

Memorandum of Understanding Between

Name of Financial Institution

and the Elder Adults/adults-at-Risk Agency(s) of

Name of County

**for Reporting Instances of Financial Exploitation
to the County Elder/Adults/Adults-at-Risk Agency**

Purpose:

This memorandum of understanding (MOU) defines the circumstances and the process for employees at financial institutions to report suspected financial exploitation to the county elder adults/adults-at-risk¹ (EA/AAR) agency. Also, this MOU allow the county agency and the financial institution to agree on a process for requests of financial information by the EA/AAR agency.

Included as attachments to this MOU

- Attachment #1 - Sample forms for use by financial institution personnel when reporting suspected financial exploitation
- Attachment #2 - Sample forms for use by the EA/AAR agency for requesting documents from the financial institution
- Attachment #3 - Definition of financial exploitation, types of exploitation
- Attachment #4 - Things to watch for, warning signs of financial exploitation and things financial institutions can do to prevent financial exploitation

For more information about responding to reports of financial exploitation, see SafetyNetworks 5² or the Coalition of Wisconsin Aging Group's Elder Financial Exploitation Prevention Project Website³.

The role of EA/AAR agencies in stopping financial exploitation

Responding to reports of financial exploitation: Under Wisconsin law, each county must name an agency responsible for responding to reports of abuse, neglect and financial exploitation of adults at risk. The statutes give counties a number of tools to help staff to investigate reports, including the authority to review financial records of an adult at risk. The goal of this MOU is to have a process in place in order to simplify the

¹ If the Elder Adults-at-Risk and the Adults-at-Risk agencies are separate, both agencies will need to work with the financial institution to develop a combined MOU or each agency will develop a separate MOU.

² <https://www.dhs.wisconsin.gov/aps/sn5finex.pdf>

³ <http://cwagwisconsin.org/elder-law-center/62-2/>

release of financial records when the need arises. Attachment #2 is a sample form for requesting information from the financial institution. This form should be modified by the financial institution to correspond to their procedures and needed documentation. The EA/AAR agency will work to control the amount of information requested without limiting their investigation.

If, upon review of the documents, the EA/AAR agency finds evidence of exploitation, staff will work with the financial institution on the best actions to prevent further losses.

Provide training to financial institutions on recognizing financial exploitation: EA/AAR staff should provide information to financial institution personnel to help them recognize signs of financial exploitation. Both parties will be helpful in developing public education materials to help adults at risk prevent exploitation.

The role of financial institutions in stopping financial exploitation

Reporting suspected financial exploitation: The elder adults/adults-at-risk statutes⁴ provide that any person may report to the elder adults/adults-at-risk agency that he or she believes that financial exploitation of an individual-at-risk has occurred.

Financial institution personnel are voluntary reporters of financial exploitation. Wis. Stats. §46.90 (5) (a) 6. a. and §55.043 (1r) 6. a. state that financial institution personnel may initiate a report of financial exploitation.

"The financial record holder may release financial record information by initiating contact with the elder-adult-at-risk agency or other investigative agency without first receiving a request for release of the information from the elder-adult-at-risk agency or other investigative agency."

Providing financial information: Both state and federal law provide exemptions from privacy laws to allow financial institutions to make reports of financial exploitation and to release financial information to state and local authorities investigating financial exploitation.

Federal Law

31 U.S.C. sec. 5318 (g) (3):

IN GENERAL.--Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

12 U.S.C. 3403 (c)

Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer 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 customer of such disclosure.

⁴ S. 46.90(4) (ar) and 55.043 (1m) (br)

In 1999 the Financial Services Modernization Act (often known as the Gramm-Leach-Bliley Act) was passed. This Act contains strong privacy protection and requires notification to customers before disclosures of their records and an opportunity to disapprove the proposed disclosure. However Section 502(e) of the Act contains exceptions to this privacy protection. Three are relevant to state reporting programs:

- (e)(3)(B) permits disclosure "to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability."
- (e)(5) permits disclosure "to the extent specifically permitted or required under other provisions of law . . . to law enforcement agencies . . .or for an investigation on a matter related to public safety."
- (e)(8) permits disclosure "to comply with Federal, State, or local laws, rules, and other applicable legal requirements."

Wisconsin law [§46.90 (5) (a) 6. and §55.043 (1r) 6.] requires financial institutions and others to release financial records without informed consent to EA/AAR agencies.

Reporting procedures

EA/AAR agency records request procedures

The financial institution will designate a contact person who will receive requests for financial records from the EA/AAR agency. Attachment #2 provides a form template for requesting records from the financial institution. Counties may complete this form or some other written request form preferred by the financial institution. The EA/AAR agency may include information detailing the elder adult/adult at risk's situation and the reason for suspecting financial exploitation.

Financial institution reporting procedures

The EA/AAR agency will designate a contact person who will receive reports from the financial institution. Reports to the EA/AAR agency may be over the phone or financial institutions may use the form template, Attachment #1. Such reporting is voluntary in Wisconsin. This MOU does not create a duty to report or a liability for failure to report.

The financial institution may have a designated contact person so employees know who to alert when they suspect financial exploitation. Employees may also call the EA/AAR agency directly or contact their supervisor. No matter what the process, reports to the EA/AAR agency should be made as timely as possible. Regardless of the process, management of the financial institution should be alerted of all reports of abuse and of financial record requests.

Confidentiality of information

The two parties acknowledge that reports of suspected financial exploitation are confidential and may not be released except in circumstances indicated under Wisconsin's elder

adults/adults-at-risk statutes⁵ or federal law⁶. The two agencies acknowledge that they may not further disclose the information except as pursuant to these statutes.

The identity of the reporter must always be deleted from any record that is released by the EA/AAR agency⁷. The identity of the person who makes a report of financial exploitation is protected and can only be released with written consent of the reporter or under an order of the court.

Reports also can be made anonymously.

Immunity from liability

Wisconsin elder adults/adults-at-risk statutes⁸ provide strong protections for individuals who report to the EA/AAR agency. Protections include immunity from liability for any reporter who has reason to believe that a client or contact is at risk of abuse, neglect or financial exploitation.

Contact Information for financial institution designee and EA/AAR agency financial exploitation reporting lead

Elder Adults/Adults-at-Risk Lead
Name
Phone number:
Email:
Fax number:
Address

Financial Institution Designee
Name
Phone number:
Email:
Fax number:
Address

Authorized Signatures

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

Name of Financial Institution

Signature of County Agency Director

Authorized Financial Institution Signature

Date

Date

⁵ § 46.90(6)(b)1.-10 and 55.043(6)(b)1.-10

⁶ See page 2.

⁷ § 46.90(6)(bv) and 55.043(6)(bv)

⁸ § 46.90(4)(c) and 55.043(1m)(d): “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 . . .”

Attachment #1

Sample Elder Adults/Adults-at-Risk Reporting Form for Financial Institutions

Name of customer _____

Phone number _____

Address _____

Other information about this customer that
may help in responding to this report. _____

Were the police contacted _____ Date of
about this incident? _____ incident _____

Describe the incident _____

Describe anyone who
accompanied the customer _____

If the customer was not present, describe the person attempting the transaction (what is their
relationship to the customer, physical description, name, address, phone number)

Contact information for financial institution personnel

Financial Institution Name _____

Branch Address _____

Reporter Name _____

Phone number _____

Name of employee who discovered
the incident (if different than above) _____

Phone Number _____

Was anyone else at the financial institution
involved in this incident? (Security, etc.) _____

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 221.1008⁹ 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)¹⁰.

⁹ 221.1008 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).

¹⁰ 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.

Sample Cover Memo on County Letterhead

TO: Name of Financial Institution
Contact Person Designated by the Financial Institution

FR: Elder Adults/Adults-at-risk Worker Name
Phone number:
Email:
Fax number:
Address

DT: Thursday, November 09, 2017

RE: Elder Adults/Adults-at-Risk Financial Exploitation Information Request for
Name of Adult at risk
Address 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 respond appropriately, we are requesting financial records of your customer/member pursuant to the Wisconsin elder adults/adults-at-risk statutes §46.90 (5) (a) 6.and §55.043 (1r) 6.

Detail the report and reasons for suspecting financial exploitation. The financial institution may have recommendations on what to review and how to respond.

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.

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 records¹¹ in response to a report of
suspected financial exploitation of an adult at risk.

Name of Customer/Member _____

Member's Current Address _____

Phase One Request for Financial Records (Ownership Documents)	
<input type="checkbox"/>	ownership documents for all accounts (open or closed) Including loan accounts and safe deposit boxes
<input type="checkbox"/>	signature cards
<input type="checkbox"/>	copies of any power of attorney documents
<input type="checkbox"/>	copies of guardianship or other court orders

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

Copying charges for these records are waived by Wisconsin Statutes, section 221.1008

¹¹ 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:			
<input type="checkbox"/>	Monthly statements for the following transaction accounts:		
	_____ Account Number	from _____ date	to _____ date
	_____ Account Number	from _____ date	to _____ date
<input type="checkbox"/>	Money Market	_____ Account Number	from _____ date
		_____ Account Number	from _____ date
<input type="checkbox"/>	Certificates of Deposit	_____ Account Number	from _____ date
		_____ Account Number	from _____ date
<input type="checkbox"/>	Mortgage	_____ Account Number	from _____ date
		_____ Account Number	from _____ date
<input type="checkbox"/>	Loan	_____ Account Number	from _____ date
		_____ Account Number	from _____ date

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

Copying charges for these records are waived by Wisconsin Statutes, section 221.1008

**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 _____

Address _____ **City/Zip** _____

Signed _____ **Dated** _____

Copying charges for these records are waived by Wisconsin Statutes, section 221.1008

Attachment #3

Definition and Types of Financial Exploitation

Definition

Financial exploitation¹² is defined as any of the following:

- Theft: Intentional taking of property including embezzlement.
- Misconduct by a fiscal agent. A fiscal agent includes any of the following:
 - A guardian of the estate appointed under s. 54.10.
 - A conservator appointed under s. 54.76.
 - An agent under a power of attorney under ch. 243.
 - A representative payee under 20 CFR 416.635.
 - A conservatorship under the U.S. Department of Veterans Affairs.
- Substantial failure or neglect of a fiscal agent to fulfill responsibilities.
- Fraud, enticement or coercion: To obtain an individual's property by deceiving or enticing or to force or coerce to give something away without informed consent.
- Identity theft: To intentionally use an individual's identifying documents or information, without consent, to either get something of value or to harm the individual's reputation or property.
- Unauthorized use of the identity of a company or agency: To intentionally use the identifying information of an entity (such as a bank, business, or government agency) to get something of value by pretending that he or she is acting with authorization of the entity.
- Forgery: To alter official documents, such as a will or title, with the intent to defraud, or to show an altered document and pretend it is genuine.
- Unauthorized use of financial transaction cards including credit, debit, ATM and similar cards.

Types

Financial exploitation exists in these or similar forms:

- Mismanagement of Income/Assets: Willful misuse of an elder's finances by a family member, caretaker, friend, or legal fiduciary.
- Signing/Cashing Checks or Documents without the Elder's Authorization: Forging and cashing checks, or removal (theft) of an elder's money from a financial institution account without the elder's knowledge, for use by another person.

¹² Wisconsin Stats. § 46.90 (1) (ed) and (eg)

- **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.
- **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.
- **Obtaining Money or Other Assets by Deceit or Trickery:** Obtaining consent of the elder to give or sign over money or other assets through misrepresentation of the intent of the transaction.

For information on how to protect clients from financial exploitation and links to helpful websites, go to the Wisconsin Department of Health Services website.¹³

¹³ <http://www.dhs.wisconsin.gov/aps/Financial.htm>

Attachment #4

Financial Exploitation Warning Signs and How Financial Institutions Can Help Prevent Financial Exploitation

Financial institution personnel should watch for these and other warning signs.

- Have there been unexplained changes in power of attorney, wills or other legal documents (e.g., power of attorney given when the adult at risk is unable to comprehend the financial situation and in reality is unable to give a valid power of attorney)?
- Has there been a change in account beneficiaries?
- Are there new authorized signers on accounts?
- Has there been a change in property titles, deeds, or other ownership documents?
- Are there missing checks or money, or unexplained decreases in bank accounts?
- Are there missing documents (e.g., pensions, stocks or government payments)?
- Has there been inappropriate activity (e.g., withdrawals from automated banking machines when the individual cannot walk or get to the bank, checks or financial documents signed by an individual who cannot write)?
- Have there been unusual withdrawals (numerous cash withdrawals in a short period of time, inconsistent or uncharacteristic with the elder's spending habits)?
- Has a mortgage been refinanced?
- Has there been a request to send bank or credit card statements to an address other than the customer's home address?
- Are there recent, new acquaintances, particularly those who take up residence with an older person and/or who accompany the elder to conduct bank business?
- Is there increased or suspicious activity on credit cards, line of credit accounts?
- Are there forged or suspicious signatures on documents?
- Do you know of charges for excessive rent or fees for services? The perpetrator charges excessive rent or unreasonable fees for basic care services such as transportation, food, domestic services (such as housecleaning and lawn maintenance) or medicine.

Note: Some of the above transactions (for instance, refinancing a mortgage) may be completely proper. It is only financial exploitation if the customer is being threatened, coerced, or deceived into the activity. There is no simple analysis and each case is different. The county elder adults/adults-at-risk agency can help the financial institution when there are questions about how to proceed.

How can a financial institution help prevent financial exploitation?

- Train employees to recognize warning signs of financial exploitation and on what to do if they suspect inappropriate activity.
- For large or new, frequent withdrawals, ask the adult at risk for a reason for the change in activity.
- Tellers should check authorization of individuals who claim to have guardianship or power of attorney for finances.
- If teller suspects fraud or coercion, s/he should contact a supervisor immediately. If questioned, the teller can explain that large or unusual transactions must be reviewed by a supervisor.
- If possible, the supervisor should talk with the account holder alone. Alert bank security and/or the county elder adults/adults-at-risk agency about suspected financial exploitation.
- Participate in the county's elder adults/adults-at-risk Interdisciplinary Team to keep partners apprised of current trends in financial exploitation and techniques to stop it.
- Distribute educational materials alerting customers to common scams and how to recognize potential exploitation.
- Talk to customers about safe banking:
 - Dangers of joint checking accounts with a non-spouse,
 - Payable on death accounts,
 - Power of attorney for finances,
 - Alerts on accounts,
 - Protected accounts,
 - If someone is helping you pay bills and manage your accounts, get a trusted third party to do a monthly review of your bank statements,
 - Do not sign over money or property to anyone in return for care, even family members, without review by a trusted third party,
 - If you can no longer use your ATM card, cancel it,
 - Check your bank statements at least monthly,
 - Give your bank a copy of your power of attorney for finances form,
 - Keep all important financial documents in a safe, secure place,
 - Open your own mail,
 - Have your social security, pension and other income checks automatically deposited,
 - Sign your own checks and do not sign "blank checks," even for family members.

For more information about protecting customers from financial exploitation see <http://www.dhs.wisconsin.gov/aps/Financial.htm>