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## The Senior Safe Act – Potential Impact on Investment Advisers and Broker-Dealers That Disclose Suspected Exploitation of Senior Citizens

by Alan P. Goldberg

On May 24, President Donald Trump signed into law S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act (<https://www.congress.gov/bill/115th-congress/senate-bill/2155/text>) (Act), which included the Senior Safe Act of 2017 (SSA) (now Public Law No. 115-174). The inclusion of the SSA is intended to help protect against financial exploitation<sup>1</sup> of senior citizens through the promise of immunity to “covered financial institutions” (CFI) and individuals who disclose suspected financial exploitation to an enumerated “covered agency.” Investment advisers and broker-dealers are CFIs.<sup>2</sup> The Securities and Exchange Commission is a covered agency.<sup>3</sup>

The promise of immunity, including in civil or administrative proceedings, extends to the disclosure of suspected financial exploitation of a senior citizen to a covered agency as long as the CFI has provided requisite training and the report is made by the reporting individual in good faith and with reasonable care.

Though the SSA is intended to curb financial exploitation of seniors, the Act does not mandate any disclosure requirements for the CFI; rather, the legislative intent is designed to encourage a CFI to identify warning signs and common scams to help prevent senior citizens from becoming future victims.

### How to Obtain Immunity Under the SSA

**Individual seeking immunity:** For an individual to receive immunity, he or she must have received requisite training; served as a supervisor or in a compliance or legal function for the CFI or, in the case of a registered representative or investment adviser representative, was affiliated or associated with the CFI; and disclosed in good faith and with reasonable care.

**CFI seeking immunity:** Immunity for a CFI is similar to the requirements for a reporting individual. For a CFI to receive immunity, the reporting individual on behalf of the CFI who made the disclosure to the covered agency must have been employed by the CFI at the time of disclosure, and in the case of a registered representative or investment adviser representative, must have been affiliated or associated with the CFI at the time of the disclosure; and received requisite training before the disclosure to a covered agency.

**Training:** The Act provides that the content of the training – used by either the CFI or provided by a third-party training company selected by the CFI – must:

- be maintained by the CFI and made available to the covered agency with examination authority over the CFI;

- instruct those individuals subject to the program on how to identify and report the suspected financial exploitation of a senior citizen internally and to government officials or law enforcement authorities;
- discuss the need to protect the privacy and integrity of each individual customer of the CFI; and
- be appropriate to the job responsibilities of the individual attending the training session.

Additionally, the training must be provided by the CFI as soon as reasonably practical for current employees and individuals and must be provided for new employees within one year after the date the individual became employed. Finally, the CFI must maintain certain records, including a record of each individual who has completed the training, whether employed or affiliated with the CFI.

The SSA does not preempt state law except to the extent that it provides a greater level of protection against liability to an individual or CFI.

<sup>1</sup> The SSA defines “exploitation,” in part, as the fraudulent or otherwise illegal act or process that “uses the resources of a senior citizen for monetary or personal benefit” or “results in depriving a senior citizen of rightful access to or use of benefits, resources, or assets.”

<sup>2</sup> In addition to investment advisers and broker-dealers, the following entities are deemed CFIs:

1. a credit union;
2. a depository institution;
3. an insurance company;
4. an insurance agency; or
5. a transfer agent.



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<sup>3</sup> In addition to the SEC, covered agencies include:

1. a state financial regulatory agency, including a state securities or law enforcement authority and a state insurance regulator;
2. each of the federal agencies represented in the membership of the Financial Institutions Examination Council established under Section 1004 of the Federal Financial Institutions Examination Council Act of 1978;
3. a securities association registered under Section 15A of the Securities Exchange Act of 1934;
4. a law enforcement agency; or
5. a state or local agency responsible for administering adult protective service laws.