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Senior Investor Protection Laws: Principles for Constructing a Comprehensive Compliance Plan



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- Worked to develop Missouri Senior Savings Protection Act



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Senior Investor Protection Laws

- Increase in Rulemaking & Legislation
 - Federal Senior Safe Act
 - FINRA Rules
 - NASAA Model Legislation
 - 18 states have passed some form, plus MO & WA



Senior Financial Exploitation

- Almost \$3 billion per year
- 1 in 44 cases is ever reported
- Brooke Astor case
 - Grandson sued his dad to remove his dad as legal guardian
 - Son criminally convicted



Infirmities of Aging

- Increasing incidences of disability, diminished capacity, dementia
- Increasing incidence – not every senior
- Recent research suggests financial cognitive capabilities can be one of the first to decline

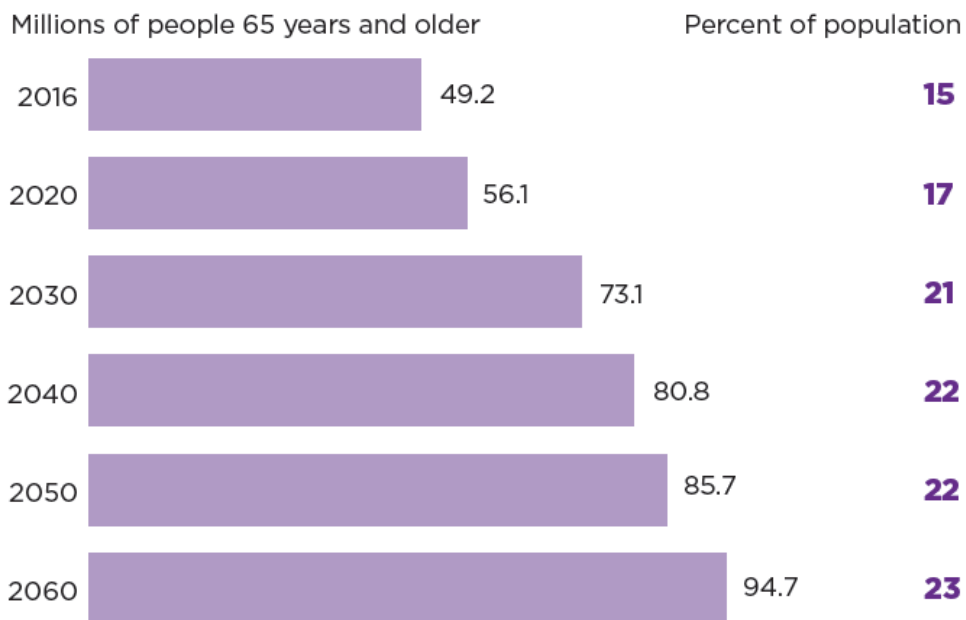


An Aging Population

Figure 1.

Projections of the Older Adult Population: 2020 to 2060

By 2060, nearly one in four Americans is projected to be an older adult.

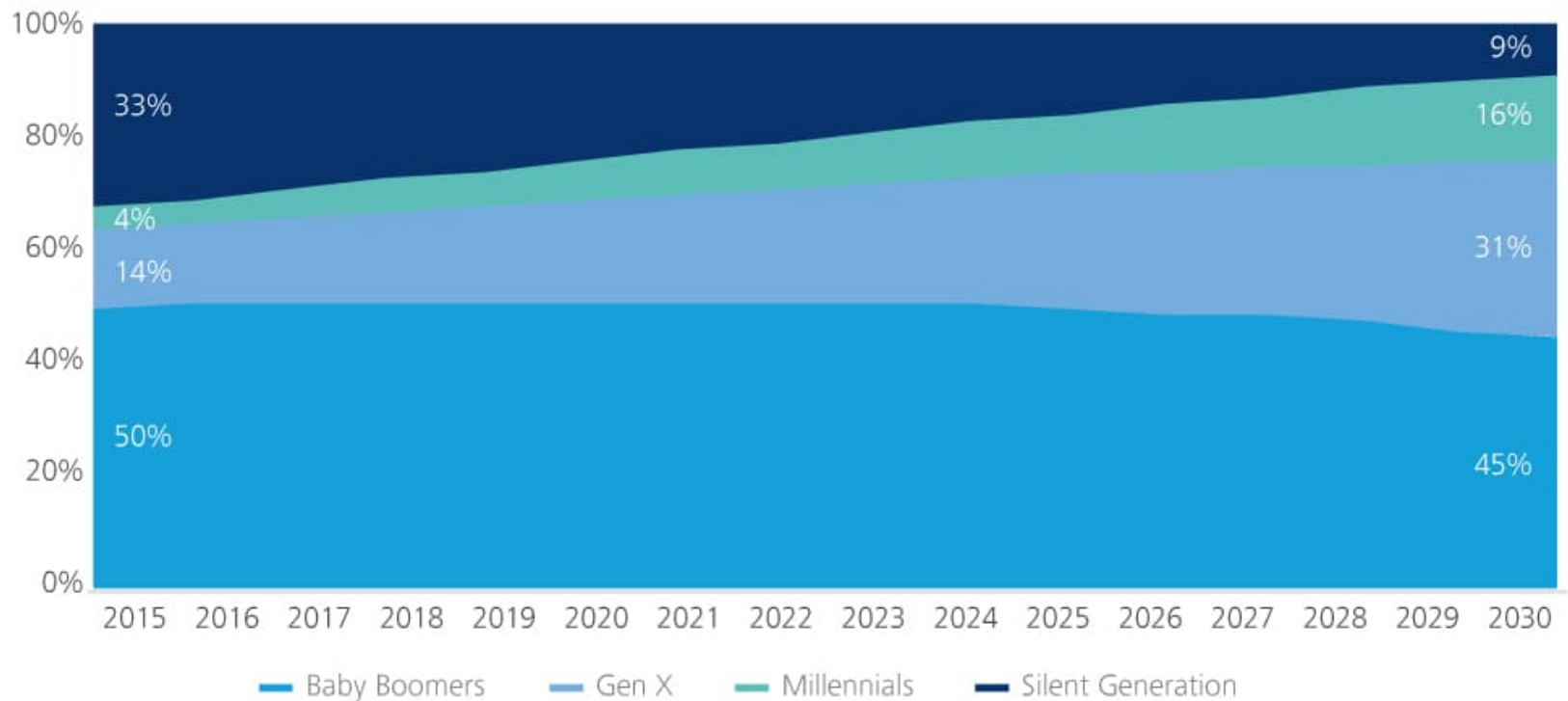


Source: U.S. Census Bureau, 2017 National Population Projections.



Wealth Concentration

Figure 2. Generational share of net household wealth (percent)



Source: Deloitte Center for Financial Services.

Graphic: Deloitte University Press | DUPress.com



Public Policy Responses

- Training
- Government Disclosure
- Family/Trusted Contact Disclosure
- Disbursement/Transaction Holds



Senior Safe Act

- Introduced by Senators Collins and McCaskill
- Section 303 of Economic Growth, Regulatory Relief, and Consumer Protection Act (Senate Bill 2155)
- Immunity for telling government about suspected financial exploitation, provided firm has provided training to employees



Senior Safe Act (Cont'd)

- Civil and administrative immunity for individuals who disclose suspected exploitation of a senior citizen if the individual
 - Served in certain roles within the firm &
 - Made the disclosure in good faith and with reasonable care.
- Civil and administrative immunity for the firm as well for the individual's disclosure if the individual was employed or affiliated with the firm and the firm's employees had been trained.



Senior Safe Act (Cont'd)

- Firm must train
 - Supervisory, compliance, or legal personnel
 - Those who come into contact with senior citizens
 - Those who may review or approve financial documents of a senior citizen.
- The Act was not drafted just to apply to “employees” – Speaks in terms of compliance or legal function, for example.



Senior Safe Act (Cont'd)

- The Training
 - Must cover how to identify and report the suspected exploitation internally and, as appropriate, to government officials or law enforcement authorities, including common signs that indicate the financial exploitation of a senior citizen
 - Discuss the need to protect the privacy and respect the integrity of each individual customer
 - Be appropriate to the job responsibilities of the individual
- Records of the training individuals received must be maintained for examiners



FINRA Rules 4152 & 2165

- Rule 4152 requires firms to “make reasonable efforts to obtain” and update the name of and contact information for a trusted contact.
- Rule 2165 allows a firm to delay disbursing funds or securities if the firm reasonably believes that financial exploitation of certain clients “has occurred, is occurring, has been attempted, or will be attempted.”



NASAA Model Legislation

- The NASAA Model mandates that qualified individuals – registered representatives, investment adviser representatives, and those who serve in a compliance, supervisory, or legal capacity – report suspected financial exploitation to adult protective services and the securities regulator



NASAA Model Legislation

- Similar to FINRA Rule, allows disbursement delays where firm reasonably believes that the requested disbursement may result in financial exploitation
 - Required Disclosures
 - Internal Review
 - Delay expires



State Mandatory Reporter Statutes

- States that mandate reporting not related to NASAA Model
- Generally require everyone to report
- Generally not age-related; tend to be triggered by some kind of disability
- Agencies to report to often different as well



Lots of Change

- Senior Safe Act, FINRA Rule, and NASAA Model all first introduced/published for comment 2015 or later
- Now 18 states have implemented statutes based on the NASAA Model
- Upside: New tools to help protect clients
- Downside: Not perfect uniformity



Considerations in Writing Policies

- Who is Protected
- Training
- Mandatory Reporting
- Third-party reporting / Trusted Contact
- Disbursement Delay
- Concluding Thoughts



Who is Protected

- FINRA / NASAA Model have two categories
 - 65
 - One disability based
- Not all states use 65 (though it is the most frequent)
- 60, 62, 65, 70 all appear in statutes



Training

- Senior Safe Act
- FINRA Rule 2165
- New Mexico – N.M. Stat. § 58-13-D7
- Mandatory Reporting Requirements
- Be careful about anyone you choose not to train



Mandatory Reporting

- Over 20-plus mandates apply to Broker-Dealers and Investment Advisers
- Mandate falls on the individual in some states
- Not all triggered based on senior status; some only on disability
- Variety of entities to report to



Third-Party Disclosures

- Thorny Public Policy Tension
- FINRA Rule 4512
 - disclose information about the customer's account to address possible financial exploitation, to confirm the specifics of the customer's current contact information, health status, or the identity of any legal guardian, executor, trustee or holder of a power of attorney
- Some state statutes go farther



Disbursement/Transaction Delays

- Disbursement vs. Transaction
- Inform those authorized to transact business on the account
- Inform securities administrator and APS unit
- Internal review
- Generally, 15 business days, which may be extended to 25



Concluding Thoughts

- Record Keeping
- Multiple statutes
- Training
- Responsible person/people
- Dual-Registrants



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