Officials Seek Clampdown on Elder Fraud

Growing financial exploitation prompts legislation mandating advisers to report suspected abuse

Donald Chambers backs requiring financial advisers to report suspected fraud involving older people. *PHOTO: AMY STROTH*

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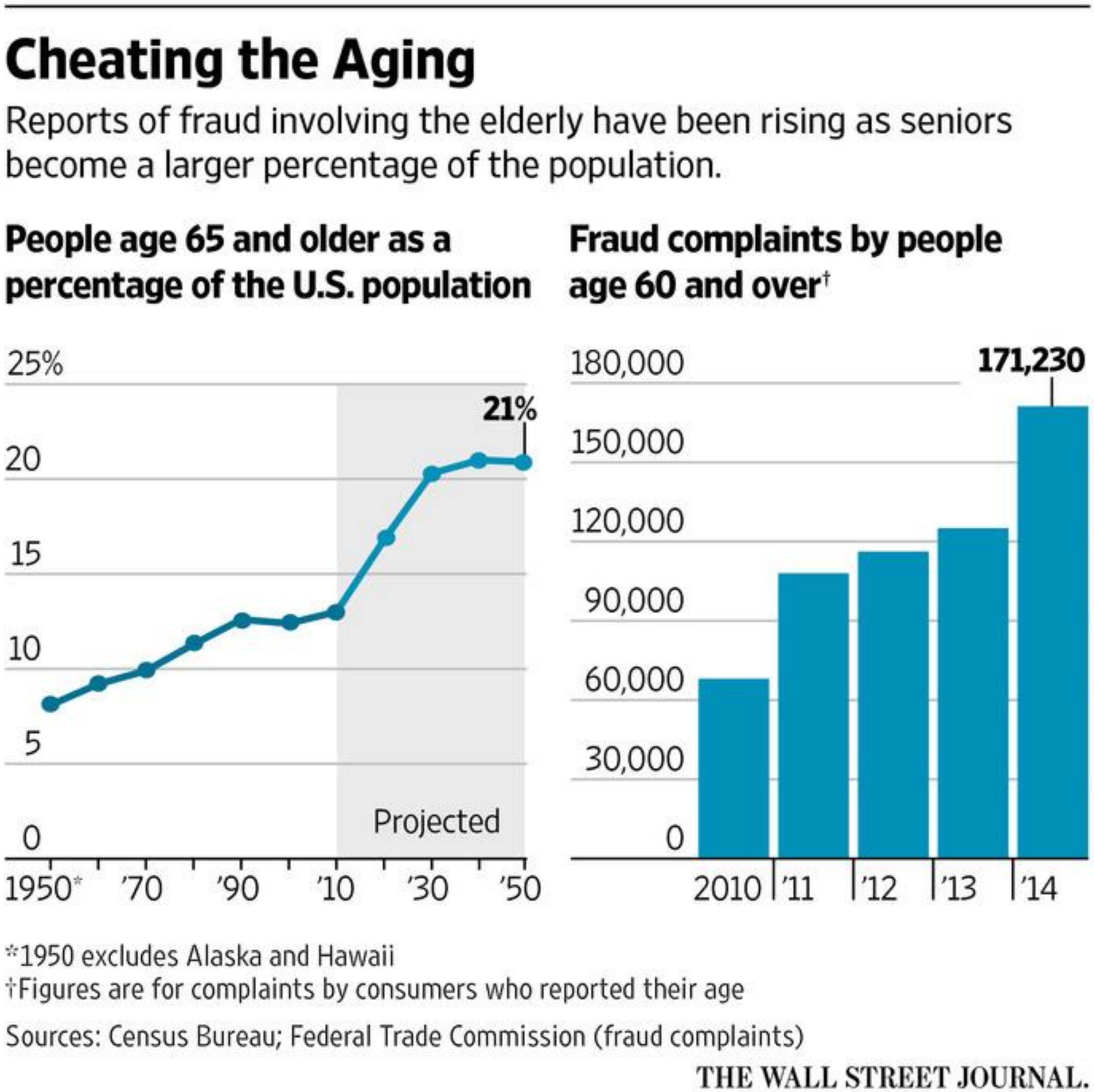
Grappling with growing financial exploitation of the elderly, state officials are pressing for laws that require financial advisers to report suspected “elder fraud” to authorities.

But the mandate faces pushback from the financial industry, which says it could result in a massive

People 60 years and older were involved in 171,230 fraud complaints tracked by the Federal Trade Commission in 2014, more than double the number in 2010, although some of that jump could come from improved reporting.

American retirees are exercising greater control over their finances, given the decline in traditional pension plans. But the complexity of managing and investing savings poses a challenge, particularly as the U.S. population ages, resulting in a greater number of people projected to get dementia. That has opened up avenues for exploitation.

The fraud ranges from sweepstakes scams and bogus investment schemes to dishonest caregivers or family members skimming funds. In some cases, investment advisers or stockbrokers churn accounts through unnecessary trades, resulting in high fees or losses.



Elder financial abuse is expected to "grow dramatically," according to Rick Fleming, head of the Office of the Investor Advocate at the U.S. Securities and Exchange Commission. Older Americans lost at least $2.9 billion to financial abuse in 2010, up 12% in two years, according to Metropolitan Life Insurance Co. **MET -0.57 %**, which tracks issues facing the elderly.

To help curb the problem, a coalition of state securities regulators in September proposed a model state law that would require financial advisers, including brokers at large investment houses and independent advisers, as well as their supervisors, to report suspected elder financial fraud to both a state securities regulator and an adult protective-services agency.

The legislation would mandate prompt reporting by a financial adviser who “reasonably believes that financial exploitation” of an older person “may have occurred, may have been attempted, or is being attempted.”

The bill gives brokers and advisers civil immunity from privacy violations for reporting suspected fraud, and allows them to put a temporary hold on suspicious account disbursements.

Supporters say advisers and brokers are well-positioned to raise early warnings about exploitation that can leave elderly victims with scant money left for necessities and little time to rebuild savings.

“In the long run we’ve got to say the greater good is served by making it mandatory and trying to protect the vast amount of people,” said Joseph Borg, Alabama’s securities commissioner. He plans to introduce such legislation early next year.

But financial-industry trade groups are pushing back against a key part of the North American Securities Administrators Association’s proposal. They say its reporting mandate would overburden state agencies, while some financial advisers worry they could be sued if they miss an abuse case.

Roughly 40% to 50% of all “red flags” about suspicious activity turn out to be false, according to an Oct. 29 letter to NASAA from the Securities Industry and Financial Markets Association, the main Wall Street trade group. A voluntary reporting system would allow firms to check out such reports internally before going to authorities, it said. Some financial firms already have in-house units that monitor for elder confusion or abuse.

Laws requiring professionals such as social workers to report elder abuse are common. Roughly half of the states also mandate elder fraud reporting by certain financial professionals.

But the laws don’t always extend specifically to financial advisers. Kansas’ law doesn’t generally treat brokers as mandatory reporters, according to the state’s securities commissioner. Meanwhile, Ohio’s law requires lawyers to report suspected elder financial exploitation, but not financial advisers.

In New York state, which doesn’t have a mandatory reporting law, only one in 44 cases of elder financial exploitation was reported to authorities in 2008, according to a 2011 study by Cornell University and aging agencies.

“We’re losing valuable time that we could provide that safety net for that elderly individual,“ said Judith Shaw, NASAA’s president and securities administrator in Maine, which lacks a mandatory fraud-reporting law.

That troubles Donald Chambers, 86, a retired University of Kansas professor who manages his investments through a broker but said he may not be far off from having to delegate the task to a family member or his lawyer.

If his broker had any suspicions he was being defrauded, Mr. Chambers said he would feel better knowing that the broker was obliged to bring those hunches to an investigator. It is “simply a wise idea,” he said.

Similarly, Philip Marshall believes mandatory reporting might have helped his late grandmother, Brooke Astor, the New York philanthropist. She was financially exploited by her son, Mr. Marshall’s late father, as she suffered from dementia, a jury found in 2009.

“Certainly there were irregular patterns in terms of financial transactions,” said Mr. Marshall, a university professor and advocate for the prevention of elder financial abuse.

“There is no black eye, no blood, but the truth is, this ends up breaking victims,” said Elizabeth Loewy, the former chief of the elder-abuse unit in the Manhattan District Attorney’s Office.

Every state has adult protective-services agencies to investigate reports of abuse, neglect and exploitation of older adults. But dementia, embarrassment, or reluctance to report family members all play roles in low disclosure rates, said Kathleen Quinn, executive director of the National Adult Protective Services Association, a group for those agencies.

In a 2014 survey by the group, 44% of agency officials said financial institutions were frequently unwilling to provide a client’s records, and 40% reported long delays obtaining records.

The Financial Industry Regulatory Authority, Wall Street’s self-regulator, recently proposed its own rule to allow firms to put temporary holds on suspicious account disbursements, though the proposal doesn’t address mandatory reporting.

Currently, even when financial advisers suspect an aging client is being taken advantage of, many say they are hamstrung by strict rules governing the execution of trades and processing of withdrawals, and worry about violating privacy laws if they report concerns.

The current system, “kind of puts advisers and firms in between a sort of legal rock and hard place,” said Steve Kline, director of state government relations for the National Association of Insurance and Financial Advisors, a professional association. The proposed rules aim to provide clarity.

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