

# SafetyNetWorks

Information for Elder-Adult-at-Risk and Adult-at-Risk Agencies  
AAR Information Memo #5 July 2008

## IN THIS ISSUE

Financial institutions release of financial records to Elder Adults/Adults-at-Risk (EA/AAR) Agencies who are responding to a report of financial exploitation.

## SUMMARY

This document clarifies the right of county EA/AAR workers to be given access to financial records of adults at risk of any age. It will also guide EA/AAR workers through the process of requesting financial records to protect adults at risk from financial exploitation.

State law and clarification of federal law strengthens Wisconsin EA/AAR workers' ability to access financial information in order to respond to reports of financial abuse.

A 2003 paper prepared for the American Bar Association concluded:

*"Banks have the potential to be the "first line of defense" against financial abuse, by identifying the abuse at its outset, before the elder's assets have been dissipated. No institution is in a better position to observe and report suspicious behavior."*

[http://www.elderabusecenter.org/pdf/publication/bank\\_reporting\\_long\\_final\\_52703.pdf](http://www.elderabusecenter.org/pdf/publication/bank_reporting_long_final_52703.pdf)

## FEDERAL PRIVACY EXCEPTIONS AND IMMUNITIES

The federal Gramm-Leach-Bliley Act prohibits the release of "non-public personal information" of customers, with several exceptions including **"To protect against or prevent actual or potential fraud, unauthorized transactions, claims and other liability"**.

Alan Greenspan (then Federal Reserve Chair) and all the federal financial regulators provided further clarification of this law in June 2005, stating that Wisconsin financial institutions **are allowed to voluntarily report** financial exploitation to the county, if they have a memorandum of understanding with local financial institutions.



*"Based on the Wisconsin Statute, the Dane County MOU, and our understanding of the program, we believe that financial institution disclosures of nonpublic personal information made in reports to designated county agencies under this or similar MOU, and in response to properly authorized investigations by designated county agencies, will fall within the exceptions in section 502(e) of the GLBA and section .15 of the agencies' implementing regulations."*

For more information, go to:

<http://cwag.org/uploads/GLBA2007Wis.pdf>

While the federal clarification only discusses **elder** adults-at-risk agencies, this material was issued before Wisconsin law provided the same protections to adults at risk ages 18 to 59. The Chapter 46 language protecting elder adults at risk from financial exploitation is identical to the Chapter 55 language protecting younger adults at risk.<sup>1</sup>

## WISCONSIN PRIVACY EXCEPTIONS AND IMMUNITIES

Both Chapters 46 and 55 state that “records **shall** be released without informed consent<sup>2</sup>” to the EA/AAR agency in response to a report of financial exploitation.

Also, financial institutions “**may** release financial record information” without being contacted by an EA/AAR agency if they suspect financial exploitation. Any teller, personal banker or customer service person who believes that reportable financial exploitation exists should contact the county EA/AAR staff or discuss the matter with his/her supervisor.

Both the person who reports financial exploitation and the bank are provided with immunity protections.

“No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith...<sup>3</sup>”

“Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution, *shall not be liable* to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.<sup>4</sup>” (*emphasis added*)

## INTERACTING WITH FINANCIAL INSTITUTIONS

Each financial institution<sup>5</sup> is free to adopt its own procedures governing voluntary reporting of financial exploitation of their customers. However, federal and state laws provide a framework for county EA/AAR agencies to work with banks to protect adults at risk from financial exploitation.

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<sup>1</sup> See s. 46.90 (5) (b) 6. and s. 55.043 (1r) (b) 6.

<sup>2</sup> See s. 46.90 (5) (b) 6. and s. 55.043 (1r) (b) 6.

<sup>3</sup> See s. 46.90 (4) (c) and 55.043 (1m) (d).

<sup>4</sup> 31 U.S.C. Sec. 5318(g)(3). Money Laundering Deterrence Act of 1998 to amend title 31 of the United States Code to improve methods for preventing financial crimes. See [http://www.fas.org/irp/congress/1998\\_rpt/h105-611-1.htm](http://www.fas.org/irp/congress/1998_rpt/h105-611-1.htm)

<sup>5</sup> Covered financial institutions as defined in s. 705.01(3) of the statutes

**ESTABLISH** trust through I-Teams, FAST's or MOUs.

**ACCEPT** voluntary reports of financial exploitation

**REQUEST** financial reports in cooperative fashion.

**REVIEW** financial records for suspicious transactions.

**REFER** possible financial crimes to law enforcement.



By entering into a memorandum of understanding (MOU) with county EA/AAR agencies, financial institutions are assured of falling within the exemptions under the Gramm-Leach-Bliley Act.

**Attachment #2** is a sample Memorandum of Understanding between county EA/AAR agencies and financial institutions that can be used to define the best methods for accessing necessary information from the financial institution. At the same time, the two parties will benefit from sharing information on procedures and terminology related to financial exploitation.

Once the MOUs are complete and a report of financial exploitation is received, EA/AAR workers should narrow the request for documents to a reasonable level. The financial institution contact may be able to help determine the most helpful records for the search.

**Attachment #3** outlines the process and provides a sample form for requesting information from a financial institution. The form is divided into three sections (phases). Only the necessary sections should be included in the request to the financial institution.

## CONCLUSION

EA/AAR workers are neither detectives nor forensic accountants. But with a common sense approach, it should be possible to find out whether or not financial exploitation is occurring. By working closely with local financial institutions and law enforcement, we can take great strides in helping victims of financial exploitation and stopping people from stealing from our parents, grandparents and elderly friends and neighbors.

## RESOURCES

Wisconsin Department of Justice Consumer Protection Hotline: 1-800-998-0700  
Coalition of Wisconsin Aging Groups Elder Financial Exploitation Prevention Project:  
1-800-488-2596 or [jhendrick@cwag.org](mailto:jhendrick@cwag.org), website: <http://cwag.org/legal/elder%2Dfinancial/>  
Wisconsin Department of Health and Family Services: [StopAbuse@dhfs.state.wi.us](mailto:StopAbuse@dhfs.state.wi.us),  
website: <http://dhfs.wisconsin.gov/Aps/>

Selected State Statutes:

- 46.90 – Elder Abuse Reporting System: <http://www.legis.state.wi.us/statutes/Stat0046.pdf>
- 55.043 – Adults at Risk Reporting System: <http://www.legis.state.wi.us/statutes/Stat0055.pdf>
- 221.1008 – Fee Waiver for Bank Records: <http://www.legis.state.wi.us/statutes/Stat0221.pdf>
- 108.02 (17) – Governmental Unit Definition: <http://www.legis.state.wi.us/statutes/Stat0108.pdf>

**Attachments:**   **#1** – Sample Memorandum of Understanding between a county and a financial institution.  
                          **#2** – Instructions and Forms for Requesting Records from a Financial Institution

### **QUESTIONS**

If you have questions concerning the appropriate role of an elder-adult/ adult-at-risk agency in responding to a report of abuse, neglect or exploitation, please contact us at StopAbuse@dhfs.state.wi.us or contact:

Jane Raymond at 608-266-2568 or  
Kay Lund at 608-261-5990.

CENTRAL OFFICE CONTACTS: Jane Raymond and Kay Lund  
Bureau of Aging and Disability Resources  
Division of Long Term Care  
1 W. Wilson Street, Room 450  
Madison, WI 53702  
(608) 266-2568

Financial Exploitation Safety Networks  
ATTACHMENT #1

**Memorandum of Understanding  
for Reporting Instances of Financial Exploitation  
to the County Elder Adults-at-Risk and/or Adults-at-risk Agency  
Between**

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Name of Financial Institution

**And the Elder Adults/Adults at Risk Agency(s) of**

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Name of County

**1. When reports may be made by the Financial Institution.**

The Wisconsin elder abuse statute, defines financial exploitation in Wis. Stat. §46.90(1)(ed). Wisconsin law requires mandatory reports of financial exploitation from certain persons and facilities, but financial personnel are voluntary reporters.

The elder adults/adults-at-risk statutes<sup>1</sup> provide that:

**Any person**, including an attorney or a person working under the supervision of an attorney, **may report** to the county department, the elder adults/adults-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care that he or she believes that abuse, **financial exploitation**, neglect, or self-neglect of an elder adult/adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self-neglect of an elder adult/adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report. (*emphasis added*)

**2. Confidentiality of the reporting person**

Reports can be made anonymously and the elder adults/adults-at-risk statutes<sup>2</sup> provide that:

“records under this subsection are confidential and may not be released by the elder adult-at-risk agency or other investigative agency, except under [very limited] circumstances . . .”

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<sup>1</sup> S. 46.90 (4) (ar) and 55.043 (1m) (br)

<sup>2</sup> S. 46.90 (6) (bt) and 55.043 (6) (bt)

### 3. Immunity from liability

The elder adults/adults-at-risk statutes<sup>3</sup> provide that:

*“No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for reporting in good faith under this subsection and within the scope of his or her authority . . .”*

### 4. Types of financial exploitation<sup>4</sup> include, but are not limited to

#### A. Mismanagement of Income/Assets:

Wilful misuse of an elder adult/adult at risk's finances by a family member, caretaker, friend, or legal fiduciary. Included would be cases where large sums of money are removed from a joint account without consent.

#### B. Signing/Cashing Checks or Documents

Without the elder adult/adult at risk's authorization: Forging and cashing of checks, or removal (theft) of money from a financial institution account without the elder adult/adult at risk's knowledge, for use by another person.

#### C. Transfer of Assets Under Duress:

Transfer of title or deed to property, such as homes, stocks, vehicles, financial institution and bank accounts, or other assets, as a result of coercion, force, intimidation, or threat of force. Use of force can include such acts as the withholding of food, isolation, confinement, as well as acts of physical violence.

#### D. Obtaining Money and Personal Possessions by Threat of Force or Force:

Use of coercion, intimidation, force or threat of force in order to obtain money or material possessions of the elder adult/adult at risk.

#### E. Obtaining Money or Other Assets by Deceit or Trickery:

Obtaining consent of the elder adult/adult at risk to give or sign over money or other assets through misrepresentation of the intent of the transaction.

### 5. Financial Institution Reporting Procedures

Reports of suspected financial exploitation should be made to the person designated by the management of the financial institution. A written report detailing the elder adult/adult at risk's situation and the reason for suspecting financial exploitation should also be completed and forwarded to the designated person.

Any teller, personal banker or customer service person who believes that reportable financial exploitation exists may contact the designated person directly. However, if they are uncertain they may discuss the matter with their supervisor.

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<sup>3</sup> S. 46/90 (4) (c) and 55.043 (1m) (d)

<sup>4</sup> See S. 46.90 (1) (ed) 1 to 7. for the statutory definition of financial exploitation.

All reports of suspected financial exploitation should be submitted to the designated person. The designated person is charged with making the final determination as to whether to report to the elder adults/adults-at-risk agency.

## **6. Reports to the Elder Adults/Adults-at-risk Agency**

Reports to the elder adults/adults-at-risk agency may be initiated by calling and making an oral report to the phone number listed above. The elder adults/adults-at-risk statutes provide that “the person shall indicate the facts and circumstances of the situation as part of the report.” Reports will be made to the elder adults/adults-at-risk agency only after that information has been confirmed for release by the management of the financial institution. Such reporting is voluntary in Wisconsin. Nothing in the memorandum shall create a duty to report abuse, neglect or financial exploitation and nothing in this memorandum shall entail any liability for failure to report in a specific instance.

## **7. Authorized Signatures**

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Name of County Elder Adults/  
Adults-at-Risk Agency

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Name of Financial Institution

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Signature of County Agency Director

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Authorized Financial Institution Signature

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Signatory Title

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Signatory Title

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Date

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Date

**Financial Exploitation Safety Networks  
ATTACHMENT #2**

**Instructions and Form for Requesting Financial Records in Response to a Report  
of Financial Exploitation to an Elder Adult/Adult at Risk**

This process is split into three separate phases to avoid overburdening the financial institution or overwhelming yourself with paper. Each phase/request relates to different information that is needed to investigate a case. If you do not need one section/phase, delete that section before making your request of the financial institution. Also, whenever possible, direct the request to a specific person so that the same person at the financial institution is responding to subsequent requests.

**Phase 1** asks for ownership documents such as signature cards for all types of accounts, including checking, savings, mortgages and safe deposit boxes and also copies of any power of attorney or guardianship documents.

**Phase 2** focuses on a critical time period. For transaction accounts such as checking and some money market accounts, list the account numbers and request monthly statements. For other accounts, only periodic statements will be available. At some financial institutions, these statements may automatically include images of any checks.

**Phase 3** focuses on documentation of any suspicious transactions. There may be cancelled checks available or they may be in the form of electronic images. For electronic payments, the detailed information may need to be obtained from the company that received the payment. This information is maintained for only two years. For debit card transactions, the documentation may be very sparse; law enforcement may need to request camera images of the person using the card at the ATM.

**No charge for copies**

Wisconsin statutes 221.1008<sup>1</sup> waives financial institution fees when a governmental unit, including a county, requests copies of documents. Since the financial institution is providing these copies at no charge, be especially careful not to make excessive requests.

**Confidentiality**

In order to protect the privacy of the adult at risk and in case of future use by law enforcement, it is very important that any records obtained through this request process be handled properly in accordance with the elder adults/adults-at-risk statutes, 46.90(6)(bw) and 55.043(6)(bw)<sup>2</sup>.

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<sup>1</sup> 221.1008 Record search. A bank is entitled to reimbursement for expenses and costs incurred in searching for, reproducing and transporting books, papers, records and other data required to be produced by legal process, unless otherwise prohibited by law from collecting these expenses and costs or **unless the person seeking the production is a government unit**, as defined in s. 108.02 (17).

<sup>2</sup> 46.90(6)(bw) and 55.043(6)(bw) A person to whom a departmental report form or a record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this subsection.





**TO:**      Name of Financial Institution  
            Contact Person if available

**FR:**      Adult-at-risk worker  
            Phone number:  
            Email:  
            Fax number:  
            Address

**DT:**      Monday, July 07, 2008

**RE:**      Adults-at-Risk Financial Exploitation Information Request for  
            Name of Adult at Risk

We have received a report about possible financial exploitation of your customer/member named in the accompanying records request. In order to respond to this report, protect your customer's finances and offer appropriate services, we are requesting financial records of your customer/member pursuant to the adults at risk statute, Wisconsin Statutes section 46.90 (5) (b) 6. and 55.043 (1r) (b) 6.

We will try to request only the critical records needed for our response and will work cooperatively with you to obtain the information we need without creating unnecessary burdens on your resources. If you can suggest alternative methods that can provide the same information, we would appreciate the suggestions.

Although fees for these records are waived by state statute (Wisconsin Statute 221.1008), we have no more interest in receiving excessive copies of unneeded records than you have in providing them. Please contact me with any questions, concerns or suggestions.

On behalf of the Elder Adults/Adults at Risk Agency of  
**County,**

I request the following financial records<sup>3</sup>, for an elder adult/adult at risk who  
may be the victim of financial exploitation as reported to this agency

Name of Customer/Member \_\_\_\_\_

Member's Current Address \_\_\_\_\_

\_\_\_\_\_

<b>Phase One Request for Financial Records (Ownership Documents)</b>
<div data-bbox="271 846 1268 928"><input type="checkbox"/> ownership documents for all accounts (open or closed) including loan accounts and safe deposit boxes</div> <div data-bbox="271 955 623 1014"><input type="checkbox"/> signature cards</div> <div data-bbox="271 1050 1078 1106"><input type="checkbox"/> copies of any power of attorney documents</div> <div data-bbox="271 1140 1088 1197"><input type="checkbox"/> copies of guardianship or other court orders</div>

*Delete this table if you are not requesting this section of information.*

<sup>3</sup> pursuant to Wisconsin Statutes section 46.90 (5) (b) 6. and 55.043 (1r)(b) 6.

## Phase Two Request for Financial Records (Transactions during a Specific Time Period)

Periodic statements for the following accounts:

☐ Monthly statements for the following transaction accounts:

	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> Account Number	from	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	to	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	
	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> Account Number	from	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	to	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	
<input type="checkbox"/>	<b>Money Market</b>	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> Account Number	from	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	to	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date
<input type="checkbox"/>	<b>Certificates of Deposit</b>	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> Account Number	from	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	to	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date
<input type="checkbox"/>	<b>Mortgage</b>	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> Account Number	from	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	to	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date
<input type="checkbox"/>	<b>Loan</b>	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> Account Number	from	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date	to	<div style="border-bottom: 1px solid black; width: 100%; margin-bottom: 5px;"></div> date

*Delete this table if you are not requesting this section of information.*

### Phase Three Request for Financial Records (Documentation of any Suspicious Transactions)

Any and all documentation for the following transactions:

Any transactions highlighted or circled on the attached statement copies and:

including, but not limited to, cancelled checks or electronic images where checks are not available. For electronic payments, I request any detailed documentation that is held by or can be obtained by the financial institution.

Delete this table if you are not requesting this section of information.

Please respond as soon as possible to protect the finances of your customer/member. Contact me with any questions or suggestions.

Elder adult-at-risk worker contact information:

**Phone** \_\_\_\_\_ **Fax** \_\_\_\_\_

Email

<b>Address</b>	<b>City/Zip</b>
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Signed \_\_\_\_\_ Dated \_\_\_\_\_