. For those contacts who also utilize social media, including Facebook and Twitter, expanding this system to encompass those media should be considered. In addition, thought should be given to who would have access to this contact information, and what kind of information should and should not be disseminated. The Working Group recognizes the difficulty of creating and maintaining such a database. While a logical repository for this function might be DAIL, the Working Group believes that additional resources will be needed if the Legislature wishes to have such a database created and maintained.

C. "Continuing the conversation"

The efforts of the Working Group do not eliminate the need to come up with effective strategies for protecting Vermonters from consumer fraud. The issue of fraud prevention is complex and warrants an ongoing focus on ways of designing and implementing effective and sustainable measures to keep Vermont consumers from being harmed.

Two general approaches, beyond rigorous law enforcement, need to be evaluated carefully. One is *helping consumers protect themselves*, by providing them with fraud warnings and other relevant information in a form that is understandable, that persists over time, and that changes their behavior so they are no longer vulnerable to fraud. To this end, posters and brochures and websites are not enough. New approaches are needed, which are evidence-based, or which are both newly promising and evaluated for their effectiveness.

The other approach is to *change the defaults* in consumer transactions in ways that make the loss of funds difficult or impossible to occur, and so that the burden of detecting and avoiding fraud does not rest on the shoulders of the consumers alone. An example of this is Vermont's recent effort to stop third-party sellers of email, voice mail and other services from imposing unauthorized charges on consumers' local telephone bills, a common practice known as "cramming." In May 2011, the Legislature decided that it was not enough to require the disclosure of such charges to consumers; with some limited exceptions, all third-party charges to local telephone bills were simply declared unlawful. *See* 9 V.S.A. § 2466 (as amended). By all accounts, the problem of landline cramming disappeared in Vermont. A similar approach has been taken to regulating, and imposing liability on, "middleman" processing companies that help telemarketers withdraw money from Vermonters' bank accounts. *See* 9 V.S.A. § 2464.

The Working Group believes this ongoing search for prevention-based solutions to the problem of consumer fraud could most productively be lodged with DAIL's existing Financial Exploitation Unit ("FEU").[21]

VII. CONCLUSION

In response to the Legislature's charge, the Working Group on Protecting Older Consumers offers the foregoing recommendations, both statutory and non-statutory, for consideration in 2013.

[21] One other idea was discussed by the Working Group: tightening state regulation of wire transfer companies like Western Union and MoneyGram, which, as noted earlier, serve as "conduits" for many consumers' payments to scammers. However, the Attorney General's Office recommends that this proposal—which in time could take the form of either new legislation or new administrative action by the Department of Financial Regulation under existing law, *see* 8 V.S.A. ch. 79 (Money Services)—be held in abeyance while current multistate efforts to reform wire transfer anti-fraud systems at the national level are completed.

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ATTACHMENT 1

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WORKING GROUP READINGS LIST

ATTACHMENT 2

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K. Blanton, "The Rise of Financial Fraud," Center for Retirement Research at Boston College (2012)

Certified Financial Planner Board of Standards comments in response to the CFPB's recent public request for information on elder financial exploitation. (Letter, August 20, 2012)

M. S. Finke et al., "Old Age and the Decline in Financial Literacy," Social Science Research Network Working Paper (2011)

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K.L. Triebel et al., "Declining financial capacity in mild cognitive impairment," University of Alabama at Birmingham (2009)

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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

September 19, 2012

Dear Senior Advocate:

I am writing to ask you, as a representative of an organization in Vermont that works with senior citizens, for any information you may have on *consumer fraud issues* that have impacted your clientele.

By way of background, I am chairing a Working Group on Protecting Older Seniors that was formed in response to a mandate from the Vermont Legislature. The Legislature asked the Attorney General's Office, in collaboration with many other stakeholders, to make recommendations by next January on new consumer fraud legislation to protect older Vermonters.

The Working Group is looking for ***any information—data, anecdotal information, or stories—that would help us understand what kinds of scams are directed to, or affect, seniors and, more generally, vulnerable adults in Vermont.*** Enclosed is a short questionnaire to guide your feedback. The more specific your responses, the better.

Could you please complete the questionnaire and mail it back in the enclosed envelope by *Thursday, September 27,* so that the Working Group can consider your input before our next meeting?

Thank you!

Sincerely,

Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609

Enc.

Your name/position: ____________________

Name of organization: ____________________

Address: ____________________

Telephone number: ____________

Email address: ____________________

FRAUD AGAINST SENIORS QUESTIONNAIRE

Please complete as appropriate; attach additional sheets if necessary.

1. Please list any types of scams that you have seen or heard of, that have harmed senior citizens in Vermont over the past two years. For each type of scam, (a) state the number of persons who have been harmed, (b) state the *average* dollar amount lost per person, and (c) rank the scam by number, starting with "1" to indicate the worst scam.

Scam type	*Persons*	*$ lost*	*Rank*

2. Describe any particularly memorable fraud situations involving a senior citizen, omitting only the person's name, but stating his or her age and describing the amount of any dollar loss.

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3. What factors—such as age, disability, personality traits, way of viewing the world, or personal circumstances—do you think are most important in explaining *why* these seniors were vulnerable to fraud? Please be specific.

4. Please describe the type, number, and dollar losses of any consumer scams that have taken advantage of Vermonters who are ***vulnerable adults but not elderly***, including (a) any memorable fraud situations and (b) any thoughts you may have on *why* they were scammed.

5. Do you have any specific suggestions on how state agencies or private organizations or businesses can more effectively protect seniors from fraud, including any changes to the law?

Thank you!

ATTACHMENT 4

Consumer Protections for Senior Citizens:
A survey of Vermont seniors who have sought consumer assistance

December 2012

This survey was a project of the Vermont Office of the Attorney General and its Consumer Assistance Program at the University of Vermont, in collaboration with The Working Group on Protecting Older Consumers

Report prepared by Autumn Barnett
Graduate student in the Master of Public Administration program
at the University of Vermont

Introduction

Senior citizens are an attractive group to target for fraudulent activity. Those born in the earlier half of the last century are socialized to be polite and more trusting of others, are less likely than their younger counterparts to report having been scammed, and have accumulated wealth from which scammers can profit (Federal Bureau of Investigation [FBI], 2012). While seniors, defined as ages 60 and over, make up roughly 15% of the United States population, they represent 30% of fraud victims (Consumer Action [CA], 2005). With regard to financial exploitation, seniors are increasingly being targeted: between 2008 and 2010 there was a 12% increase in the amount of money scammed from seniors (Humphrey, 2012).

Background and Literature Review

Despite broad recognition that seniors are disproportionately targeted for fraud (FBI, 2012; Consumer Financial Protection Bureau [CFPB], 2012; CA, 2005), it appears that little to no research has been done regarding seniors' opinions on what to do about it. As well, though several sources concur that seniors are particularly targeted, research that supports their claims is hard to come by. This puts advocates and policy makers in the difficult position of acting somewhat blindly. As Stephen Brobeck (2006) implores, consumer preferences must be understood and respected and values should not be imposed on them.

It is in this context, with recognition of disproportionate victimization of seniors and a lack of input from seniors about protections for them as consumers that Vermont lawmakers determined to commission a work group on the topic. In the spring of 2012, with a mandate from the Vermont Legislature, The Working Group on Protecting Older Consumers (Working Group) convened to study the need for consumer protections specific to Vermont senior citizens and then to provide recommendations back to the Legislature. The Working Group is comprised of representatives from a variety of public and non-profit organizations whose work focuses on senior citizens.

When considering how to address the problem of protecting seniors from fraud, questions arose among group members. In its deliberations, the Working Group identified a concern about potential implications of creating special protections for this age group. Such a designation might lead to conclusions that seniors have diminished capacity and should therefore enjoy fewer freedoms than non-seniors. In addition, the Working Group questioned whether or not seniors themselves wanted greater protections. Beyond seeking expert advice on the subject, the Working Group initiated a survey to research the opinions of Vermont Seniors. The services of the Vermont Attorney General's Office Consumer Assistance Program (CAP) were enlisted for the study.

Methodology

CAP is the intake department for consumer complaints for the State of Vermont. Located at and operated in partnership with the University of Vermont (UVM), CAP maintains a public-record database of complaints, including complainant contact information, for six years from the date of complaint. The database includes a designation for those complainants who identify themselves to CAP as senior citizens. Using the CAP database, a population was identified of Vermont consumers who had contacted CAP between 2006-2012, provided CAP with their phone number, and had disclosed being seniors. A population of 528 people was identified (N= 528).

Quantitative and qualitative questions for a telephone survey were developed by CAP staff, including graduate student staff in the Master of Public Administration program at UVM, in consultation with Working Group members, Assistant Attorney General Elliot Burg, and Dr. Frederick Schmidt, Professor Emeritus at UVM and former Center for Rural Studies Director. The resulting 12-question survey was programmed into SurveyMonkey for use by surveyors to input data during survey calls. Questions in the survey addressed specific areas of consumer attitudes and experiences, especially those relevant to potential policy action. The survey questions are attached in Appendix A.

Upon review and approval of the instrument and protocol from the University of Vermont Institutional Review Board for human subjects research, the survey fielding began on Wednesday, October 31st, 2012. Fielding proceeded through Thursday, November 8th, 2012 and consisted of at least two attempts to reach every record. A daytime and an evening attempt were made on all records and calling was done on one weekend day.

Of the 528 records, 80 had non-working or invalid telephone numbers, yielding a sample of 448 records (*n*= 448). When reached, 68 respondents declined to participate and 138 respondents completed the survey. Research has highlighted a precipitous drop in survey response rates over time, with declines accelerating (Curtin, Presser, & Singer, 2005; Singer, 2006). The response rate in this survey resulted in a sample that cannot be assumed to be representative of the population identified. At a 90% confidence level and 5% confidence interval, the sample would need to have included at least 170 respondents.

Results

Definition of senior

Given that the survey asked respondents to consider questions regarding senior citizens, the term senior needed to be defined. Rather than providing a definition, the survey asked respondents to provide their own. This also served the purpose of identifying how the public defines the category; a result of import to policy makers. In their responses to this question, seniors ranged from a low age of 50 to a high of 85. The mean age cited was 63 and 70% of the sample cited ages ranging from 60-65 as the age at which they consider a person a senior.

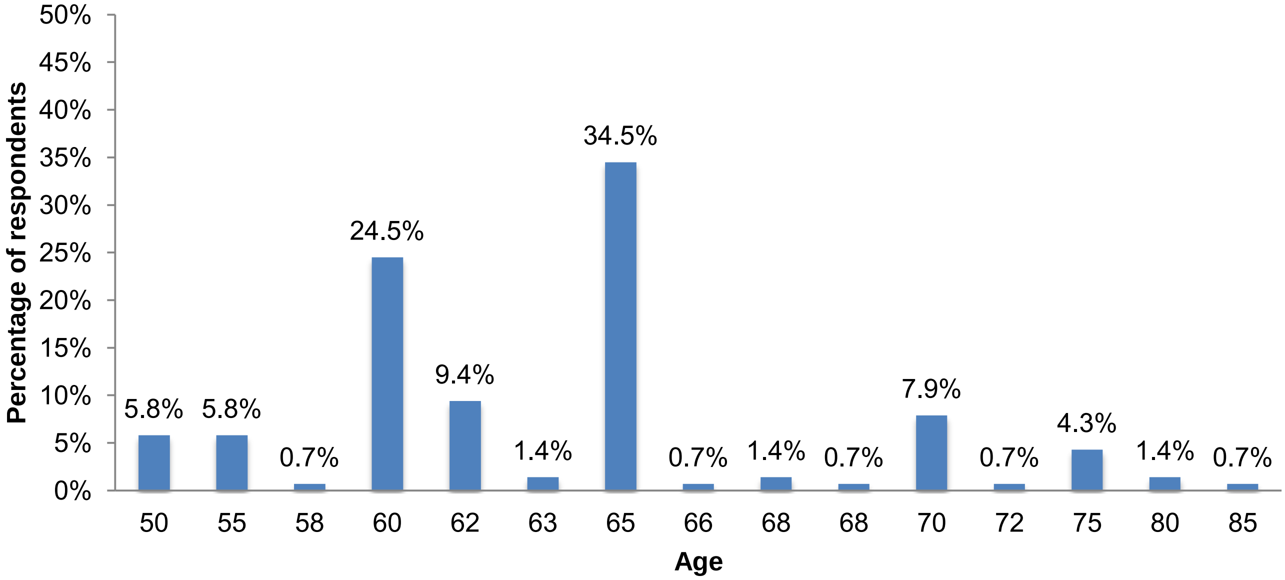

Figure 1. Definition of 'senior'

Consumer experiences

When asked whether they had ever purchased goods or services from a person who came to their home (such as a door-to-door salesperson), 35% said they had done so. Of those, 37% said they would do it again. For those respondents who had not purchased from someone who came to their home, 3% said they would do so in the future. Results from both groups indicate concerns about this practice.

Opinions regarding legal distinctions for seniors

Respondents were informed that Vermont law currently provides consumers 3 days in which to cancel a purchase from a person who comes to their home. When asked how many days they thought a person (not specifically a senior) should have to cancel, their responses varied from 0 to 60 days, with a mean response of 8 days and a median of 5 days. Just over half (55%) of respondents believed that seniors should have a longer cancellation period than non-seniors.

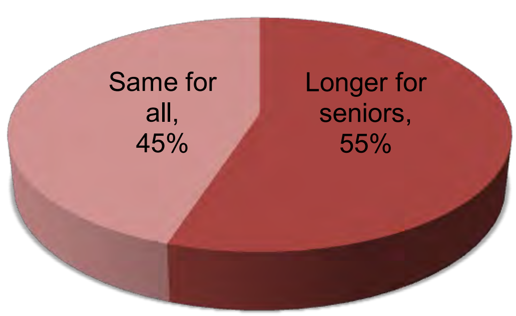

Figure 2. Difference in cancellation period

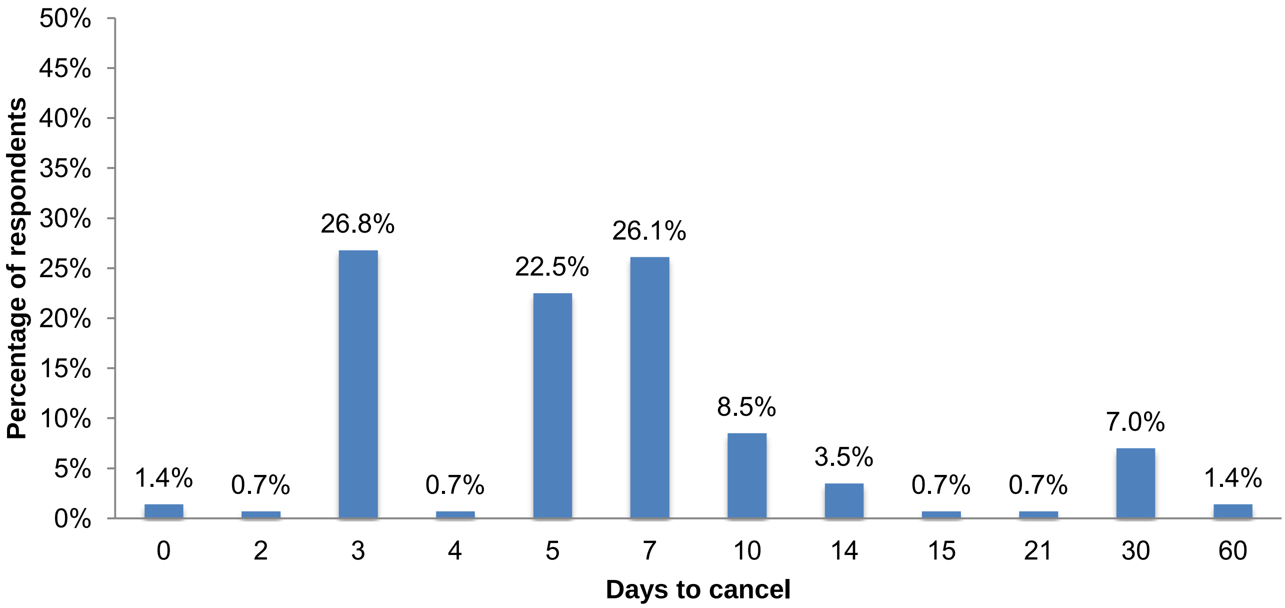

Figure 3. Desired number of days of cancellation period

Two additional sets of questions were asked regarding legal distinctions based on senior status. In one set of questions, respondents were asked if monetary penalties to businesses that violate Vermont's consumer protection laws should be the same, more, or less than the monetary penalties for non-seniors. Responses were nearly evenly divided between those believing the penalty should be the same and those who favored greater penalties (48% and 51%, respectively). When asked why they held these perspectives, 78% of those who thought the penalty should be the same cited equity with non-seniors as their reasoning. Other reasons given by small minorities were questions about the intent of the business or a belief that current penalties are adequate. Still others did not think penalties should be larger when seniors are the victim because they do not think monetary penalties are effective deterrents to illegal behavior. The 51% who favored greater penalties when seniors are victims most often cited concern that businesses (or those posing as such) target or take advantage of seniors (46%). Reasons to do with increased vulnerability or decreased mental capacity were cited by 36% of respondents.

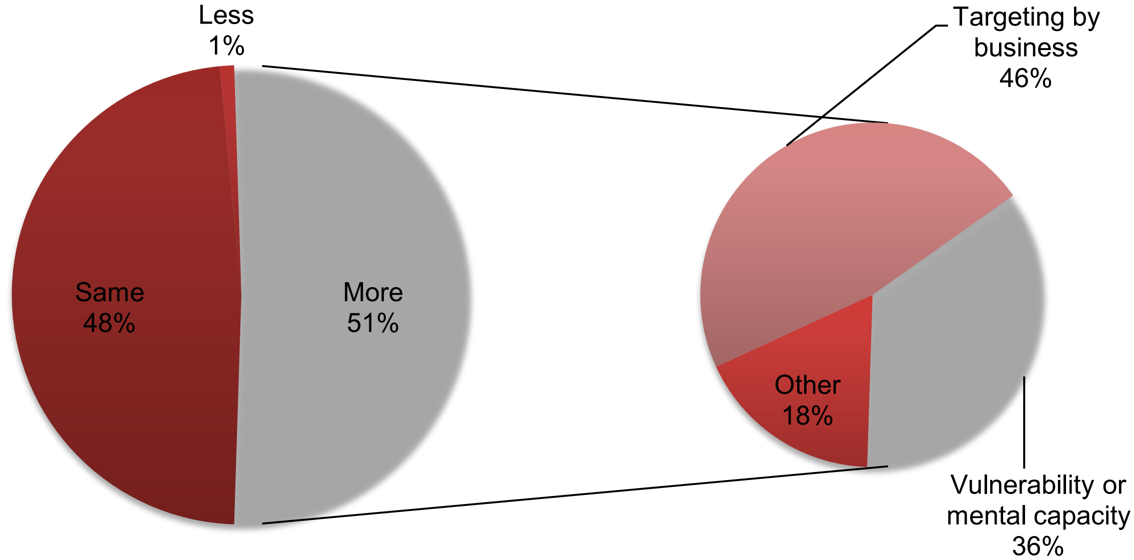

Figure 4. Support and reasons for increased penalties when seniors are victims

Despite 92% of respondents believing that seniors are more likely than non-seniors to be targeted for fraud, when asked if they thought Vermont law should better protect older consumers, 61% indicated that it should and 23% were undecided. Reasons cited for better protection included concerns related to seniors having decreased mental capacity (28%) or increased vulnerability (12%), that businesses behave in deceptive or exploitative ways (12%), or other reasons (15%), such as the frequency of fraud against seniors or a general sense of the need for protection. 9% of respondents did not support greater protection for seniors due to a belief that adults should be treated equally, regardless of age. Of those who were undecided about better protections for seniors, 43% explained that they do not know enough about current laws from which to make a judgment. These respondents represented 9% of the total sample.

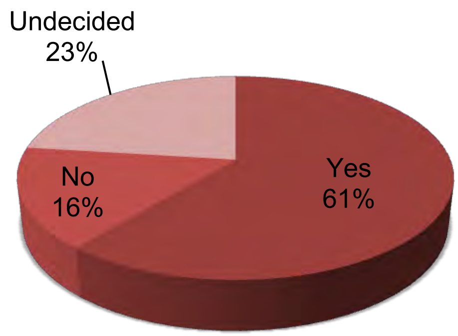

Figure 5. Seniors should be provided better legal protection

- 9% of respondents did not support greater protections for seniors because they believe adults should be treated equally under the law
- 23% of respondents were undecided about whether law should provide greater protection for seniors. Of those, 43% cited not knowing enough about current laws

Reasons for better protecting older consumers:

- Decreased mental capacity (28%)
- Increased vulnerability (12%)
- Exploitive or deceptive business practices (12%)

Of note, particularly for policy makers, is that when respondents supported greater protections for seniors, they did not necessarily support the specific measures suggested in this survey. Specifically, 33% of them believed the monetary penalty should be the same whether or not the victim is a senior when businesses violate consumer protection laws. Similarly, 39% of them believed the time to cancel a purchase from a person who comes to the home should be the same for seniors and non-seniors.

Suggested changes

Respondents were asked open-ended questions to solicit their ideas for changes, legal or otherwise, to better protect older consumers. In response to a question specifically seeking suggested changes to Vermont law, the most often response, by 15% of respondents, was that they do not know current laws well enough to be able to recommend changes. Following that, 13% of respondents thought that there should be more “teeth” or stricter penalties in response to businesses or individuals who commit fraud against a senior. Other responses cited by several people were the need for stronger enforcement, for more time to reconsider purchases, and greater access to free advocacy or support services for seniors.

- 15% do not believe they know the law well enough to make recommendations
- 13% believe penalties should be stronger

Specific suggestions offered included:

- More requirements and licensing of general contractors
- Phone sales should require the buyer to initiate the phone call. A telemarketer should have to say that if the person is interested in the product they can call back to order
- Both restitution and financial penalties should be required
- Scammers from other states or countries should be addressed more aggressively
- Businesses should not be allowed to initiate a recurring charge pay plan unless requested by the buyer

When respondents were asked for recommendations other than changes in the law that would better protect older Vermont consumers, just under half of them had specific ideas to offer. By a wide margin, the most common response (44%) was to provide increased and more accessible education to seniors. Sharing similar popularity were suggestions for improving access to supports/advocates for seniors (18%) and changes in bank or credit card company practices (15%). Several respondents (14%) expressed the need for increased protection, but may not have had a specific suggestion. One such respondent expressed wanting more stringent consumer protection and a report card published for consumers with the number of complaints by organization, along with the use of social media to disseminate the information. Four respondents cited the need for increased access to health care or simpler insurance.

- 44% of respondents suggest better education
- 18% recommend improved access to support persons
- 15% want changes to bank or credit card company practices

Discussion & Recommendations

This survey revealed areas of both disparate beliefs and shared perspectives. Opinions varied widely when respondents were asked to define 'senior', to name a number of days for purchase cancellation, and to provide reasons for their opinions. Some trends did emerge, however. Most respondents believed a senior is between the ages of 60 and 65. Just under half of respondents offered that they support a 5 or 7-day period for canceling purchases made from someone who came to their home. When respondents did not support stricter penalties or better legal protections for seniors the majority of them held this view because they want adults to be treated equally, regardless of age. Decreased mental capacity and increased vulnerability of seniors were most often cited as reasons for support of these measures.

Respondents in this survey were nearly evenly divided in their opinion about age-differentiated cancellation periods for purchases and penalties when seniors are victims of consumer protection violations. The data show that respondents may have nuanced opinions with regard to these greater protections. Given that a third or more of them did not support the specific measures suggested, further research should be done to determine what would be favorable. In addition, further definition of the question is important. Respondents may have interpreted the question as implying that the law would change in ways that better protect older consumers specifically, while others may have interpreted it to apply to all consumers. For example, the 33% who would like the law to provide greater protection to seniors but also thought the cancellation period should be the same regardless of age may indicate interpretation of the question as increased protections for all ages.

The need for increased education about current consumer protection laws and supports that are available to seniors was clearly indicated by the respondents. They often cited lack of knowledge as the reason why they were undecided about some of the questions. When asked to provide suggestions about legal or other changes to better protect older consumers, nearly half of them asked for greater education.

Lawmakers and advocates are questioning whether policies should be established to better protect older Vermont consumers. While this survey suggests some trends among the sample and offers some ideas, it does not provide definitive direction. Brobeck (2006) asserts that, "facts, preferences, and universal values need to be considered by advocates when considering which specific consumer policies to pursue" (p. 178). However, little research seems to be available regarding seniors' opinions about consumer protections specific to their age group. Brobeck goes on to caution that there is not one definition of the 'consumer interest', and that any such definition is highly politicized (Brobeck, 2006). This survey attempts a neutral perspective on the views of one population of Vermont seniors. However, due to time and resource constraints, representative samples of neither the population identified nor the senior population at large were attained. The result is an informative survey with results that are limited in applicability. Therefore, additional research and assessment in this area is of continued import.

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ATTACHMENT 5

Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609

RE: Proposed Amendments to Vermont Consumer Protection

Dear Elliot,

This letter is in response to your request for comments regarding the proposed amendments to the Vermont Consumer Protection Act. The Direct Selling Association (DSA), founded in 1910, is the national trade association representing almost 200 companies that sell their products and services by personal presentation and demonstration, primarily in the home. These direct selling companies, with 15.6 million individual American direct sellers, include some of the nation's most well known commercial names, such as Avon, Mary Kay, Herbalife International, and The Pampered Chef. The direct selling industry attracts individuals seeking job flexibility, offering low start-up costs to many who often have minimal work experience. **DSA estimates that there are over 20,000 direct sellers in Vermont in any given year who are responsible for approximately $4.8 million in annual sales.**

These proposed amendments would place onerous, unjustified and unnecessary burdens on legitimate direct selling companies. If the cooling-off period is increased from 3 days to 15 days for those over a certain age, 65-70 for example, there will be a significant impact on the direct selling industry in Vermont, specifically on the approximately 20,000 Vermont residents involved in direct selling.

Key Points:

- These amendments make Vermont law inconsistent with Federal regulation and almost all other states.
- Consistency between the states and federal requirements prevents burdensome, duplicative and confusing disclosures on sales receipts.
- The current Vermont and Federal Home Solicitation Sales provisions have been in place for 40 years and work well to protect the consumer.
- The Federal Trade Commission is currently conducting its own review of the Cooling-Off Rule. It would be prudent for states to see what, if any, changes are made at the federal level before considering changes to state law.
- The delay in finalizing the transaction could delay commissions.

- Direct selling companies would potentially need to have special sales receipts just for the Vermont market.

If you have any questions please feel free to contact me at any time. I look forward to working with you and your office in the future.

Best Regards,

Jeff

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DSA
DIRECT SELLING
ASSOCIATION

ATTACHMENT 6

Preventing Elder Exploitation: How Banks Can Help

It is recommended that Banks and Credit Unions train all branch/retail personnel at the time of hire, and conduct annual training for all employees.

This "training aid" includes sample forms. If your institution chooses to use the forms, they can be customized per your institution's procedures.

Contents

What is Elder Financial Abuse?

Elder financial abuse is a specific form of a more general crime, the crime of financial abuse or exploitation. Elder financial abuse is the perpetration of a crime against elder citizens and/or adults who are vulnerable due to physical or mental limitations. Elder financial abuse can occur in many forms and via many channels. It can be perpetrated by a friend, relative or caretaker, or by a complete stranger.

Consumer education is possibly the best defense to combat financial fraud. However, many elder customers either don't hear about common scams, or are in a position where they feel they cannot speak up. As their bank, we are often able to spot the fraud and work with law enforcement and the state Adult Protective Services to keep our customers from further exploitation.

Red Flags

"Red Flags" are warning signs that you may see that could indicate financial exploitation. Presence of one of the signs listed below doesn't always mean fraud is taking place. However, they are signs that may indicate the need for follow up. The red flags have been broken down into four groups of warning signs.

- Diminished Capacity
- Abnormal Account Activity
- Changes in Behavior
- Abuse by Friend/Relative/Caretaker

Diminished Capacity

- A power of attorney executed by a confused older person.
- Unaware of or does not understand recently completed financial transactions.
- Concerned or confused about missing funds in his or her accounts.
- Disorientation - a person may come to the bank when it is closed or have difficulty finding the bank, or once inside, have difficulty remembering why he or she is there.
- Paranoia – accusing employees of mismanaging money (charges that require review by a professional agency to determine whether they have merit or are distortions of reality).
- Hoarding behavior, such as carrying all of their paper and/or valuable items in large bags all the time.
- Frequently forgets items such as personal effects (purse, wallet, coat, umbrella, etc.) and/or items necessary to do business with (checkbook, deposit slips, etc.).
- Frequently asks the same question over a short period of time.
- Changes in eye contact and/or vocal qualities, such as stammering, whispering, or brief answers when those qualities are different from the elder's normal manner of speaking.
- Falling victim to a scam (see examples below)

Abnormal Account Activity

- Unusual money withdrawals.
- Bank activity that is erratic, unusual or uncharacteristic of the older person.
- Bank activity that is inconsistent with the older person's ability (e.g., the person's automatic teller card has been used by a homebound elder or an elder in out-of-home care).
- Frequent overdrafts when none occurred in the past.
- A declining credit score or debt the individual doesn't seem to know about.
- Suspicious activity on credit cards or line of credit accounts.
- Forged or suspicious signatures on documents.
- Increased frequency of checks payable to caretakers or family members.
- Missing documents for the elder's financial items, such as pension, stocks or government payment documents

Changes in Behavior

- Changes in the older person’s property title, will or other documents, particularly if the person is confused and/or the documents favor new acquaintances.
- Lack of amenities when the older person can afford them.
- Failure to receive services that have already been paid for.
- Eviction of the elder from his or her residence, or disconnection of utilities.
- Untreated medical or mental health problems, including but not limited to frequent physical injuries such as bruising, burns, or lacerations.
- In isolation from friends or relatives.
- Giving implausible explanations about what he or she is doing with his or her money.
- Changes in mood.
- Changes in stance or mobility.
- Changes in physical distance between the elder and the bank employee.
- Cringing or withdrawing.
- Sudden expressions of fear.
- Reluctance to engage in normal conversation.
- Noticeable changes in grooming and appearance.

Abuse by Friend/Relative/Caretaker

- Recent, new acquaintances, particularly those who take up residence with an elder person and/or who accompany the elder to conduct bank business.
- Redirection of the elder person’s mail to a new address.
- Accompanied by a stranger who encourages him or her to make large cash withdrawals
- Accompanied by a family member or other person who seems to coerce the elder into conducting transactions.
- Not allowed to speak for them self, or make decisions.
- Nervous or afraid of the person accompanying him or her.
- Fearful he or she will be evicted or institutionalized if money is not given to the caregiver
- Bringing strangers with him or her to the bank.

****COMMON SCAMS****

Many of the scams listed below involve an individual receiving a check in the mail, along with instructions to cash it, keep a small portion of the money and wire the remainder back to the sender or another 3rd party. They are generally instructed to wire through Western Union or Money Gram as those are less regulated than banks. As with any other check scenario, the customer should be advised even though the funds are often made available to them, it could take days or even weeks for the check to be returned to the bank and the customer is ultimately responsible for reimbursing the bank if the check should be returned.

- **Lottery scams** – A customer receives a call stating he has won a lottery or sweepstakes but must send money, usually by wire, to cover fees, taxes or other charges. In fact, the winnings do not exist and the money goes straight to a scammer.

- **Craigslist or online sales** – A counterfeit check has been sent for payment for an online sale listing, but it is for more than the purchase price and to fix the "error" you have to send back the excess via wire transfer.

- **Nigerian or Inheritance Scam** – You are notified you are the beneficiary of a long lost relative's estate. To claim the inheritance, you must wire legal fees to an overseas "attorney". In fact, no inheritance exists - it is just another ploy for the scammer to get a victim to wire funds.

- **Romance scams** – a customer is contacted online by a stranger, who wants to strike up a relationship with someone in the U.S. The stranger will talk about coming to America to go to school or perhaps get married. Eventually a request for money will come, for a plane ticket, medical expenses or attorney fees. After the first wire, there is always a request for more. The requests keep coming, but the individual never comes to America.

- **The grandparent scam** – An elderly bank customer receives a phone call from a person that she is sure is a grandchild, who says they are in trouble and need money wired immediately. Often the story is there has been a car accident or an arrest in Canada or Mexico and needs funds for medical care, bail or to fix a vehicle. The caller often requests the grandparent not call his parents. They often will have someone impersonate a police officer to make the call seem genuine. Once the person wires the money, the scammer often calls back to try for more money.

- "**Gypsy Travelers"** – A group of roofers/pavers/painters come through town offering a great deal on work you didn't know you needed….Always get a second opinion from a reputable local company before agreeing to allow the work to be done.

- **Counterfeit Check Scams** - If someone receives a check in the mail that was not expected always question the source. These checks can be received as part of a "work at home" job, a "secret shopper" job, online sales of merchandise, property rentals, sweepstakes winnings, and sometimes for no reason at all. Often checks are mailed from Canada, but the check is drawn off a company in the United States. Spelling errors and improper or foreign grammar often appear on the checks. A quick way to verify is to do an online search for the business name and call the business. Tell them you have a check you suspect is counterfeit and ask for their accounting department. They usually will quickly confirm if the check is authentic or not.

Most of the scams listed above include sending money through either **Western Union** or **Money Gram.** Always use caution when one of these two entities are involved, most of the scammers will ask that money be sent through one of these two agencies.

******If you have a customer who is about to wire money via Western Union or Money Gram, the Attorney General's office may be able to help. Call the AG's office immediately and they may be able to stop the wire from occurring. The phone number is 802-828-3171******

Employee Response: Action Steps

1. Learn the reason for large transactions or withdrawals.
    - Make small talk with the customer. “Oh, Mrs. Smith, are you purchasing something new?”
    - Obtain permission to ask additional questions. “Mrs. Smith, if it is ok I’d like to ask you some questions. We frequently see fraudulent checks and for your protection I’d like to make sure yours isn’t one of them.”
    - Ask if they know the person who sent them the check or if they were expecting the funds. “Mrs. Smith, may I ask if you know the person who sent you this check?”
2. Check the authorization and documentation of persons who are acting for elderly customers- i.e., the validity of a POA.
    - People without authorization often ask you to bend the rules for them, or get angry when you try to verify. Be sure all authorizations are valid and all signatures match. You can always contact the customer by phone if they are not with the person trying to access the accounts.
3. Make notes of the physical description of the subject.
4. Consult with your supervisor. You may ask the elder to step inside your supervisor’s office to discuss the transaction. This provides more privacy and the ability to stall the transaction.
5. Ask the elder to speak with security.
6. If the elder insists on withdrawing large amount of cash, or under suspicious circumstances, have them fill out the “Fraud Alert” form. (see below)
    - We cannot block the customer from their request to complete a transaction, however providing the “Fraud Alert” form and asking them to sign off may make them think twice.
7. Proposed protocol for AG office wire intervention. Procedures pending.

Remember:

- Time is the enemy of the financial exploiter. Delaying a suspicious transaction may rattle the perpetrator enough to cause him or her to abandon the scam.
- Justify your concern and emphasize the bank’s commitment to protecting customers.
- Empathize with the customer and validate his or her feelings.
- Ask clear, non-threatening and factual questions.
- Tell elders they are not alone. People are often reluctant to reveal exploitation or abuse, because of the embarrassment that they are the only victim of such scams.
- Do not say that you are concerned simply because the customer is elderly- cite objective deviations in the customer’s standard transaction patterns, changes in mood/appearance, etc. that are of concern.
- Don’t let anyone else speak for the elder. This is a red flag that something is wrong.

Sample Fraud Alert Form

Attention:

Consumers lose millions of dollars each year to people who appear to be friendly but who are scheming to take advantage of you.

Please consider the following questions before you withdraw funds in the amount of $________________ from your account. The answers to these questions will help you determine if you might be the victim of a swindler.

- Has a stranger asked you to withdraw your money for any reason?
- Has anyone befriended you and is now asking you to put up money to obtain or share cash or valuables?
- Has anyone asked you to withdraw money to help with a criminal investigation?
- Has someone told you that you need home repairs and then asked for immediate cash payment?
- Have you been pressured or threatened by a stranger, friend or family member for money or for access to your bank accounts?

If the answer to any of these questions is "yes", it is likely that you are about to be swindled. You may never see your money again.

Would you like to talk with an official from this bank? Yes: _________ No: _________

Remember, Swindlers are nearly always friendly and have honest faces or pleasant voices. This is how they gain your trust.

I have read and understand the above statement.

Customer Signature: ____

Customer Name: ____

Date: __________________

Bank Representative: ____

Teller Training Scenarios

What does the front-line bank employee do when confronted with a situation involving elder exploitation? This is where good training and an effective established protocol pay off. The following are scenarios where elder abuse could be occurring.

Scenario 1
Situation: Daughter-in-law uses elder's ATM card without permission.
Response: Teller reports to supervisor, supervisor contacts customer, confirms unauthorized use and reports to Adult Protective Services.

Scenario 2
Situation: Caregiver asks bank to grant her power of attorney for elder.
Response: Customer Service representative asks elder about her wishes, tells caregiver that the bank will not comply with the request and contacts a supervisor. Supervisor contacts Adult Protective Services. APS asks bank to activate a hard hold on the account. Bank alerts other branches.

Scenario 3
Situation: Elder withdraws large amounts of money to "purchase" lottery winnings, claim a prize, or "help" a family member stranded across the border.
Response: Teller questions elder then contacts supervisor. Supervisor contacts Attorney General's office, appropriate authorities and/or Adult Protective Services.

Scenario 4
Situation: Two suspicious men attempt to coerce an elder to withdraw a large amount of cash.
Response: Teller questions the elder then contacts supervisor. Supervisor asks elder to speak with her alone. Teller takes photos of perpetrators and notes date and time, notifies security. Police and APS are notified.

Scenario 5
Situation: Elder discovers funds missing from bank account.
Response: Situation is reported to Bank Security Officer. Authorities and/or APS are contacted.

Scenario 6
Situation: Grandson wants to establish joint account without elder being present.
Response: With approval from the Security Officer and Branch Manager, customer representative allows grandson to take signature card home to customer. A call is placed to the grandparent. If permission is granted, a signature card is sent home with grandson and signatures are verified when the forms are returned.

Reporting Protocol

It is advisable for every bank to establish a written reporting protocol. The protocol should include the following:

1. Who the teller should speak with when a concern exists, and how quickly it should be reported;
2. Who makes the report to state/local authorities;
3. The role that the bank's security officer has in these situations;
4. What information should be gathered and provided to state/local agencies- names, account numbers, dates, times, descriptions of suspected perpetrators, etc.

Note: The bank staff does not need to prove that elder financial exploitation is occurring. Suspicion, not proof, is adequate and acceptable. It is the job of Adult Protective Services and law enforcement to investigate and determine if exploitation is occurring. The more quickly a report is made, the faster the financial abuse can be stopped.

Suggested Reporting Procedures for Financial Institutions

- Employee or branch manager completes an internal report to security or otherwise designated senior officer of suspicious circumstances as soon as possible. Employee does not contact authorities directly.
- Security officer or designated senior officer reviews elder abuse report, determines whether or not reasonable cause exists to believe that exploitation is occurring and documents reports for financial institution's records.
- Security officer or designated senior officer makes an oral report of suspected abuse to designated protective services agency as soon as possible.
- Oral reports should include the name, age (estimated if need be), address and telephone number of the elder; name, relationship and address of suspect if known; description of the suspect and the suspicious circumstances; bank name, branch address and name of employee who made the initial referral; and the names of other agencies or authorities involved. Security officer or designated senior officer should alert other bank branches about instances of suspected financial abuse.
- Security officer or designated senior officer may also choose to submit a written report to the designated protective services agency after oral notification.
- In cases of suspected exploitation by a person known to the victim, reports should be made to Adult Protective Services. In cases of suspected exploitation by a scam, reports should be made to the Attorney General's office. When an emergency situation arises or there is a present and obvious violation of the law occurring in the financial institution, an immediate report should be made directly to local police.

Sample Elder Abuse Reporting Form

For Internal Use Only

Name of Employee(s): ____

Date: ________________________ Time: ________________________

Branch Location: ________________________ Phone Number: ________________________

Reason for Report (provide as much descriptive detail as possible. Attach a separate sheet if needed.):____

____

____

Name of Customer: ____

SSN: ________________________ Phone Number: ________________________

Address: ____

Date of Birth: ________________________ ☐ Male ☐ Female

Language spoken, if not English: ________________________

Bank Relationships: ____

Account Number: ________________________ Type: ________________________

Branch: ____

For Security Department Use Only

Date report received: ________________________ Reviewed by: ________________________

Action taken: ____

Report forwarded to (if applicable): ____

Sample Manager's Report Form for Suspected Elder Financial Exploitation

Bank Information

Name of employee initiating report: ____

Branch: ________________________ Department: ________________________

Date/Time of incident: ____

Customer Information

Address: ____

Date of Birth: ________________________ Social Security Number: _____________________

Describe any person(s) with customer:

____

____

____

Describe vehicle, if applicable:

____

If the customer was not present, describe the person attempting the transaction and provide as much of the following information as possible.

Physical Description: ____

Name: ____ Phone: ________________________

Address: ____

Account Information

Describe any inconsistencies with customer's usual transaction patterns or any comments or restraints placed onto the account. Do not include actual balances or specific transaction amounts.

____

____

____

Account name: _______________________ Account type: ______________________________

Report filed with (Check all that apply):

☐ Corporate Security

☐ Protective Services (please list) ____

☐ Local Police

Date(s) filed: _____________________________

Please attach copy of Police Report, if applicable.

Other Ways Banks Can Help

- Develop and distribute educational materials alerting customers to scams and how to recognize the potential for exploitation.
- Conduct senior seminars or other presentations on elder exploitation
- Generate media attention highlighting financial exploitation
- Stay aware of current trends in scams and financial abuse and also the techniques being used for stopping it.
- Sensitize employees to abuse so they can recognize and report it.
- Train customer service specialists in techniques for interviewing older customers.
- Offer older customers banking services and products especially designed to meet their special needs. (Duplicate statements, limited access to accounts, dual signatures)
- Conduct regularly scheduled visits and limited banking services at places convenient to older people, including senior centers and long-term care providers.
- Take a proactive approach to developing new procedures and product lines, including:
  - Mechanisms for detecting unusual account activity,
  - Alerts on accounts,
  - Procedures for verifying suspicious transactions, and
  - Protected accounts for seniors.

More Ideas

- Print copies of brochures for elder customers. Place on the brochure your bank's logo and contact information.
- Post fliers and posters.
- Train bank's community relations staff to conduct elder financial abuse seminars for presentation to civic groups, faith-based groups, neighborhood associations, elder residential community groups, and other appropriate audiences.
- Partner with others in your community to plan and sponsor these events.
- Promote public awareness of elder financial exploitation with special local news advertising or by sponsoring information distribution efforts at local events; have bank officers appear on local television/radio talk-format programs to discuss the topic of elder financial abuse; finally, work with local watchdog groups, or the State's Attorney's office, to sponsor local public awareness campaigns.

The Vermont Statutes Online

Title 8: Banking and Insurance

Chapter 200: CONSUMER PROTECTION

8 V.S.A. § 10204. Exceptions

§ 10204. Exceptions

This subchapter does not prohibit any of the activities listed in this section. This section shall not be construed to require any financial institution to make any disclosure not otherwise required by law. This section shall not be construed to require or encourage any financial institution to alter any procedures or practices not inconsistent with this subchapter. This section shall not be construed to expand or create any authority in any person or entity other than a financial institution.

(25) Reports or disclosure of information to the department of disabilities, aging, and independent living, pursuant to subsection 6903(b) and 33 V.S.A. § 6904. (Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001; amended 2001, No. 115 (Adj. Sess.), § 3, eff. May 28, 2002; 2005, No. 174 (Adj. Sess.), § 12.)

Adult Protective Services is a unit within the Department of Disabilities, Aging and Independent Living, therefore Banks are permitted to make reports of possible financial exploitation of vulnerable Vermonters.

To report an instance of possible abuse:

- **Toll-Free:** 1-800-564-1612
- **Phone:** (802) 871-3317
- **Fax:** (802) 871-3318
- **Online:** www.dlp.vermont.gov/protection

Resources

- Before you donate, check to see if the charity is legitimate
  www.charitywatch.org: 773-529-2300

- Check your credit at least once a year.
  One free credit report can be obtained annually at www.annualcreditreport.com
  There are fees associated to obtain a credit score

- Eldercare Locator
  The National Center on Elder Abuse
  www.elderabusecenter.org
  1-800-677-1116

- The federal agency that advocates for seniors, Administration on Aging
  www.aoa.gov

- Vermont Attorney General's Office
  www.atg.state.vt.us
  802-828-3171

- If you believe you've been a victim of ID Theft
  www.ftc.gov

- To add your name to the national "Do Not Call" list
  1-800-382-1222 or www.donotcall.gov

- To opt out of unsolicited mail and pre-screened credit card offers:
  1-888-567-8688 or www.optoutprescreen.com