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Senior Designations for Financial Advisers

REDUCING CONSUMER CONFUSION AND RISKS

Consumer Financial Protection Bureau

Message from Richard Cordray

Director of the CFPB

The mission of the Consumer Financial Protection Bureau is to help financial markets work for consumers by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. Our Office of Financial Protection for Older Americans focuses on the consumer financial issues that affect seniors. It is the only federal office devoted exclusively to protecting the financial health of Americans age 62 and over. The Office engages in education and policy initiatives to support sound financial decision-making by older Americans and to protect them against unfair, deceptive, or abusive practices.

The Consumer Bureau is delivering a report to Congress and the U.S. Securities and Exchange Commission, entitled *Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks*, as required by law. Congress directed our Office for Older Americans to make recommendations to help facilitate and improve the ability of older consumers to sort out and assess the numerous and varying "senior designation" titles that financial advisers use to market their services.

These designations imply special training and experience in providing financial advice to seniors. If well grounded, they can provide a sound basis for recommending financial products to help consumers prepare for and maintain a secure retirement. In preparing the enclosed report, however, the Office for Older Americans heard frequently from industry representatives, state and federal regulators, and consumer organizations that older consumers may be confused or misled by financial advisers touting senior designations. This problem is particularly dangerous to the financial health of older Americans, who often have little capacity to absorb and recover from financial losses.

The enclosed report contains the Consumer Bureau's findings and recommendations. It also discusses a series of approaches that policymakers and regulators at the federal and state level could consider to address these critical consumer protection issues and help seniors navigate the complex financial marketplace. The report also reflects the Office for Older American's efforts to work with state and federal agencies to help ensure that seniors have the information they need to make sound financial decisions.

We recognize the critical importance of protecting the financial security of our nation's seniors. And so we will continue working to help seniors improve their economic security, as well as to make consumer financial markets work better for all consumers.

Sincerely,

Richard Cordray

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Executive summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act directs the Office of Financial Protection for Older Americans in the Consumer Financial Protection Bureau (CFPB or Bureau) to make recommendations to Congress and the Securities and Exchange Commission (SEC) on the best practices for (i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors; (ii) methods in which a senior can identify the financial adviser most appropriate for the senior's needs; and (iii) methods in which a senior can verify a financial adviser's credentials.

> The use of senior designations is extremely confusing for consumers.

In recent years, federal and state regulators, financial industry representatives and consumer groups have been reporting that some financial advisers with "senior designations" are targeting older consumers and selling them inappropriate and sometimes fraudulent financial products and services. Financial advisers often use "senior designations" to imply to consumers that they have advanced training or expertise in the financial needs of older consumers. A particular problem associated with senior designations is the participation of some designees in "free lunch seminars." These events are often marketed as educational seminars, when in fact they are staged sales events to sell investment and other financial products.

In preparing this report, the Bureau found that the use of senior designations is extremely confusing for consumers. There are more than 50 different senior designations currently used in today's marketplace with senior designees recommending or selling a variety of products, such as securities, investment opportunities, financial products, and insurance products like annuities and long-term care insurance.

The titles and acronyms for the different designations are often similar or nearly identical to other designations, making it difficult for consumers to distinguish between different designations' qualifications or legitimacy. Every senior designation is different, and there is a very wide range in their characteristics. For example, there are differences regarding training requirements, qualifying examinations, continuing education requirements, oversight by the conferring organization, complaint procedures for aggrieved clients, and accreditation. Moreover, the presence, depth and rigor of these components vary widely among designations.

Individuals holding senior designations are subject to different federal and state regulatory regimes, adding an additional layer of complexity in comparing these designations. Depending on the product or service provided, a senior designee could be regulated by the SEC, Financial Industry Regulatory Authority (FINRA), a state securities or insurance regulator, state boards of accountancy, a federal or state prudential banking regulator, the Federal Trade Commission (FTC), and now the Bureau.

In this report, the Bureau's Office for Older Americans outlines observations and policy recommendations for consideration by Congress' and the SEC. The recommendations also refer to other policymakers, particularly at the state level, because they have primary authority over many senior designees and, therefore, are well positioned to improve the marketplace for consumers in this area.

The recommendations in this report seek to reduce consumer confusion and protect consumers by improving the: (1) dissemination of information and consumer education around senior designations; (2) standards for the acquisition of senior designations; (3) standards for senior designee conduct; and (4) enforcement related to the misuse of senior designations. The Bureau believes that adoption of these recommendations will help older consumers avoid financial advisers who would misuse their designations to sell inappropriate investment and financial products.

Key observations include the following:

- **Consumers are likely to be confused by the more than 50 senior designations used by financial advisers.** Senior designations vary widely in terms of training required, from rigorous college-level coursework to weekend seminars. Consumers have no simple, clear means to distinguish among these designations.

- **The financial services industry is complex and its professionals use multiple overlapping titles.** Many consumers do not understand the basic differences between financial professions and the services they provide. The large number of similar-sounding senior designations creates additional, undue complexity for consumers shopping for senior expertise in financial planning and investing.

- **Rigorous training standards for the approved use of senior designations would reduce risks to consumers.** If state and federal regulators imposed rigorous criteria for acquiring senior designations, including specific standards for qualifying prerequisites, education, training, and accreditation, consumers would likely encounter fewer designations, and those offered would require a consistent and a high- level of training and oversight.

- **Rigorous standards of conduct for those using senior designations would reduce risks to consumers.** If state and federal regulators set minimum standards for the conduct of senior designation holders, consumers would experience a more predictable, consumer-oriented market when shopping for senior financial expertise.

- **Increased enforcement of existing laws and supervision of senior designees will help to deter misleading and fraudulent practices and protect older consumers.** Consistent enforcement and supervision is needed to ensure that standards for senior designees' conduct and qualifications are upheld.

1. Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 directs the Office of Financial Protection for Older Americans (Office for Older Americans) in the Consumer Financial Protection Bureau (CFPB or Bureau) to make recommendations to Congress and the Securities and Exchange Commission (SEC or the Commission) on the best practices for (i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors; (ii) methods in which a senior can identify the financial adviser most appropriate for the senior's needs; and (iii) methods in which a senior can verify a financial adviser's credentials.[1]

As consumers move toward retirement, they often face complex financial decisions. Making sound decisions depends heavily on the individual's and family's particular situation. Due to a multitude of factors, including insufficient retirement savings and little time to recover from financial losses, appropriate financial decisions are critically important for older consumers. The vast majority of older consumers cannot afford to suffer the financial losses that can result from inappropriate products or services, or worse, fraud or exploitation.

There is a bewildering array of senior designations used by financial advisers claiming an expertise in the financial issues and choices affecting older Americans. A financial adviser acquires a "senior designation" to signify a specialized expertise in advising older consumers.

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[1] *See* 12 U.S.C. § 5493 (g)(3)(C). The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act or Act) established the Office for Older Americans within the CFPB. 12 U.S.C. § 5493(g)(1). The functions of the Office include, among other things, developing goals for programs that "help seniors recognize warning signs of unfair, deceptive, or abusive practices, [and] protect themselves from such practices." 12 U.S.C. § 5493(g)(3)(A)(i).

Although many financial advisers with senior designations are reputable professionals, the Bureau found that many designations often confuse and sometimes mislead older consumers. Unfortunately, older consumers are too often targeted by financial services professionals with senior designations who are selling products or services that may not be appropriate.

It is within this context that Congress directed the Office for Older Americans to make recommendations related to the legitimacy of senior designations, the selection of the most appropriate financial adviser, and the verification of a financial adviser's credentials.

2. Background

There are more than 50 different senior designations currently used by financial advisers in today's marketplace.[2] Senior designation credentials, which are voluntarily acquired from private conferring entities, generally imply that the financial adviser holding the designation has advanced training or expertise in the financial needs of older consumers who are planning for retirement or who are already retired.[3] However, the Bureau found that the scope and content of the required training, qualifying examinations, continuing education, ethical standards, and oversight associated with a particular designation varies widely.

The professionals who typically acquire these designations include investment advisers, broker-dealers, accountants, insurance agents, and financial planners and other general financial professionals.[4] Different senior designees may recommend or sell a variety of products, such as securities, investment opportunities, financial products, and insurance products like annuities and long-term care insurance. As discussed below, these professionals are not all subject to the same regulatory regimes.

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[2] The Bureau reviewed senior specific designations as well as general designations that professionals frequently use to market their services to seniors. *See, e.g.,* Financial Industry Regulatory Authority (FINRA), *Understanding Professional Designations*, http://apps.finra.org/DataDirectory/1/prodesignations.aspx (last visited Mar. 18, 2013). The term "senior designation" as used in this report encompasses both types of designations.

[3] See FINRA*, Senior Designations,* http://www.finra.org/Industry/Issues/Seniors/P124734 (last visited Mar. 18, 2013).

[4] For a general description of each type of professional, see FINRA, *Selecting Investment Professionals: Learn About Different Types of Investment Professionals,* http://www.finra.org/Investors/SmartInvesting/GettingStarted/SelectingInvestmentProfessional/P117278 (last visited Mar. 18, 2013).

Senior designees typically use their designation's acronym or title on their business cards or marketing materials. The Bureau found in its review of the field that the titles and acronyms for the different designations are often similar or, in some cases, nearly identical to other designations, making it extremely difficult for consumers to distinguish between different designations' qualifications or legitimacy.

For example, Certified Estate Planners (CEP), Chartered Estate Planning Practitioners (CEPP), and Certified Estate and Trust Specialists (CES) are different designations conferred by different organizations, with different training requirements, yet the similarity of these titles may lead consumers to believe each possess similar qualifications and expertise.[5]

2.1 Reported problems with senior designations

This section describes some of the reports of senior designees engaging in improper and even fraudulent conduct. Because studies indicate that older consumers may be more likely to rely on the recommendations of or advice from a professional using a senior designation,[6] reports of misconduct are a serious concern.

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[5] *See* Nat'l Inst. of Certified Estate Planners, http://www.nicep.org/ (last visited Mar. 18, 2013); Chart'd Estate Planning Practitioner Prof'l Desig'n Prog., http://www.cepp-epi.com/ (last visited Mar. 18, 2013); Inst. of Bus. & Fin., http://icfs.com/ (last visited Mar. 18, 2013).

[6] *See e.g.,* FINRA, *Senior Fraud Risk Survey* (2007), *available at* http://www.finra.org/web/groups/sai/@sai/documents/sai_original_content/p036702.pdf (finding that 46% of respondents indicated that a financial adviser's senior-specific accreditation made them more likely to listen to the professional's advice).

2.1.1 Results of the SEC's "Seniors Summits"

The SEC led three "Seniors Summits" between 2006 and 2008 to raise awareness and to coordinate multi-regulator efforts to address these issues.[7] Summit participants included the National Association of Securities Dealers (NASD) and NYSE Regulation, Inc. (now consolidated as FINRA), the North American Securities Administrators Association (NASAA), academics, and AARP.

> It is critical that the marketplace for financial advisers is transparent, understandable, and fair.

Following the first "Seniors Summit," the SEC, NASAA and FINRA launched a yearlong coordinated securities compliance examination sweep of 110 firms that were offering free lunch sales seminars.[8] The examinations found that the seminars frequently targeted seniors, and had titles such as "Senior Financial Survival Seminar." The sweeps found that the advertising for the seminars often focused on the expertise of the financial adviser, some of which included the adviser's senior designation(s), in ways that could be misleading.[9] Specifically, the examination found that

> individuals presenting seminars called themselves a "Certified Senior Adviser," or "Elder Care Asset Protection Specialist" or "Chartered Retirement Planning Counselor"—terms that suggested that the financial professional has a credential indicating specialized training or is certified from a regulatory authority, when in fact there is no regulatory qualification or registration that recognizes such expertise.[10]

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[7] *See* SEC, *Third Annual Seniors Summit* (Sept. 22, 2008), http://www.sec.gov/investor/seniors/ss3.htm; *see also* SEC, *Spotlight On: Seniors Summit*, http://www.sec.gov/spotlight/seniors/seniors_summit.htm (last updated Sept. 18, 2007).

[8] See SEC, NASAA, FINRA, Protecting Senior Investors: Report of Examinations of Securities Firms Providing "Free Lunch" Sales Seminars (Sept. 2007), http://www.sec.gov/spotlight/seniors/freelunchreport.pdf.

[9] *Id.* at 15.

[10] *Id.*

During the sweeps, the regulators found that more than half of the examined firms were using sales or advertising that may have been misleading. In addition, regulators found indications of unsuitable investment recommendations in nearly one-fourth of seminars examined.[11] Thirteen percent of firms may have been engaging in potentially fraudulent practices, such as serious misrepresentations of risk and return, liquidation of accounts without the customer's knowledge or consent, and sales of fictitious investments.

The report also found that many of the firms advertised seminars as "educational" or "workshops," when the primary goal was sales. As SEC Chairman Cox noted:

> What we are increasingly finding through our examination sweeps of investment advisers and brokers who market their wares to seniors is that the fraud artists and swindlers among them who prey on older investors often have the same MO. They call themselves "Senior Experts" in order to gain the victim's trust. They use fancy designations, such as "Certified Senior Investment Planner," or "Registered Senior Investment Adviser" to give the impression that they have older investors' best interests at heart. But all too often these are just clever marketing ploys to bait the hook so that they can reel in another sucker. They sound like genuine designations that require months or years of study and rigorous examinations. But in reality, they may be issued by some fly by-night operator on the Internet, or they might be the pure invention of the broker or the investment adviser.[12]

The misleading tenor of the advertisements, combined with use of the senior designations, the report noted, gave the false impression that the seminar would be unbiased and based on special

[11] Unsuitable recommendations included recommending a risky investment to an investor with a "conservative" investment objective, or recommending an illiquid investment to an investor with a short-term need for cash. *Id.* at 4-5.

[12] *Advising Seniors About Their Money: Who Is Qualified – And Who Is Not*?: Hearing Before the S. Special Comm. on Aging, 110th Cong. 11-12 (2007) (statement of Christopher Cox, Chairman, SEC).

expertise to serve the financial well-being and needs of the senior attendee, leaving seniors especially vulnerable to aggressive marketing tactics.[13]

2.1.2 State regulator experience: Massachusetts Securities Division

State regulators have been identifying consumer protection concerns in connection with the use of senior designations and related senior sales practices since at least 2003.[14] Massachusetts was the first state to enact regulations to address the problem of fraudulent and misleading use of senior designations.[15] The Massachusetts Securities Division (MSD or Division) in 2007 adopted regulations after finding a marked increase in the use of various designations and purported credentials potentially targeting senior citizens by, among others, broker-dealer agents and investment adviser representatives.[16]

The MSD found:

> many instances of a purported senior specialist using credentials or professional designations, as well as other marketing tools, to give seniors the impression that he or she is acting as their unbiased, knowledgeable and independent adviser when the real objective is to convince them to sell financial assets in order to purchase a product the specialist offers.[17]

The MSD pursued enforcement actions against insurance salespersons, who masqueraded as unbiased advisers to seniors, and

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[13] See SEC, NASAA, FINRA, *supra* note 8.

[14] See, e.g., Mass. Sec. Div., Discussion of Reasons for, and Objectives of, New Regulations Regarding Use of Senior Designations 1 (2007), http://www.sec.state.ma.us/sct/sctpropreg/adminrec.pdf.

[15] 950 Mass. Code Regs. 12.204(2)(i) (2007); 950 Mass. Code Regs. 12.205(9)(c)(15) (2007), *available at* http://www.sec.state.ma.us/sct/sctpropreg/propreg.htm.

[16] Mass. Sec. Div., *supra* note 14.

[17] *See id.* at 1.

> convinced seniors to sell existing securities and other assets in order to fund the purchase of high-commission equity-indexed annuities and other annuities and insurance products, often without regard to suitability to the particular client's age, tax situation or cash flow needs ….
>
> [Further, the adviser's] explanation often deemphasizes or entirely skips the unattractive features of the instrument, such as lock-up periods and surrender fees.[18]

In one case, MSD found that an insurance agent prepared a letter for one of his elderly clients to sign and send to her financial adviser that stated, "I am presently making some life changes and I am going to be working with a retirement specialist. He is well known and fully accredited to work with seniors." The agent convinced the senior to sell her securities and other assets to fund the purchase of expensive and unsuitable insurance products. The client stated that the agent's designation was "instrumental" in her decision to purchase the annuities.[19]

In a separate regulatory enforcement action the MSD charged that senior designees:

> used such specious titles as "Certified Elder Planning Specialists" (CEPs) to mislead the elderly and disguise the fact that associates were simply insurance salesman. . . . Respondents conducted 'Senior Financial Survival Workshops' as part of an unethical and dishonest scheme to deceive, coerce, and frighten the elderly into purchasing annuities.[20]

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[18] *See id.* at 2, 8. A lock-up period is a period of time during which the investor is prohibited from accessing the funds invested. *See, e.g.,* SEC, *Structured Notes with Principal Protection: Note the Terms of Your Investment* (2011), http://investor.gov/news-alerts/investor-bulletins/structured-notes-principal-protection-note-terms-your-investment (last visited Mar. 20, 2013). A surrender charge is a charge for withdrawing money from a variable annuity within a certain period of time, like the first six or seven years of the investment. The charge declines over time until there is no longer a charge (*e.g.,* 7% in year 1, 6% in year 2). *See* SEC, *Glossary: Surrender Charge*, http://investor.gov/glossary/glossary_terms/surrender-charge (last visited Mar. 20, 2013).

[19] Mass. Sec. Div., *supra* note 14.

[20] *Id.* at 1-2.

The MSD noted that “the requirements to obtain professional designations, and the monitoring of people who have obtained those designations, can vary greatly.”[21] The MSD found that seniors were influenced by senior designations, without understanding the designations’ underlying training requirements.[22] In response, Massachusetts adopted rules making it a “dishonest and unethical” business practice to use a senior designation unless the designation has been accredited by an accreditation organization recognized by the Commonwealth.[23]

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[21] *Id.* at 5.

[22] *Id.* at 1-2.

[23] 950 Mass. Code Regs. 12.204(2)(i) (2007); 950 Mass. Code Regs. 12.205(9)(c)(15) (2007), *available at* http://www.sec.state.ma.us/sct/sctpropreg/propreg.htm.

3. Challenges and concerns facing older consumers

The number of older people in the U.S. is increasing dramatically now that the baby boomers (those born between 1946 and 1964) started turning 65 in 2011. The older population in 2030 is projected to be twice as large as in 2000, growing from 35 million to 72 million.[24] As the number of Americans reaching retirement age increases sharply in coming decades, they are expected to confront an increasing variety of complex and difficult financial decisions. Consumers who are approaching retirement with accumulated assets or the expectation of retirement income may be seeking to make strategic investment and lifestyle choices, such as liquidating certain assets or downsizing their family homes. For those who are approaching retirement, how they choose to invest their assets is critically important to their future. These decisions often determine the quality of a senior's life at a time when, for most older Americans, there is a reduction in income.

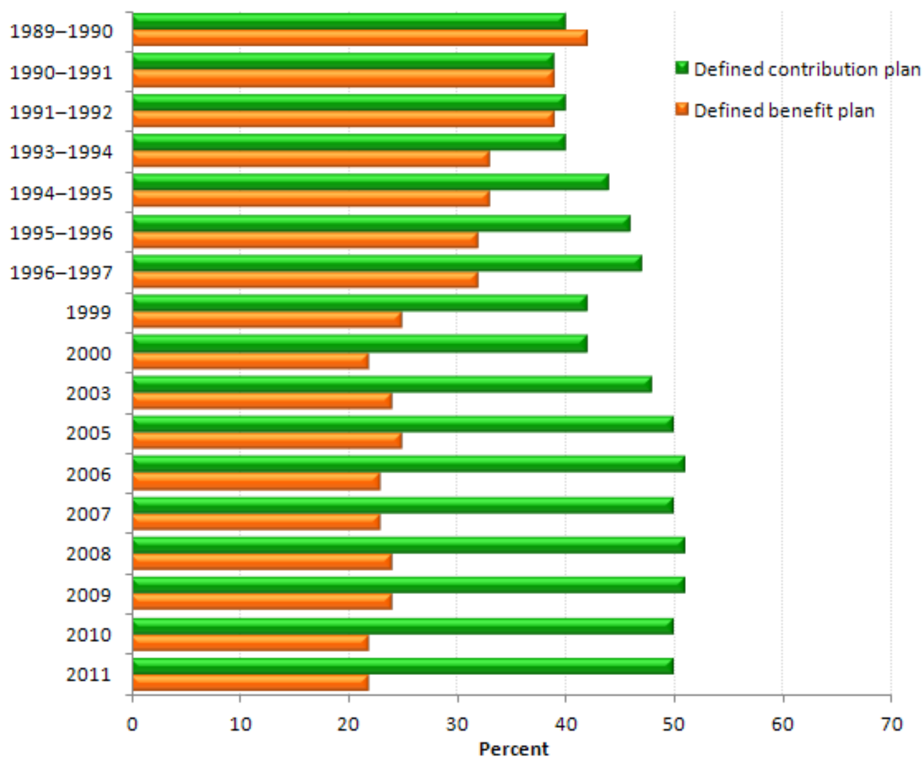
Notably, an increasing number of consumers must plan their own retirement investments and may turn to professionals for retirement guidance and advice.[25] This is due in part to the decline in the percentage of workers covered by traditional defined benefit pension plans that pay a lifetime annuity and the increase in the percentage of employees with defined contribution

[24] *See* Federal Interagency Forum on Aging, *Older Americans 2012: Key Indicators of Well-Being* (2012), http://www.agingstats.gov/Main_Site/Data/2012_Documents/Population.aspx.

[25] *See, e.g.,* Barbara A. Butrica, et al., *The Disappearing Defined Benefit Pension and Its Potential Impact on the Retirement Incomes of Baby Boomers*, 69 Soc. Sec. Bulletin 1 (2009), *available at* http://www.ssa.gov/policy/docs/ssb/v69n3/v69n3p1.html; U.S. Dep't of Labor, Changing Landscape of Employment-based Retirement Benefits (2011), *available at* http://www.bls.gov/opub/cwc/cm20110927ar01p1.htm (finding that as of 2011, 50% of private industry workers have a defined contribution retirement account, compared to 22% of private industry workers who have a defined benefit account).

accounts, which the employees own and control.[26] Specifically, employees in defined contribution plans who are required to direct their own investments must consider the investment objectives, the risk and return characteristics, and the long-term performance of the plans' options.[27] Therefore, given the data that show an increasing percentage of workers will likely have to face complex investment decisions, it is critical that the marketplace for financial advisers is transparent, understandable, and fair.[28]

Chart 1. Percent of full-time employees participating in defined contribution and defined benefit plans, private industry, 1989–2011



Source: U.S. Bureau of Labor Statistics, National Compensation Survey

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[26] *See, e.g.*, Butrica, et al., *supra* note 25, at 1 (describing defined contribution plans as "an investment account established and often subsidized by employers, but owned and controlled by employees.").

[27] *See* Dep't of Labor, *A Look at 401(k) Plan Fees* (revised Oct. 2010), *available at* http://www.dol.gov/ebsa/publications/401k_employee.html.

[28] See Dep't of Labor, *Changing Landscape*, *supra* note 25 (stating that "[r]ecent data suggest that the [percentage of workers in defined benefit plans] may continue to decline, as 1 in 4 participants in private industry defined benefit plans are in plans that have imposed some type of freeze.").

This is especially true in light of recent findings that older consumers do not have a good grasp on managing investments. One study found that despite having made many financial decisions over their lifetimes, older people were unfamiliar with asset pricing, risk diversification, portfolio choice, and investment fees.[29] Employees and retirees are increasingly being asked to take on tasks requiring financial sophistication, including making saving and investment choices, yet they often lack the requisite financial capabilities.[30] Thus, older consumers are likely to increasingly turn to professional financial advisers for recommendations and advice.

Many Americans also appear to be facing a serious shortage in retirement savings. According to the Employee Benefit Research Institute 2012 Retirement Confidence Survey, while two-thirds of all workers surveyed reported having saved money for retirement, only 35 percent of workers who earn less than $35,000 per year reported having done so.[31] Moreover, 60 percent of workers surveyed "report[ed] having less than $25,000 in total savings and investments (excluding their home and pension), including 30 percent who have less than $1,000 in savings."[32]

An analysis of 2010 U.S. Census data shows that 75% of Americans age 50-64 without defined benefit retirement plans have annual incomes below $52,201; this group has an average retirement account balance of $26,395.[33]

In addition to insufficient or limited retirement savings, older adults, including near retirees, generally have little time and fewer resources to enable them to recoup lost savings.[34] Some may

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[29] Annamaria Lusardi, Olivia S. Mitchell & Vilsa Curto, *Financial Sophistication in the Older Population*, Wharton School Research Paper No. 25, 2012, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2064440.

[30] *Id.*

[31] Employee Benefit Research Institute, *2012 Retirement Confidence Survey*—2012 RCS Fact Sheet #3 (2012), http://www.ebri.org/pdf/surveys/rcs/2012/fs-03-rcs-12-fs3-saving.pdf.

[32] *Id.* at 2.

[33] Joelle Saad-Lessler & Teresa Ghilarducci, *Retirement Account Balances by Income: Even the Highest Earners Don't Have Enough,* The New School (2012), *available at* http://www.economicpolicyresearch.org/guaranteeing-retirement-income/528-retirement-account-balances-by-income-even-the-highest-earners-dont-have-enough.html.

have an option to rejoin the workforce, but many, if not most, do not. Catastrophic financial losses can undermine the health of older Americans and their ability to support or care for themselves.[35]

For these reasons, the accuracy and credibility of the information guiding older consumers' financial and investment decisions is more critical now than ever.

3.1 Older consumers are disproportionately vulnerable to investment deception and fraud

People 60 years and older make up 15% of the population but are estimated to account for 30% of investment fraud victims.[36] The disproportionate percentage of older victims of investment fraud is attributable to at least two causes.

First, many older consumers are attractive targets for the marketing of various financial products due to their higher household wealth, such as savings for retirement, inheritance, accumulated home equity, or other assets. The net worth of U.S. households age 65+ was approximately $18 trillion in 2009.[37] Unfortunately, these

> People 60 years and older make up 15% of the population but are estimated to account for 30% of investment fraud victims.

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[34] Robert E. Roush, et al., *Why Clinicians Need to Know about the Elder Investment Fraud and Financial Exploitation Program*, 36 Generations (Issue No. 2, Summer 2012), at 94-97, *available at* http://generations.metapress.com/content/k87244298281/?sortorder=asc&p_o=10.

[35] U.S. Government Accountability Office, GAO 13-110, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation* (2012), http://www.gao.gov/assets/660/650074.pdf.

[36] *See* Karla Pak & Doug Shadel, AARP Foundation, *National Fraud Victim Study* 23-26 (2011), http://assets.aarp.org/rgcenter/econ/fraud-victims-11.pdf.

[37] SEC, NASAA, FINRA, *supra* note 8 (observing that in 2006, 75% of the nation's consumer assets were held by households headed by someone who is 50 years or older).

characteristics can also make older Americans more attractive targets for fraud and deception. In its victim profiling research, AARP found that the mean age for investment fraud victims was 69 years old.[38]

Second, as individuals grow older, they are more likely to experience cognitive decline, which can impair their capacity to manage their finances. Financial capacity is often understood as "the capacity to manage money and financial assets in ways that meet a person's needs and which are consistent with his/her values and self-interest."[39] Financial capacity encompasses such core skills as identifying and counting money, understanding debt and loans, paying bills, and maintaining judgment to act prudently and avoid financial exploitation.

Financial capacity is one of the first abilities to decline as cognitive impairment and early dementia encroach, yet older people, their families and others with whom they interact are frequently unaware that these deficits are developing.[40]

The increased possibility of cognitive impairment in the senior population compounds existing challenges in educating seniors about how to select and verify the legitimacy of financial advisers and the financial products and services they offer.

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[38] These victims also tended to be male, better educated and relatively wealthy. *See* Pak & Shadel, *supra* note 36, at 23-26 (2011), http://assets.aarp.org/rgcenter/econ/fraud-victims-11.pdf.

[39] Daniel C. Marson, Katina Hebert and Andrea C. Solomon, *Assessing Civil Competencies in Older Adults with Dementia: Consent Capacity, Financial Capacity, and Testamentary Capacity, in Forensic Neuropsychology: A Scientific Approach* 401-37 (Glenn G. Larrabee ed., 2d ed. 2011).

[40] K.L Triebel et al., *Declining Financial Capacity in Mild Cognitive Impairment*, 73 Neurology 932 (2009).

4. Confusing characteristics of senior designations

4.1 Training requirements for and conferring organization oversight over senior designees vary widely

The distinguishing components among most senior designations include training requirements, qualifying examinations, continuing education requirements, oversight by the conferring organization, complaint procedures for aggrieved clients, and accreditation. The presence, depth and rigor of these components vary widely among different designations.

Entities that confer senior designations include higher education institutions, trade or professional associations, non-profit organizations, and for-profit companies.[41] Some designations require specialized training through an accredited professional program of study

[41] *See e.g.,* CPF Board (non-profit), http://www.cfp.net/, The American College (higher education institution), http://www.theamericancollege.edu/, and The Society of Certified Senior Advisers (for-profit entity), http://www.csa.us/. These entities generally offer training based on a curriculum and exams to obtain a designation, continuing education classes to maintain the designation, and advertising tools to help designees market their designation to clients. The entities generally claim that a designation will increase the designee's expertise in specified or general subject areas, and earning potential.

while others use an unaccredited curriculum.[42] Some designations require candidates to satisfy prerequisites or hold other professional licenses and fulfill continuing education requirements, while others have no such requirements.[43]

Despite these numerous differences, many designations have names and acronyms that are nearly identical or imply similar qualifications. While conferring organizations often provide general descriptions of the designations they confer, these descriptions often do not include standardized terms or metrics making it nearly impossible for senior investors to compare designations.

The lack of clarity can exist even where some criteria might immediately appear standardized. For example, accreditation is an important step in the development of credentialing and educational programs. The accreditation process uses an impartial third party to evaluate a program against defined standards. Accreditation evaluators test examination procedures for bias and fairness. Evaluators look at whether the training procedures support the competencies defined by the program. Third party oversight allows organizations to demonstrate to professional peers and to the public that their program(s) have met the accepted standards set by the accreditor.

Nonetheless, accreditation in the senior designation field does not indicate a minimum level of competencies or qualifications. Rather, accreditation ensures that a designation's training and testing protocols are suitable for the competencies identified by the designation.[44] Even though accreditation is an important accountability mechanism, the legitimacy and value of a designation is highly contingent on the designation, its objectives and the specific training and

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[42] *See* Joyce A. Rogers (AARP), Comment, *Request for Information Regarding Senior Financial Exploitation,* 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-0917; Laurence Barton (The American College), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-1000. (noting "some designations require a qualifying examination while others may require that an applicant merely pay a fee to the conferring organization").

[43] See AARP, *Preventing the Misuse of Senior Designations* (2010), http://assets.aarp.org/rgcenter/ppi/cons-prot/i40-senior.pdf.

[44] Institute for Credentialing Excellence, http://www.credentialingexcellence.org/p/cm/ld/fid=81 (last visited Apr. 2, 2013).

exam requirements it imposes. The fact that a senior designation is conferred by an accredited organization does not guarantee that financial advisers who acquire the designation possess the necessary skills and competencies to provide financial advice to older consumers.

The following descriptions and charts illustrate key differences that exist across designations and some of the complexity inherent in attempting to compare designations.

For example, an Accredited Retirement Adviser (ARA) is an exam-only designation that does not require applicants to complete a defined course of study, or demonstrate previous professional experience. Instead, students may purchase a study aid before taking an exam. Though the ARA's conferring organization offers accreditation for a different designation for accounting, the ARA designation is not accredited.[45] Therefore, the 100-question, multiple-choice examination has not been evaluated against third party accreditation standards to ensure that competencies are being effectively tested. The ARA does require designees to receive 72 hours of continuing education every three years. The organization's website is unclear whether it is possible to file a complaint against a designee.[46]

An Accredited Estate Planner (AEP) candidate (1) must be an attorney, accountant, insurance professional, financial planner, or trust officer; (2) must be in good professional standing and not subject to disciplinary action; and (3) must have a minimum of five years' experience in estate planning in their profession.[47] The training requirements include two graduate level courses offered by an accredited higher education graduate program as part of a master's or

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[45] Accreditation Council for Accountancy and Taxation, http://connect.nsacct.org/ACAT/About1/AboutACAT (last visited Apr. 2, 2013).

[46] Accreditation Council for Accountancy and Taxation, http://www.acatcredentials.org/About1/ContactUs (last visited Apr. 2, 2013).

[47] National Association of Estate Planners & Councils (NAEPC), http://www.naepc.org/designations/estate-planners (last visited Apr. 2, 2013). To be eligible for the AEP designation, the applicant must be currently licensed to practice law as an attorney (J.D.) or as a Certified Public Accountant (CPA), or currently designated as a Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), or Certified Trust & Financial Advisor (CTFA), in any jurisdiction of the U.S.

doctoral degree. The conferring organization provides a link to consumer complaint procedures on the front page of its website.[48]

To illustrate the variety of training requirements and quality controls among senior designations, the tables below compare four important criteria among eight senior designation programs.[49]

TABLE 1: COURSEWORK REQUIRED BY EIGHT SENIOR DESIGNATION PROGRAMS

SENIOR DESIGNATION	REQUIRED COURSEWORK
Accredited Retirement Advisor (ARA)	None
Accredited Retirement Plan Consultant (ARPC)	None
Certified Senior Advisor (CSA)	Three-day training course
Certified Retirement Financial Advisors (CRFA)	None (optional three day course)
Certified Specialist in Retirement Planning (CSRP)	Self-study seven courses
Chartered Advisor for Senior Living (CASL)	15 Semester Hours (18 months average completion time)

48 See Accredited Estate Planner Complaint Procedure, NAEPC, http://www.naepc.org/designations/estate-planners/complaints (last visited Apr. 1, 2013).

[49] The information in the tables was derived from the information appearing on the designation conferring organizations' websites in March 2013. The four criteria featured in the tables were selected for two reasons: (1) the NASAA and NAIC model rules devote guidelines to related criteria, and (2) financial education experts and consumer advocates prioritized these criteria in interviews with the Bureau. *See* NASAA, *Model Rule On the Use of Senior-Specific Certifications and Professional Designations* (2008), http://www.nasaa.org/wp-content/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf; see also NAIC Model Regulation, http://www.naic.org/documents/committees_a_suitability_reg_guidance.pdf. The tables are provided for illustrative purposes only, and the Bureau is not responsible for and cannot verify information from sources other than from the Bureau. The Bureau does not warrant or guarantee the accuracy or completeness of the information. Nor does the Bureau endorse any particular credential or adviser. And, of course, consumers should not rely on a credential alone when selecting an adviser. *See* App. B for tables comparing additional designations.

Personal Retirement Planning Specialist (PRPS)	6 weeks of self-study with 24 hours of webcast recorded lectures
Retired Income Specialist (RIS)	60-hour online self-study program

TABLE 2: ACCREDITATION STATUS OF EIGHT SENIOR DESIGNATION PROGRAMS

SENIOR DESIGNATION	ACCREDITATION
Accredited Retirement Advisor (ARA)	Not Accredited
Accredited Retirement Plan Consultant (ARPC)	Not Accredited
Certified Senior Advisor (CSA)	Nationally accredited (NCCA)
Certified Retirement Financial Advisors (CRFA)	Nationally Accredited (NCCA)
Certified Specialist in Retirement Planning (CSRP)	Not Accredited
Chartered Advisor for Senior Living (CASL)	Regionally accredited
Personal Retirement Planning Specialist (PRPS)	Not Accredited
Retired Income Specialist (RIS)	Not Accredited

TABLE 3: DESIGNEE "GOOD STANDING" CHECK AND CONSUMER COMPLAINT PROCESS FOR EIGHT SENIOR DESIGNATION PROGRAMS

SENIOR DESIGNATION	ONLINE METHODS TO CHECK ANY DESIGNEE'S STATUS AND SUBMIT COMPLAINTS
Accredited Retirement Advisor (ARA)	No
Accredited Retirement Plan Consultant (ARPC)	No
Certified Senior Advisor (CSA)	Online and telephone
Certified Retirement Financial Advisors (CRFA)	Online
Certified Specialist in Retirement Planning (CSRP)	No
Chartered Advisor for Senior Living (CASL)	Online and telephone
Personal Retirement Planning Specialist (PRPS)	Online
Retired Income Specialist (RIS)	No

TABLE 4: PROCEDURES TO DISCIPLINE DESIGNEES OR REVOKE DESIGNATIONS FOR EIGHT SENIOR DESIGNATION PROGRAMS

SENIOR DESIGNATION	WEBSITE DISCLOSES DISCIPLINARY PROCEDURES FOR DESIGNEE MISCONDUCT
Accredited Retirement Advisor (ARA)	No
Accredited Retirement Plan Consultant (ARPC)	No
Certified Senior Advisor (CSA)	Yes
Certified Retirement Financial Advisors (CRFA)	Yes
Certified Specialist in Retirement Planning (CSRP)	Yes

Chartered Advisor for Senior Living (CASL)	Yes
Personal Retirement Planning Specialist (PRPS)	Yes
Retired Income Specialist (RIS)	No

4.2 Professionals who use senior designations are subject to varying regulatory regimes

The fact that different regulatory regimes govern the conduct of the individuals holding senior designations adds an additional layer of complexity in comparing designations. As a general matter, large investment advisers are regulated by the SEC, while small and mid-sized investment advisers are regulated by state securities regulators. Broker-dealers are regulated by the SEC, FINRA, and state securities regulators. Insurance professionals are generally regulated by state insurance commissions and accountants are generally regulated by state boards of accountancy. Depository institutions are regulated by federal or state prudential banking regulators and the Bureau. Attorneys are overseen by state bars. Other persons with senior designations, or those not acting in an otherwise regulated capacity, may be regulated by states, the FTC, and or the Bureau.[50]

These regulators do not impose uniform rules for providing financial advice, services, and products to seniors.

[50] See FINRA, *Selecting Investment Professionals, supra* note 4; see also NAIC, *State Insurance Regulation: History, Purpose and Structure*, http://www.naic.org/documents/consumer_state_reg_brief.pdf; U.S. Gov't Accountability Office, GAO-11-235, *Consumer Finance: Regulatory Coverage Generally Exists for Financial Planners, But Consumer Protection Issues Remain* (2011), http://www.gao.gov/new.items/d11235.pdf. The Bureau has authority with respect to the provision of certain financial advisory services as described in 12 U.S.C. § 5481(15)(A)(viii) (2011). The Bureau's authority is subject to certain limitations with respect to securities and insurance professionals acting in their regulated capacities, whose activities are the main subject of this report. See 12 U.S.C. § 5517(f), (h), (i) (2011).

4.3 The duty of care owed to consumers varies by regulated activity

A particularly confusing issue for many consumers is the standard of care owed to them by their financial adviser.[51] Many consumers assume, incorrectly, that financial advisers have a uniform legal duty to make recommendations or sell products that are in the client's best interest.[52] The use of senior designations can compound consumer confusion.[53]

Although senior designation conferring organizations may require adherence to a code of ethics or similar standards, these standards are not uniform across designations. In addition, the conferring organizations do not have uniform disciplinary processes for professionals that fail to abide by a particular designation's standards.

As a general matter, designees' regulatory status – not their designation – determines whether they have a legal duty of care to their clients, and if so, the type of duty of care. As indicated above, since a wide range of professionals hold senior designations, numerous regulatory regimes and standards of care apply.[54]

For example, two types of financial professionals who may hold senior designations and provide personalized financial and investment advice and recommendations – broker-dealers and

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[51] *See, e.g.,* SEC Staff Report, *Study on Investment Advisers and Broker Dealers* (2011), http://www.sec.gov/news/studies/2011/913studyfinal.pdf (noting that retail investors are often unaware of the different standards of care that apply to advice about and transactions related to securities versus other products, and that they are confused by the different standards that apply to investment advisers and broker-dealers).

[52] *See, e.g., id.* (noting that "[m]any [investors] expect that both investment advisers and broker-dealers are obligated to act in the investors' best interests.")

[53] *See Advising Seniors About Their Money: Who Is Qualified – And Who Is Not?, supra* note 12 (noting that in addition to the potential confusion created by different standards for investment advisers and broker-dealers, "[o]ne particular source of potential investor confusion is the use of "senior" professional designations by brokers, investment advisers, and others.")

[54] *See* GAO, *Report, supra* note 50; see *al*so SEC, *Study*, *supra* note 51.

investment advisers – are currently held to different standards of care.[55] Investment advisers are held to a “fiduciary” standard of care, which requires them to act in their clients’ best interest.[56] A fiduciary standard prohibits an investment adviser from subordinating a client’s interest to the adviser’s interest, and requires advisers to disclose conflicts of interest.[57] Broker-dealers, by contrast, are not required to act as fiduciaries to their clients. A broker-dealer’s securities recommendations are measured against a “suitability” standard, which means that the recommendations must be consistent with the client’s interests.[58]

For some professionals, there may be varying standards of care depending on their location or size, or the specific products they sell. For example, insurance agents are generally regulated by the states.[59] Some, but not all, states have adopted rules requiring insurance agents to have reasonable grounds to believe a recommended annuity transaction is suitable for the consumer.[60]

> Many consumers assume, incorrectly, that financial advisers have a uniform legal duty to make recommendations or sell products that are in the client’s best interest.

Other types of financial professionals use general titles such as “financial planner,” “financial analyst,” or “wealth adviser” that do not necessarily require or indicate that the individual holds

[55] *See, e.g.,* SEC, *Study, supra* note 51. This SEC staff study and recommendations were released in 2011, pursuant to Section 913 of the Dodd-Frank Act, and examined, among other things, “the differences in legal and regulatory standards in the protection of retail customers relating to the standards of care for broker-dealers, investment advisers and their associated persons for providing personalized investment advice about securities to retail customers.”

[56] *See* SEC, *Regulation of Investment Advisers by the U.S. Securities and Exchange Commission* 23 (2013), http://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf .

[57] *See id.* at 23-24.

[58] *See* SEC, *Study, supra* note 51.

[59] *See* 15 U.S.C. § 1012 (2011).

[60] *See* GAO, *Report, supra* note 50, at 7-8; *see also* NAIC Model Regulation, http://www.naic.org/documents/committees_a_suitability_reg_guidance.pdf.

a license or is subject to any particular regulatory requirements.[61] These professionals may offer detailed or generalized advice about a personal financial plan for a client without handling the client's accounts or executing transactions on behalf of the client. Those who hold themselves out as financial planners, financial analysts, or wealth advisers need not always be licensed or registered. However, many of these professionals provide services that subject them to licensing or registration requirements, along with standards of behavior that apply when these professionals act in a regulated capacity.[62] For example, financial planners who provide advice related to securities may be subject to a fiduciary standard of care because they are acting as investment advisers.[63] However, other financial planners may provide recommendations in contexts in which they are not required to act in their clients' best interest.[64]

As noted above, the SEC has reported that financial advisers' roles and applicable standards of care frequently confuse consumers.[65] In a trade-consulting firm's recent survey of 380 advisers (brokers, investment advisers and dual registrants) relating to their understanding and use of the fiduciary standard of care, over 71% of advisers said they believed "there should be clear differentiation between product providers and advice providers, and that industry titles like 'adviser,' 'consultant,' and 'planner' imply that a fiduciary relationship exists."[66]

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[61] *See, e.g.,* FINRA, *Selecting Investment Professionals*, *supra* note 4.

[62] *Id.*

[63] *See, e.g.*, SEC, *Investment Advisers: What You Need to Know Before Choosing One* (2012), http://www.sec.gov/investor/pubs/invadvisers.htm (noting that many financial planners may be investment advisers, but that others who call themselves financial planners may only be able to recommend investing in a narrow range of products, and sometimes products that are not securities.)

[64] *Id.*

[65] *See, e.g.*, SEC, *Study*, *supra* note 51.

[66] fi360, *Is the Fiduciary Standard the New Normal For Financial Advisors?* Findings of the 2012 fi360-AdvisorOne Fiduciary Survey 13 (2012), http://www.fi360.com/main/pdf/fiduciarysurvey_resultsreport_2012.pdf.

5. Consumer protection concerns remain even after recent regulatory efforts

5.1 NASAA and NAIC model rules and regulations

In response to concerns expressed by many state regulators about the misleading and fraudulent use of senior designations, in 2008, the North American Securities Administrators Association (NASAA) and the National Association of Insurance Commissioners (NAIC), adopted model rules that would prohibit the misleading use of senior-specific designations in connection with the sale of securities or insurance products, respectively, or related investment advice.[67] Based on the Massachusetts rule discussed above, the model rules cover the misleading use of senior designations as well as inadequate standards in the designating or certifying organization.[68]

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[67] *See, e.g.,* Neb. Dep't of Banking & Finance*, Special Notice* (2007), http://www.ndbf.ne.gov/forms/bd-ia-special-notice.pdf; Mass. Sec. Div., *supra* note 7; Press Release, NASAA, *State Securities Regulators Announce New Model Rule on the Use of Senior Certifications and Professional Designations* (Apr. 1, 2008), http://www.nasaa.org/5685/state-securities-regulators-announce-new-model-rule-on-the-use-of-senior-certifications-and-professional-designations/; *see also* Press Release, NAIC, *State Regulators Protect Consumers From Insurance Fraud* (Sept. 24, 2008), http://naic.org/Releases/2008_docs/fraud_protect.htm. NASAA and NAIC are associations comprised of state securities and insurance regulators, respectively.

[68] Lisa A. Catalano & Christine Lazaro, *Financial Abuse of the Elderly: Protecting the Vulnerable*, 1 J. Sec. L., Reg. & Compliance 13 (2008).

The NASAA Model Rule provides that the misleading use of a senior-specific designation in connection with the sale or advice related to securities is a "dishonest and unethical practice" under the relevant state securities law.[69] Prohibited uses of a senior designation include the use of a designation to indicate or imply a level of training or experience the designee does not have; the use of a non-existent or self-conferred designation; and the use of a designation not actually earned.[70]

The Model Rule also prohibits senior-specific designations obtained from a designating organization that: (i) is primarily engaged in the business of instruction in sales and/or marketing; (ii) does not have reasonable standards or procedures related to assuring competency of its designees; monitoring and disciplining designees; and continuing education requirements.[71]

The NASAA Model Rule also establishes a rebuttable presumption that a designation is qualified if the designating organization has been accredited by certain enumerated organizations including those on the U.S. Department of Education's list of accrediting agencies recognized for purposes of Title IV of the Higher Education Act.[72]

The NAIC adopted a nearly identical model regulation on senior certifications and designations for the insurance industry in 2008.[73] The NAIC Model Rule also specifies the same specific misleading uses as the NASAA Model Rule, and the same rebuttable presumption regarding the certifying or designating organization.

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[69] NASAA, Model Rule On the Use of Senior-Specific Certifications and Professional Designations § 1 (2008), http://www.nasaa.org/wp-content/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf.

[70] *Id.* at § 1(a)-(c).

[71] *Id.* at § 1(d)(i)-(iv).

[72] *Id.* at § 2(i)-(iii).

[73] NAIC, Model Laws Regulations, and Guidelines § II-278-1 (2012), http://naic.org/documents/committees_models_table_of_contents.pdf.

As of June 2012, 28 states and the District of Columbia had adopted the NASAA model rule (or close variant) and 30 states and the District of Columbia had adopted an identical or similar version of the NAIC rule through statute or administrative regulation.[74]

In early 2008 the SEC, FINRA and NASAA issued a report containing examples of best practices that financial firms could adopt to increase senior investor protection.[75] These best practices included procedural controls to ensure age-related considerations on products and policies, senior-issues training opportunities for securities professionals, methods for effective communication, distribution of investor education materials, and best practices regarding advertising and marketing to seniors, including content containing references to senior designations. Specifically, the report recommended that firms:

- Review the training materials used by entities or organizations that confer a designation to ensure that predatory sales techniques are not included as part of the training;
- Verify the appropriate use of designations during field office inspections by reviewing securities professionals' business cards;
- Maintain a list of approved designations;
- Ban the use of any designation that includes the word "Senior" to help ensure that investors are not confused; and
- Permit use of designations only if accredited by a national accreditation organization.[76]

[74] In June 2012, the Bureau conducted a scan to see how many states passed laws based upon the NASAA or the NAIC model rules. At that time, 10 states had not adopted either the NASAA or NAIC model rules, 18 states and the District of Columbia adopted both the NASAA and NAIC model rules, 10 states adopted only the NASAA model rules, and 12 states adopted only the NAIC model rules. NASAA reported in its submission in response to the Bureau's June 2012 Request for Information that as of August 2012, 30 states had adopted their rule, and two states had adopted similar rules prior to the issuance of the model rules. *See* Jack E. Herstein (NASAA), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-0980.

[75] SEC, NASAA, FINRA, *Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors* (2008), http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf.

[76] *Id.*

5.2 Reported problems after model rules

Despite the regulatory efforts described above, the Bureau's research and outreach revealed substantial concerns related to the wide range of training requirements associated with different senior designations as well as the lack of uniform standards of conduct for designees. As discussed further below, the responses to the CFPB's June 2012 Request for Information and the information gathered by the Bureau at its roundtable listening sessions indicate that consumers, and even financial services professionals, remain confused about the quality and expertise associated with different senior designations.

The accreditation provisions in the model rules established an important baseline to ensure the quality of training required for senior designations, and to ensure that the expertise and qualification claims made by particular senior designations do not mislead consumers. However, the rules and the accreditation process do not contain uniform requirements for training or competencies for senior designations. Therefore, some designations appear on their face to imply specialized financial expertise, yet they can be earned without the requisite training to ensure designees have competencies to advise seniors on financial products and services.[77]

In addition to concerns about training and qualifications required for senior designations, concerns persist regarding the lack of uniform standards of conduct for senior designees and the lack of comprehensive supervision and enforcement to ensure that persons using senior designations do not mislead or harm consumers. Moreover, the organizations that confer senior designations lack consistent standards of conduct, complaint processes, and disciplinary mechanisms. In addition, many of the efforts to improve the senior designation field consist of voluntary best practices. Without the application of uniform minimum conduct standards across the financial services industry for all who claim a specialized expertise in advising seniors through a senior designation, consumer protections will remain inconsistent.

[77] For example, when used by financial professionals, the designation Certified Senior Adviser (CSA) may be understood by seniors to imply senior-specific financial expertise. However, the designation does not focus on training designees regarding financial or investment products for older investors. Rather, the CSA is a general designation intended for use among a wide variety of professions to demonstrate an interest in serving seniors. *See* Society of Certified Senior Advisors, http://www.csa.us/ (last visited Mar. 19, 2013).

For example, a January 2011 FINRA survey of retail broker-dealer firms found widespread use of senior designations in the broker-dealer community (68% of the 157 firms that completed the survey), and varying levels of vetting and oversight of the quality of permissible designations. In particular, FINRA found that,

> [i]n certain instances, senior designations approved by firms or widely used by registered persons did not require rigorous qualification standards. As a result, the existence of qualification standards to obtain a designation did not ensure that those registered persons holding the designation possessed financial services skills that were unique or valuable to senior investors. This finding was consistent across survey participants and is of concern to FINRA.[78]

FINRA found that "[i]nvestors are unlikely to differentiate between designations that represent an enhanced level of proficiency in dealing with financial matters relevant to senior investors versus a designation that is simply a marketing tool."[79]

FINRA highlighted sound practices used by some firms to address these problems and encouraged broker-dealer firms to adopt these practices and procedures. For example, FINRA recommended that:

- firms may reduce the risk of confusion or overreliance by their customers by implementing procedures aimed at only permitting their registered persons to use senior designations that instill substantive knowledge to better serve and protect senior investors;
- firms could prohibit the use of designations that do not have a rigorous curriculum, an emphasis on ethics, continuing education requirements, a method for determining the registered person's status regarding the designation, and/or a public disciplinary process;
- firms review advertising and sales literature to ensure that registered persons do not use self-conferred or misleading designations without the knowledge of the firm;

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[78] See FINRA Regulatory Notice 11-52 (Nov. 2011), *available at* http://www.finra.org/Industry/Regulation/Notices/2011/P125093.

[79] *Id.* at 3.

- registered persons use only earned and approved designations; and
- registered persons comply with training and annual attestation requirements.[80]

These recommendations constitute promising approaches to reducing consumer confusion as well as the misleading use of senior designations. However, it is unclear how widely these recommendations will be adopted given that they remain voluntary and are addressed only to the firms FINRA regulates.

5.3 CFPB findings: more protections needed

To better understand current perspectives about senior designations, the Bureau issued a Request for Information and held two roundtables to hear from policymakers, regulators, consumer advocates, financial educators, and other experts regarding consumers' experiences with senior designations. Many of the comments and perspectives the Bureau received described the difficulties consumers face in verifying the legitimacy of designations, and the lack of consistent and robust standards for designee training and oversight of designee conduct.

5.3.1 Results of the CFPB roundtable listening sessions

The Bureau held roundtable listening sessions with stakeholders in Washington, DC and San Francisco, CA in late 2012 to discuss seniors' understanding of and experience with senior designations. Attendees included financial planners, insurance and securities professionals, consumer advocates, social workers, and other industry stakeholders.

The discussion topics focused on effective methods to protect older consumers in a confusing and somewhat opaque senior designation marketplace. Specifically, attendees shared their thoughts on best practices to provide seniors with the tools to assess the legitimacy of senior designations and verify the credentials of financial advisers, how seniors might identify an appropriate adviser, and how the Bureau might best ensure that seniors have access to these tools. The most common themes arising in the discussions were:

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[80] *Id.* at 3-6.

- the need for information and tools to enable consumers and the industry to assess the legitimacy and value of senior designations;
- support for the development of a senior designation ratings system; and
- the vulnerability of senior consumers.

The most common concern expressed during the roundtables was that seniors have insufficient information to determine the legitimacy and value of different senior designations. One Certified Financial Planner (CFP) professional echoed the sentiments of many in both roundtables when she stated, “Good information is urgently needed to help consumers understand the differences between these credentials.”

Some participants provided anecdotal examples about the obstacles to assessing the legitimacy of senior designations despite having expertise in financial services matters. A financial adviser in San Francisco said, “If it’s confusing for me, how must it be for seniors, especially those without investing experience?”

A Registered Investment Adviser in San Francisco expressed the importance of ensuring that clients understand the distinction between different designations when saying that, “I’m a CFP and I have several other designations. The CFP took me two years to earn. The others took two months. All of my credentials have been useful to me, but my clients deserve to know the difference between them.”

Financial professionals, academic representatives, and conferring organizations all expressed interest in seeing improved educational resources on how to judge a financial adviser's credentials and determine their fit with a consumer’s financial needs and goals. There were numerous calls at both roundtables to establish a ratings system for senior designations. One financial planner suggested a “simple approval system, comparable to the Good Housekeeping seal of approval.” Other attendees called for ratings systems that resemble food safety scores or academic report cards.

Many attendees also stated that confusion exists on "both sides of the table," noting that industry professionals are often unsure of which senior designations are a good investment of their time and energy to obtain.

Attendees universally agreed on the vulnerability of older investors in the financial services marketplace. Attendees also expressed concern that seniors frequently assume financial advisers hold their interests above all else. Many noted that older clients do not understand that a fiduciary duty is not universal in the financial services field. One financial adviser attending the

San Francisco roundtable noted that "seniors need to understand how their adviser is incentivized, and what this means for the services they receive." An investment adviser added, "Consumers, especially older ones, should know the basic (differences) between a fiduciary and someone following suitability. They almost never do."

5.3.2 Results of the CFPB request for information

In June of 2012, the Bureau issued a Request for Information (RFI) in the *Federal Register* inquiring about several topics related to senior financial exploitation.[81] The questions concerning senior designations focused on 1) the evaluation of senior designations and designees, 2) availability of quality information about senior designations, and 3) fraudulent or misleading use of senior designations.

The comments addressing senior designations provided a rich picture of the current consumer protection concerns.[82] The commenters generally expressed concerns that the misleading use of senior designations is a long-standing consumer protection concern. Commenters also noted that even within the current regulatory regime, senior designations lack consistent training, qualification, and oversight standards. Lastly, many commenters stated that consumers do not have the tools or information to determine the value or legitimacy of different designations, or to understand how designations differ from one another. Below is a sample of responses to the RFI that illustrate this point.

The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States. FINRA oversees approximately 4,275 brokerage firms, about 161,550 branch offices and approximately 629,980 registered securities representatives.[83] FINRA in its response noted that the use of professional designations in general has been a long-standing regulatory concern. In addition to outlining its extensive work in investor education, FINRA focused attention on the potentially unfair,

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[81] 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), *available at* www.federalregister.gov/articles/2012/06/19/2012-14854/request-for-information-regarding-senior-financial-exploitation.

[82] A total of 1,045 responses were received and posted to the *Federal Register*. Not all responses addressed senior designations.

[83] *See* FINRA, http://www.finra.org/AboutFINRA/index.htm (last visited Apr. 2, 2013).

abusive, or deceptive practices of targeting seniors at free-lunch sales seminars. FINRA noted that even though there may be nothing "inherently wrong" with a sales seminar, consumer protection problems around sales tactics have arisen in the past.[84] FINRA offers an investor alert on its website titled *Free Lunch" Investment Seminars – Avoiding the Heartburn of a Hard Sell*.[85] FINRA also offers a Professional Designations Tool, which is a database of professional designations currently in use. FINRA states that "while extensive, the tool is not an all-inclusive database…."[86]

The North American Securities Administrators Association (NASAA), organized in 1919, is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.[87] NASAA's submission described its record in leading consumer protection efforts regarding senior designations. Specifically, "[the] widespread deception [relating to the use of senior designations], often combined with free-meal seminars, was identified by state securities regulators following investor complaints in various regions of the United States," and therefore, since 2005, NASAA has been alerting seniors to carefully check the credentials of individuals claiming to be senior specialists. Further, in 2008, NASAA issued its Model Rule on Senior-Specific Certifications and Professional Designations. To date, 30 states have adopted the NASAA Model Rule and two states had adopted similar rules prior to the issuance of the model rules. However, in its RFI response, NASAA expressed continued concerns over senior designation misuse and fraud. NASAA noted the particular vulnerability seniors face regarding fraud and other financial abuses in light of "misleading" senior designations. NASAA stated, "[t]he requirements to obtain these designations and certifications

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[84] *See* Marcia E. Asquith (FINRA), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491 (June 19, 2012), *available at* http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-0913.

[85] *See* FINRA, "*Free Lunch" Investment Seminars: Avoiding the Heartburn of a Hard Sell,* Investor Education Series (2011), http://www.finra.org/web/groups/investors/@inv/@protect/@ia/documents/investors/p125861.pdf.

[86] *See* FINRA, Comment, *supra* note 84.

[87] *See* NASAA, http://www.nasaa.org/about-us/ (last visited Apr. 1, 2013).

vary greatly, as can the processes for monitoring compliance with a code of conduct or ethics, if any, adopted by the organization that awards the designation or certification."[88]

The Investor Protection Trust (IPT) & Investor Protection Institute (IPI) are non-profit, investor education organizations founded in 1993 as part of a multi-state settlement to resolve charges of misconduct.[89] The IPT also oversees the Investor Education Fund, which receives deposits resulting from some settlement cases in the securities industry.[90] In their response to the RFI, IPT & IPI submitted the results of an online survey conducted of 756 professionals, including state securities regulators, financial planners, health care professionals, social workers, adult protective services, law enforcement officials, elder law attorneys, and academics.[91]

According to IPT & IPI, two-thirds of those surveyed have experience working with elderly victims of investment fraud/financial exploitation. Three-quarters said that such cases are a "very serious" problem in America today and 78 percent reported that older Americans are "very vulnerable" to investment fraud/financial exploitation.[92] IPT & IPI reported specific findings related to senior designations:

- 58 percent of surveyed professionals said seniors are "not very able" or "not able at all" to determine the legitimacy, value, and authenticity of credentials held by their financial advisers and planners.

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[88] *See* Jack E. Herstein (NASAA), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-0980.

[89] Investor Protection Trust, http://www.investorprotection.org/ipt-activities/?fa=about (last visited Mar. 19, 2013).

[90] According to IPT's website, "[i]n April 2003, [NASAA, the SEC], FINRA, and the New York Stock Exchange announced the settlement of enforcement actions involving conflicts of interest between the research and investment banking operations of 10 of the nation's largest investment firms. Seven of the firms agreed to pay a total of $80 million for investor education purposes. Of that amount, $30 million was paid to State Securities Regulators and those funds comprise the Investor Education Fund overseen by IPT." *Id.*

[91] *See* Don Blandin (IPT & IPI), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-1010.

[92] *See id.* for complete survey.

- Respondents reported that "current efforts for maintaining the legitimacy, value, and authenticity of credentials held by financial advisers and planners" are "not very effective" (36%) or "not effective at all" (26%).
- 59 percent reported that existing accountability controls are not effective "when it comes to deterring the misuse of senior adviser credentials."
- 53 percent reported that "the available resources for seniors when selecting a financial adviser with appropriate knowledge to address their specific financial needs" are either not very effective or not effective at all.

The Women's Institute for a Secure Retirement (WISER) is a non-profit organization that develops and runs retirement education programs. WISER noted in its submission in response to the RFI that over the last three decades, Americans have faced increasingly complex financial decisions in spite of low overall financial literacy.[93] WISER reported seeing "confusion and uncertainty in all corners of the country when we conduct workshops." Citing the conflicting and often poor advice from family and colleagues and the uneven performance of online retirement calculators,[94] WISER observed that the many senior designations pose additional barriers to clarity:

> The avalanche of information and the complexities involved are significant barriers to seniors trying to protect themselves from financial insecurity. Then introduce the confusing certifications and designations used by certain financial predators and you have the steady increase of seniors who are misled and who are purchasing unsuitable products.

WISER also described the confusing jargon and numerous titles in the financial services industry, which creates an increased risk of confusion for older consumers:

> Just think about some of the terms that are part of the everyday financial lingo: there are CFP's, CFA's, RMD's[,] MMA's, CD's, DB's, DC's, IRA's, annuities, and

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[93] WISER, Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-1026.

[94] Review of calculators conducted by CBS MoneyWatch: http://www.cbsnews.com/8301-505146_162-57490505/can-you-trust-retirement-calculators/?tag=cbsnewsSectionsArea;cbsnewsSectionsArea.6.

more. To reach people—to have them hear the message—we need to take a step back from all the jargon and give people basic, usable information from reliable trusted messengers, in combination with the tools to find out who is reliable.

Thus, WISER expressed concern that consumers may throw their hands in the air or walk into the arms of predators who portray themselves as protectors of the rights of seniors.

> The information available about certifications and designations is not remotely comprehensive and does not provide sufficient comparisons to permit a consumer to quickly and easily assess the differences between designations.

AARP is a nonprofit, nonpartisan organization that advocates on issues like healthcare, employment security and retirement planning.[95] AARP noted in its response to the RFI that problems with respect to senior designations, such as the lack of information available to assist seniors in evaluating various designations and poor accountability controls for issuing organizations and designation users, increase the risk of senior financial exploitation.[96] AARP noted the varied quality among senior designations, commenting that training and accountability requirements range from "minimal" leading to "self-awarded designations," to "substantial specialized training and adherence to heightened standards of conduct and oversight." AARP noted that this lack of consistency creates substantial consumer confusion:

> [T]he absence of consistent training requirement benchmarks] complicates exponentially the choice a consumer must make. In order to evaluate the differences in the designations, a consumer is forced to conduct complicated research. But the lack of information to assist them in comparing the credentials of one adviser to another further complicates that process and increases the potential for misuse. The information that is available about

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[95] AARP, http://www.aarp.org/about-aarp/ (last visited Apr. 1, 2013).

[96] *See* Joyce A. Rogers (AARP), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-0917.

> certifications and designations is spotty, in that it is not remotely comprehensive, and does not provide sufficient comparisons to permit a consumer to quickly and easily assess the differences between designations.

AARP provided specific suggestions to address the inadequacy of resources available to determine the legitimacy, value, and authenticity of credentials held by their financial advisers and planners. In addition to requiring that designees provide clear, comparable information, AARP suggested requiring "clear disclosure regarding the educational and other requirements necessary to obtain and maintain a designation by any professional that uses one." Finally, AARP called for greater accountability controls for policing the use of senior designations by increasing the enforcement of existing laws and regulations, particularly related to fraud and unfair trade practices that harm older investors.

The American College is a non-profit higher education institution that provides financial education programs, including several senior designations. The American College provided recommendations to improve consumers' ability to discern the legitimacy of different designations:

> An ideal outcome of your work would be to create a single-source consumer website to help seniors understand which designations represent depth and quality of education and which ones do not. Information on the site would need to explain that other marks may have some educational value, but that only credentials that meet certain minimum national standards should be viewed as professional designations that may be used with the public.[97]

The American College noted several consumer protection concerns, including that "consumers can't really be expected to [know the difference]" between a senior designation requiring hundreds of hours of preparation and one that is merely purchased along with a weekend seminar. The American College supports the creation of minimum national standards for senior designations.

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[97] *See* Laurence Barton (The American College), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-1000.

The National Association of Insurance and Financial Advisers (NAIFA) is one of the oldest and largest financial services organizations representing the interest of insurance professionals. NAIFA's submission to the Bureau noted that seniors rely on designations to acquire a sense of an adviser's expertise and recognized that,

> people often do no additional investigation or due diligence to ensure that their financial adviser or other service provider has the necessary experience and knowledge to provide the services the individual needs.[98]

For this reason, NAIFA noted that the substance behind a certification or designation is very important.

The CFP Board is a non-profit organization that grants the Certified Financial Planner (CFP) designation. The CFP Board contracted with APCO Insight to survey current CFP professionals on issues related to senior financial exploitation. The online survey received 2,649 responses, and researchers conducted in-depth telephone interviews with a subset of respondents. The findings from the survey provide an important lens into the views of financial planners' regarding the prevalence of senior financial exploitation and of the challenges seniors face in selecting an appropriate and trustworthy financial adviser.

CFP professionals reported seeing senior financial exploitation in the form of invitations for free financial or investment seminars, unsolicited calls for financial products/services and offers for high-yield investment products that are described as no-risk or low-risk. Through these channels and others, CFP professionals reported being aware of the sale of what they consider to be "unsuitable" products, omission of important facts, misrepresentation and negligence or lack of follow-up by financial advisers.

The CFP Board's key findings were:

- More than half (56%) of CFP professionals personally have worked with an older client who has been subject to what the professionals consider to be unfair, deceptive or abusive practices in the delivery of financial advice or the sale of financial products.

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[98] *See* Gary Sanders (NAIFA), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-0924.

- 32 percent personally know an older non-client who has been subject to what the professionals consider to be unfair, deceptive or abusive practices.
- Seniors are being targeted for free lunches, risky investments and abusive practices.
- 73 percent of CFP professionals are aware of older investors who have been invited to "free meal" seminars.
- 58 percent are aware of older investors who have received unsolicited pitches for financial products or services.
- Half are aware of older investors who have been offered high-yielding investments described as no-risk or low-risk.
- Approximately a third are aware of older investors who have been pitched for prize-winning scams.
- 74 percent of CFP professionals are aware of older investors who have been offered unsuitable financial products by a financial advisor.
- 58 percent are aware of older investors who have been subject to omission of material facts about financial products.
- 48 percent are aware of older investors who have been subject to misrepresentations about financial products.
- 46 percent are aware of older investors who have been subject to negligence or lack of follow-up in connection with financial products.
- Approximately one in five CFP professionals are aware of practices by financial advisors such as fraud with intent or lying (19%) and unauthorized transactions (17%).[99]

The survey revealed that CFP professionals responded that, "by far, the most common products involved in the subjection of an older American to unfair, deceptive or abusive practices by a financial advisor are equity indexed or variable annuities."

CFP professionals reported that they have most often witnessed financial exploitation that involved equity indexed or variable annuities (76%), variable life insurance (32%), mutual funds (29%), and universal or whole life insurance (28%).[100]

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[99] Marilyn Mohrman-Gillis (CFP), Comment, *Request for Information Regarding Senior Financial Exploitation*, 77 Fed. Reg. 36491, 36491-36492 (June 19, 2012), http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0018-1036.

6. Recommendations

In light of its findings from a review of the senior designation marketplace, the Bureau has developed the recommendations outlined below.

The first section of the recommendations (Section 6.1) addresses dissemination of information to consumers. In order for consumers to understand the legitimacy of certifications, effectively identify the most appropriate adviser and verify an adviser's credentials, consumers will need information about, among other things, the training, qualifications, education, and standards required for a given designation.

The second section of the recommendations (Section 6.2) similarly seeks to address the consumer confusion around senior designations, as well as related consumer protection concerns the Bureau observed in its review of the field. These recommendations seek to enhance the consistency and quality of standards for the acquisition of senior designations, senior designee conduct, and accountability and oversight of senior designees.

Enforcement plays an important role in ensuring that older investors are protected.

The effectiveness of methods to inform older consumers about the legitimacy of senior designations, to assist them in selecting the most appropriate financial advisor, and to enable them to verify a financial advisor's credentials (described in Section 6.1) hinge on addressing the lack of consistent standards for training and conduct for financial professionals who use senior designations, and the use of misleading senior designee titles (described in Section 6.2).

Enforcement plays an important role in ensuring that older investors are protected. Providing individuals with a private right to seek redress is one enforcement tool that many states employ

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[100] *Id.*

to protect consumers. Most states provide private rights of action to enforce state laws prohibiting unfair or deceptive acts or practices, or similar consumer protection statutes.[101] However, misleading conduct around senior designations is not within the coverage of all such statutes.[102] And while investors with claims against broker-dealers who are registered with FINRA may be required to bring claims using FINRA's arbitration process rather than file a lawsuit under state law,[103] use of senior designations is not limited to broker-dealers. Increasing enforcement with respect to prohibited conduct – whether by providing a private right of action, increasing enforcement and supervision efforts by regulators, or otherwise – could help to address consumer harm and deter prohibited conduct in connection with misuse of senior designations.

Though regulators will need to consider the recommendations in light of their legal authorities and available resources, the Bureau believes that these recommendations, if adopted, will help reduce consumer confusion and protect older consumers in their retirement years.[104]

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[101] *See,* e.g., Rob Sand, Note, *Fraud's Final Frontier: Iowa's Battle Over Becoming the Final State to Allow Private Consumer Fraud Actions*, 35 J. Corp. L. 615 (Spring 2010).

[102] *See*, e.g., *Morris v. Gilbert*, 649 F. Supp. 1491 (E.D.N.Y. 1986) (claim under N.Y. Gen. Bus. Law § 349(h) by a disappointed investor concerning alleged deceptive practices in regard to the sale of securities was outside the ambit of the statute); see generally Consumer Protection and the Law, AmJur2d § 4.21 (updated Nov. 2012) (securities and insurance claims often excluded from ambit of state consumer protection statutes).

[103] *See* FINRA Code of Arbitration Procedure for Customer Disputes, *available at* http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbion/documents/arbmed/p117546.pdf.

[104] With respect to recommendations that would be implemented for broker-dealers, the SEC may determine that implementation is best undertaken by FINRA rather than directly by the SEC.

6.1 Recommendations Regarding Education and Disclosure

6.1.1 Education

The SEC may wish to consider establishing a centralized tool through which senior investors can verify a financial adviser's designations.

> Older Americans deserve a consumer financial marketplace that is transparent and fair, where they can easily compare among products and services to determine those that best meet their needs.

The SEC may wish to coordinate this effort with other regulators and build upon existing resources, for example, SEC's Investment Adviser Public Disclosure (IAPD) which provides investors with online access to registration documents and other background information on more than 25,000 SEC- or state-registered investment advisers; FINRA's *BrokerCheck,* which provides investors with professional background information on current and former FINRA-registered brokers and dealers; and NASAA's website, " which includes contact information for state securities' regulators.[105] While the SEC's and FINRA's tools include extensive information about an individual or firm's professional history, qualifications and disciplinary history, the tools generally do not include information about the nature of advisers' senior designations. In addition, FINRA has created the *Understanding Professional Designations Database*. This database provides helpful information regarding existing designations. It does not, however, provide tools that let consumers quickly assess how one designation compares with others.

Including information about senior designations in existing professional background databases or in a newly created tool, and ensuring coordination of resources, would help to increase consumers' ability to assess the legitimacy of a financial adviser's qualifications, including any senior designations, and would help to reduce consumer confusion. These databases could

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[105] *See* NASAA, How to Check Out Your Broker or Investment Adviser, http://www.nasaa.org/2709/how-to-check-out-your-broker-or-investment-adviser/.

provide seniors with simple ways to check (a) whether the financial advisor that they are dealing with actually has the senior designation he/she claims to have and (b) the requirements for obtaining that senior designation, so the senior can decide whether the designation has validity and substance. In addition, seniors should have access to a toll-free number that would provide them an alternative way to obtain this information. An authoritative, unbiased, and comprehensive resource would help consumers make meaningful comparisons among advisers.

6.1.2 Tracking and Data Collection

The SEC may wish to consider establishing a mechanism to capture complaints and enforcement actions against senior designation holders and consider reporting the data to designation providers consistent with and to the extent allowed by the Commission's legal obligations.

The Bureau believes that adoption of this recommendation may help:

- Minimize consumer harm and financial loss by enhancing the ability of consumers to protect themselves from unscrupulous designees;
- Provide regulators with a comprehensive, global resource to monitor designee conduct;
- Enable honest and qualified designees to distinguish themselves in the marketplace.

6.1.3 Disclosure

Congress and the SEC may wish to consider requiring financial professionals who utilize a senior designation to provide a disclosure to clients and prospective clients.

For example, the senior designation disclosure could require information that explains (1) the adviser's qualifications; (2) the meaning of senior-specific certifications; and (3) how consumers may obtain further information concerning the advisor's qualifications and disciplinary background.

Additionally, Congress and the SEC may wish to consider requiring that other related information should be disclosed by the adviser to the extent not already required by existing law. For instance advisers might be required to disclose the fees and compensation, including any commissions or performance-based compensation that the adviser receives and to discuss the duty of care they owe the consumer, including whether the adviser will act as a fiduciary to the client.

To the extent there are existing disclosures already being distributed that contain at least some of the information called for in this recommendation, regulators may consider whether a combined disclosure or a separate brochure regarding senior designations is preferable.

The Bureau believes that adoption of this recommendation may help:

- Ensure that consumers have access to comprehensive, relevant, and understandable information to understand the meaning of different senior designations;
- Ensure consumers have access to comprehensive and standardized information to make comparisons among different senior designations;
- Ensure consumers have access to relevant and understandable information to enable consumers to determine how the different designees' qualifications and standards of care relate to the consumers' financial needs and goals and to identify the adviser most appropriate for the consumers' needs; and
- Reduce the barriers to older consumers' locating relevant and understandable information about senior designations.

6.2 Additional Recommendations

6.2.1 Acquisition of Senior Designations

Policymakers may wish to consider providing minimum standards for acquiring senior designations and the amount of training necessary to earn the designation, including requiring standardized testing and specific number of units of education. This would improve the consistency and quality of designations.

Policymakers may also wish to consider prohibiting the use of senior designations issued by any non-accredited conferring organization.[106]

[106] The Bureau anticipates that the relevant federal and state regulators and policymakers would determine standards for accreditation appropriate for the entities that they regulate. For instance, the NASAA and NAIC model rules and regulations provide guidance by recognizing the American National Standards Institute, the National Commission for Certifying Agencies, and organizations that are on the U.S. Department of Education's list entitled '"Accrediting

The Bureau believes that adoption of this recommendation may help:

- Minimize the potential for consumer harm and financial loss by ensuring minimum, consistent standards for acquiring senior designations;
- Reduce consumer confusion by reducing the wide variation in quality for senior designations in use;
- Provide regulators with consistent standards to monitor the senior designation marketplace; and
- Establish a level playing field for senior designations across industries.

6.2.2 Conduct of Senior Designees

Policymakers may wish to consider providing minimum standards of conduct for any person holding a senior designation.

For example policymakers may wish to consider:

a. Prohibiting the misleading use of senior certifications to the extent that such practices are not already prohibited by federal or state law.

b. Prohibiting harmful acts known to be targeted toward or particularly detrimental to seniors, such as prohibiting designees from recommending or selling unregistered investment products (such as private offerings) to investors at group sales events.

c. Specifying standards for advertising and customer communications for holders of senior specific designations, to the extent such standards do not exist, to avoid misleading consumers with respect to the nature of the designation, expertise, or purpose of an event, including prohibiting senior designees from characterizing sales events as educational seminars, and selling financial products and services at events that are advertised, promoted or described as educational or informational events.

Agencies Recognized for Title IV Purposes.'" *See* e.g., *NASAA Model Rule On The Use Of Senior-Specific Certifications And Professional Designations*, Adopted March 20, 2008 at http://www.nasaa.org/wp-content/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf; and *Model Regulation On The Use Of Senior Specific Certifications And Professional Designations In The Sale Of Life Insurance And Annuities* (October 2008) http://www.naic.org/store/free/MDL-278.pdf.

The Bureau believes that adoption of this recommendation may help:

- Minimize consumer harm and financial loss by reducing consumer confusion and potential for fraud;
- Provide regulators with consistent standards to monitor the senior designation marketplace and hold designees accountable;
- Establish a level playing field for senior designations across industries; and
- Provide older consumers with an enhanced level of protection in light of this population's unique vulnerabilities and this marketplace's history of exploitation.

6.2.3 Enforcement

a. Recommendation to SEC and States: policymakers may wish to consider increasing use of existing supervision and enforcement authority to enjoin and penalize misleading or other improper conduct by a holder of a senior designation.

b. Recommendation to States: where private remedies do not currently exist, policymakers may wish to consider providing consumers with a private right to seek appropriate relief for improper conduct in connection with the use of senior designations.

The Bureau believes that adoption of these recommendations may help:

- Establish a level playing field for senior designations across industries;
- Provide older consumers with an enhanced level of protection in light of their unique vulnerability to exploitation; and
- Provide consumers with tools to deter misconduct and seek redress for harm suffered.

6.2.4 State Disclosures

State policymakers may wish to consider requiring financial professionals who utilize a senior designation to provide a disclosure to clients and prospective clients as described in section 6.1.3 above.

7. Conclusion

Older Americans deserve a consumer financial marketplace that is transparent and fair, where they can easily compare among products and services to determine those that best meet their needs. The Bureau found that the current marketplace for financial advisers who hold senior designations generally does not provide seniors with that option. Instead, consumers face numerous obstacles to assessing the legitimacy of a designation and verifying the expertise of persons who hold these designations. The lack of consistent and minimum standards to acquire and use a senior designation and the increased likelihood that seniors will accept advice from someone holding a designation increases the potential for seniors to be misled or even defrauded by someone holding a designation.

For these reasons, the CFPB, in response to Congress' directive in the Dodd-Frank Act, offers the recommendations in this report for federal and state policymakers' consideration.

APPENDIX A: METHODOLOGY

The purpose of this report is to support the Bureau's best practices recommendations on senior designations. To achieve this aim, the Bureau had the following three objectives: (1) examine how senior designations are obtained and used by advisers in the financial services industry, (2) explore the range of program requirements for senior designations in use, and (3) identify essential consumer protection concerns associated with the use of these credentials.

The Bureau conducted multiple in-depth interviews and meetings with over 60 individual stakeholders and experts to gain insight into consumer protection concerns about senior designations.

Interviews and meetings were held with staff from the SEC, FINRA, NASAA, NAIC, the Federal Insurance Office, National Association of Insurance and Financial Advisors, and numerous state securities administrators to discuss the regulatory oversight of senior designation holders. Interviews were also conducted with numerous financial education academics, policy experts from conferring organizations, and compliance professionals from brokerage and insurance firms. These interviews helped the Bureau to better understand the training, testing, and conduct requirements of those holding senior designations. They also provided insight for how financial firms analyze senior designations to approve or deny their use.

The Bureau interviewed subject matter experts at AARP, American Financial Advisors, the Association for Financial Counseling, Planning, Education, the Financial Planning Association, the Insured Retirement Institute, Women's Institute for a Secure Retirement, and state law enforcement officials. These interviews allowed Bureau staff to acquire a broad appreciation for the consumer protection issues triggered by senior designation use, as well as a deeper understanding of the challenges financial professionals face when working with seniors.

The Bureau sought direct engagement with the public in two forums. First, the Bureau posted a Request for Information in the *Federal Register*, requesting public input on several key questions relating to senior financial exploitation. Several of these questions concerned senior designations directly. Over one thousand comments were received. Second, Bureau staff conducted public listening sessions in Washington, DC, and San Francisco, CA. The listening "roundtables" gave consumers, advocates, and industry professionals the opportunity to share their thoughts and concerns on senior designations directly in dialogue with the Bureau.

Finally, Bureau staff completed an extensive literature review. Sources included state and federal reports, testimony, academic analysis, white papers, regulatory alerts and notifications, publications from consumer advocacy groups, and press.

APPENDIX B: SENIOR DESIGNATIONS TABLE

The table is provided for illustrative purposes only, and the Bureau is not responsible for and cannot verify information from sources other than from the Bureau. The Bureau does not warrant or guarantee the accuracy or completeness of the information. Nor does the Bureau endorse any particular credential or advisor. And, of course, consumers should not rely on a credential alone when selecting an advisor.[107]

Designation	Required coursework	Accreditation	Online methods to check any designee's status and submit complaints	Website discloses disciplinary procedures for designee misconduct
Accredited Estate Planner (AEP)	Two graduate level courses as components of masters or doctorate program	Regionally accredited curriculum	Online	Yes
Accredited Pension Administrator (APA)	Four self-study courses	Not accredited	No	No
Accredited Pension Representative (APR)	Four self-study courses	Not accredited	No	No
Accredited Retirement Advisor (ARA)	None (Optional online study guide is available)	Not accredited	No	No
Accredited Retirement Plan Consultant (ARPC)	None (Optional online study guide is available)	Nationally accredited (NCCA)	No	No

[107]The information in the tables was derived from the information appearing on the designation conferring organizations' websites in March 2013. The four criteria featured in the tables were selected for two reasons: (1) the NASAA and NAIC model rules devote guidelines to related criteria, and (2) financial education experts and consumer advocates prioritized these criteria in interviews with the Bureau. *See* NASAA, *Model Rule On the Use of Senior-Specific Certifications and Professional Designations* (2008) *available at* http://www.nasaa.org/wp-content/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf; NAIC, *Model Regulation* at http://www.naic.org/documents/committees_a_suitability_reg_guidance.pdf.

Accredited Retirement Plan Specialist (ARPS)	None (Optional online study guide is available)	Not accredited	No	No
Board Certified in Estate Planning (BCE)	Now the “CES” designation, but still honored by conferring organization			
Certified 401(k) Professional (C(k)P)	Three levels of coursework with online and classroom options	Curriculum offered at regionally accredited institution	No	No
Certified Asset Protection Planner (CAPP)	24 hours of classroom or online study	Not accredited	No	No
Certified Estate and Trust Specialist (formerly Board Certified in Estate Planning) (CES)	Six self-study modules	Not accredited	No	No
Certified Estate Planner (CEP)	Five to six month average combined study of eight modules (Online and classroom)	Not accredited	Online	Yes
Certified Financial Gerontologist (CFG)	Self-study program of six courses	Not accredited	No	No
Certified Financial Planner (CFP)	21 semester hours in financial planning topics	Nationally accredited (NCCA)	Online	Yes
Certified Healthcare Financial Professional (CHFP)	None (Optional online study guide is available)	Not accredited	No	No
Certified Income Specialist (CIS)	Six module self-study program to be completed within 15 weeks	Not accredited	No	No
Certified Pension Consultant (CPC)	None (Candidates must pass eight exams)	Not accredited	Online	Yes
Certified Retirement Counselor (CRC)	None (Self-study with optional study guides available for purchase)	Nationally accredited (NCCA)	Online	Yes

Certified Retirement Financial Advisors (CRFA)	Optional four-day classroom course or self-study course	Nationally accredited (NCCA)	Online	Yes
Certified Retirement Planner (CRP)	Seven units of CRP preliminary and advanced coursework and five retirement planning techniques seminars	Not accredited	No*	No
Certified Retirement Services Professional (CRSP)	Institute of Certified Bankers-approved employee benefit/retirement services training program (This condition is waived if the candidate has five or more years of experience in ERISA and IRS Code/Regulations)	Not accredited	No	No
Certified Senior Advisor (CSA)	CSA training course, plus one class from approved list of pre-requisites	Nationally accredited (NCCA)	Online	Yes
Certified Specialist in Estate Planning (CSEP)	Six core and two elective self-study courses	Not accredited	No	Yes
Certified Specialist in Retirement Planning (CSRP)	Five core and two elective courses	Not accredited	No	Yes
Certified Wealth Preservation Planner (CWPP)	24 hours of classroom or online study	Not accredited	No	No
Chartered Advisor for Senior Living (CASL)	15 semester hours of specified coursework related to senior clients and financial planning	Regionally accredited	Online	Yes
Chartered Estate Planning Practitioner (CEPP)	Three segments of self-study	Not accredited	No	No

Chartered Healthcare Consultant (CHC)	Six courses, 18 semester hours	Regionally accredited	Online	Yes
Chartered Life Underwriter (CLU)	Five courses, 15 semester credit hours	Regionally accredited	Online	Yes
Chartered Retirement Planning Counselor (CRPC)	Online instructor led or self-study course. Course is equivalent of up to three undergraduate credit hours	Regionally accredited	Online	Yes
Chartered Retirement Plans Specialist (CRPS)	Online instructor led or self-study course. Course is equivalent of up to three undergraduate credit hours	Regionally accredited	Online	Yes
Chartered Senior Financial Planner (CSFP)	Three-day in-person course	Not accredited	Online and mail-in	Yes
Chartered Trust and Estate Planner (CTEP)	None (Designation awarded for previously completed education)	Accredited by the Accreditation Council for Business Schools and Programs	Online	Yes
Graduate Certificate in Retirement Planning	Four self-study courses equivalent to 12 semester credit hours	Regionally accredited	Online	Yes
Master Certified Estate Planner (MCEP)	Classroom or self-study course (Eight modules)	Not accredited	Online	Yes
Personal Retirement Planning Specialist (PRPS)	Six weeks of self-study with 24 hours of web cast recorded lectures	Not accredited	Online	Yes
PLANSPONSOR Retirement Professional (PRP)	Online coursework, two-day onsite seminar and attendance at a multi-day, instructor-led training session	Not accredited	No*	Yes

Professional Plan Consultant (PPC)	16 hour 401 (k) training program	Instruction offered through regionally accredited Robert Morris University	No*	No
Qualified 401(k) Administrator (QKA)	None (Candidates must pass four exams)	Not accredited	Online	Yes
Qualified Financial Planner (QFP)	None (Meta designation intended to reduce confusion by qualifying financial planning designations according to standards)	Not accredited	Online and mail-in	Yes
Qualified Pension Administrator (QPA)	None (Candidates must pass six exams)	Not accredited	Online	Yes
Qualified Plan Financial Consultant (QPFC)	None (Candidates must pass two exams)	Not accredited	Online	Yes
Registered Employee Benefits Consultant (REBC)	Three required courses related to retirement planning and group benefits	Regionally accredited	Online	Yes
Registered Financial Consultant (RFC)	Two self-study courses	Not accredited	No*	Yes
Registered Financial Planner (RFP)	None	Not accredited	No*	Yes
Registered Paraplanner (RP)	Completion of an internship and 10-module course (Self-study or instructor-led)	Regionally accredited	Online	Yes
Retirement Income Certified Professional (RICP)	Three courses, nine semester credit hours	Regionally accredited	Online	Yes
Retirement Management Analyst (RMA)	Pass a Retirement Income Industry Association Approved Education Program	Not accredited	Online	Yes

Retirement Plans Associate (RPA)	Two retirement planning courses and one elective	Not accredited	No	No

* Online search function does not specify if it verifies total universe of members or merely searches for listed members. Does not indicate whether members are identified as in good standing