SEP 18 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Today, I am transmitting to the Council of the District of Columbia for its consideration and enactment, the “Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2017” (“Bill”).

This legislation is designed to provide for mandatory reporting of suspected instances of financial exploitation of seniors and vulnerable adults applicable to banks, credit unions, and other depository and non-depository institutions; insurers and insurance producers; broker-dealers; and investment advisers. The Bill also provides for notification of potential financial exploitation to designated third parties with the advance consent of the senior citizen or vulnerable adult.

In addition, regulated entities are given the authority to temporarily delay disbursement of funds in cases of suspected financial exploitation, and are eligible for immunity from civil and administrative liability for reporting, disclosure, and disbursement delays. Finally, the Bill mandates records sharing related to financial exploitation of seniors and vulnerable adults with the Department of Insurance, Securities and Banking (DISB), Adult Protective Services (APS), and law enforcement.

The Bill is largely modeled on the North American Securities Administrators Association’s (NASAA), “An Act to Protect Vulnerable Adults from Financial Exploitation,” however the Bill has been modified to include all District financial sectors, including insurance, securities and banking. Approximately 16 states have introduced or enacted similar consumer protection oriented legislation.

Accordingly, I urge the Council to act favorably and expeditiously on the proposed Bill.

Sincerely,

Muriel Bowser

Enclosures
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill, which was referred to the Committee on ____________.

To provide for a mandatory reporting requirement of suspected instances of financial exploitation of seniors and vulnerable adults applicable to qualified individuals of financial institutions, insurers, insurance producers, broker-dealers and investment advisers; to provide for notification to third parties of potential financial exploitation with advance consent of eligible adults; to provide authority to temporarily delay disbursement of funds in cases of suspected financial exploitation; to provide for immunity from civil and administrative liability for reporting, disclosure, and disbursement delays; and to provide for mandatory sharing of records related to financial exploitation of seniors and vulnerable adults with the Department of Insurance, Securities and Banking, Adult Protective Services, and law enforcement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2017.”

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Agent” shall have the same meaning as provided in section 101(3)(A) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(3)(A)).

(2) “Broker-dealer” shall have the same meaning as provided in section 101(4) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(4)).
(3) "Chief" means the Chief, Department of Human Services, Family Services Administration, Adult Protective Services Division.

(4) "Commissioner" means the Commissioner of the Department of Insurance, Securities and Banking.

(5) "Department" means the Department of Insurance, Securities and Banking.

(6) "Eligible adult" means:

(A) A person 65 years of age or older; or

(B) A person subject to the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901 et seq.).

(7) "Financial exploitation" means:

(A) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or

(B) Any act or omission, including using a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(i) Obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property; or

(ii) Convert money, assets or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property.

(8) "Financial institution" means any depository or non-depository institution licensed and regulated under Title 26 of the D.C. Official Code, and any bank or credit union located in the District of Columbia.
(9) "Insurance producer" means a person required to be licensed in the District to sell, solicit, or negotiate insurance under the Producer Licensing Act of 2002 (D.C. Law 14-264; D.C. Official Code § 31-1131.02).

(10) "Insurer" means any person, firm, association, or corporation duly licensed in the District as an insurance company pursuant to section 5 of chapter II of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1131; D.C. Code § 31-4304), and section 2 of chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1066; D.C. Official Code § 31-2502.02).

(11) "Investment adviser" shall have the same meaning as provided in section 101(17)(A) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(17)(A)).

(12) "Investment adviser representative" has the meaning ascribed in section 101(18) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(18)).

(13) "Regulated firm" means any broker-dealer or investment adviser licensed under the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601 et seq.), or any financial institution, insurance producer, or insurer.

(14) "Qualified individual" means:

(A) Any agent, investment adviser representative or person who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser;

(B) Any person who serves in a supervisory, compliance or legal capacity of a financial institution; or
(C) Any person who serves in a supervisory, compliance or legal capacity of an insurer or a producer.

Sec. 3. Governmental disclosures.

(a) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify the Commissioner and the Chief.

(b) Notification to the Department shall be made on a form and in a manner prescribed by the Commissioner by rule.

Sec. 4. Immunity for governmental disclosures.

A qualified individual who, in good faith and exercising reasonable care, makes a disclosure of information pursuant to section 3 shall be immune from administrative or civil liability that may otherwise arise as a result of such disclosure.

Sec. 5. Third-party disclosures.

(a) Except as provided in subsection (b) of this section, if a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third party previously designated by the eligible adult to receive financial information.

(b) Disclosure of financial exploitation of an eligible adult shall not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

Sec. 6. Immunity for third-party disclosures.
A qualified individual who, in good faith and exercising reasonable care, complies with section 5 shall be immune from any administrative or civil liability that may otherwise arise as a result of a disclosure and notification.

Sec. 7. Delay of disbursements by regulated firms.

(a) Upon meeting the requirements in subsection (b) of this section, a regulated firm may delay a disbursement of funds that are contained in an account:

(1) Of an eligible adult or on which the eligible adult is a beneficiary, including a trust or guardianship account; or

(2) Of a person suspected of perpetrating financial exploitation against an eligible adult.

(b) To delay a disbursement from an account referenced in subsection (a) of this section, the regulated firm must:

(1) Reasonably believe, after initiating an internal review of the requested disbursement and all known facts related to the suspected financial exploitation, that the requested disbursement is intended to or may result in financial exploitation of an eligible adult;

(2) Immediately, but in no event more than 2 business days after the disbursement is requested, provide written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, except that the regulated firm shall not provide notification to any party that is reasonably believed by the regulated firm to have attempted to engage in financial exploitation of the eligible adult;

(3) Immediately, but in no event more than 2 business days after the disbursement is requested, notify the Commissioner and the Chief; and
(4) Diligently conduct its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and report the results of the investigation to the Commissioner and the Chief within 7 business days after the disbursement is requested.

(c) Any disbursement that has been delayed pursuant to this section must be disbursed upon the earlier of:

(1) A determination by the regulated firm that the disbursement will not result in financial exploitation of the eligible adult; or

(2) 15 business days after the date on which the regulated firm first delayed disbursement of the funds, unless either the Commissioner or the Chief requests that the regulated firm extend the delay, in which case the delay shall expire no more than 25 business days after the date on which the regulated firm first delayed disbursement of the funds unless sooner terminated by the Commissioner, the Chief, or an order of a court of competent jurisdiction.

(d) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the Commissioner, the Chief, the regulated firm that initiated the delay under this section, or another interested party.

(e) Each regulated firm shall adopt internal policies, programs, plans, or procedures for delaying disbursements under this section.

(f) A regulated firm may satisfy the requirement in subsection (e) of this section by adopting any standard policies and procedures approved or established by the Commissioner by rule.

Sec. 8. Immunity for delay of disbursements.
A regulated firm that, in good faith and exercising reasonable care, complies with section 
7 shall be immune from any administrative or civil liability that may otherwise arise from a delay 
in a disbursement.

Sec. 9. Records.

(a) A qualified individual shall provide access to or copies of records that are relevant to 
the suspected or attempted financial exploitation of an eligible adult to the Commissioner, the 
Chief, and to law enforcement, either as part of a referral, or upon request of the Commissioner, 
the Chief, or law enforcement pursuant to an investigation. The records may include historical 
records as well as records relating to the most recent transaction or transactions that may 
comprise financial exploitation of an eligible adult. All records made available to agencies under 
this section shall not be considered a public record as defined in section 2 of the District of 
Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. 
Official Code § 2-502(18)).

(b) Nothing in this provision shall limit or otherwise impede the authority of the 
Commissioner to access or examine the books and records of a regulated firm as otherwise 
provided by law.

Sec. 10. Penalties.

A qualified individual who fails to provide notification as required under section 3 is 
subject to a fine of up to $10,000.

Sec. 11. Rulemaking.

The Commissioner may promulgate rules to implement the provisions of this act.

Sec. 12. Fiscal impact statement.

Sec. 13. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.
MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: September 15, 2017


REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on September 13, 2017

Conclusion

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill.

Background

The bill establishes protections for seniors\(^1\) and other vulnerable adults\(^2\) from financial exploitation. Financial exploitation includes any wrongful or unauthorized taking, withholding, or appropriation on the money, assets, or properties of an eligible adult, including the use of a power of attorney to undertake such actions.

The bill requires any qualified employee\(^3\) of a broker-dealer, insurer, investment advisor, or financial institution to report potential financial exploitation to the Commissioner of the Department of Insurance, Securities, and Banking (DISB) and the Chief of the Adult Protective Services Division of the Department of Human Services (DHS) in a manner prescribed by the DISB Commissioner by rule. Qualified individuals who fail to report as required could be subject to penalties of up to $10,000. The bill allows qualified employees to notify a designated third party of

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\(^1\) Seniors are defined as persons over 65 years of age.

\(^2\) Vulnerable adults are adults 18 years of age or older in need of protective services under the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901 et seq.).

\(^3\) Qualified employees are agents, investment advisors, supervisors, compliance personnel, or other legal personnel of firms in the identified industries.
The Honorable Phil Mendelson
FIS: "Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2017," Draft Bill as shared with the Office of Revenue Analysis on September 13, 2017

a senior or vulnerable adult in the event the employee suspects financial exploitation.\(^4\) The bill also allows a firm to delay disbursement of funds when it believes financial exploitation is taking place. The firm must conduct an internal investigation and, within two days of the disbursement request, provide notification to any parties authorized to transact business on the account, the Commissioner, and the Chief. The firm must disburse the funds on the earlier of a completed investigation where no wrongdoing was found or fifteen business days after the disbursement request, unless the Commissioner or a court order requests an extended timeline.

The bill provides all qualified employees and firms with immunity from administrative or civil liability for any disclosures, notifications, or delayed disbursements.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The budgets of DISB and DHS can absorb any costs associated with receiving financial exploitation notifications or disclosures, as well as any required enforcement actions. Although the bill provides for the imposition of fines for violations of the notification requirement, the bill’s reporting requirements are new, and therefore data is insufficient to project any fine revenues.

The bill imposes notification, investigation, and reporting requirements upon employees and firms in the broker-dealer, insurance, investment advisory, and financial institution industries, but any related costs will be borne by the private sector.

\(^4\) Unless such designated individual is suspected of the exploitation
MEMORANDUM

TO: Lolita S. Alston
    Director
    Office of Legislative Support

FROM: Janet M. Robins
      Deputy Attorney General
      Legal Counsel Division

DATE: September 14, 2017

SUBJECT: Legal Sufficiency Review of Draft Bill Entitled the “Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2017”
(AE-17-514-B)

This is to Certify that this Office has reviewed the above-referenced Draft Bill and found it to be legally unobjectionable. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Janet M. Robins