DSS Consulting

Financial literacy, simplified.

Ethics and Seniors: Understanding the Mature Market

Meet Your Instructor

For the past 35 years Ilene has provided financial literacy and investment education for individual clients to enhance their understanding of money, finances, and investments; and to organizations with a particular emphasis on retirement planning.

In early 2023, Ilene introduced Metamorphosis, an online video-on-demand learning portal designed for the 45+. Each micro webinar covers essential information and is accompanied by a 5 Actionable Steps download, guiding participants to act.

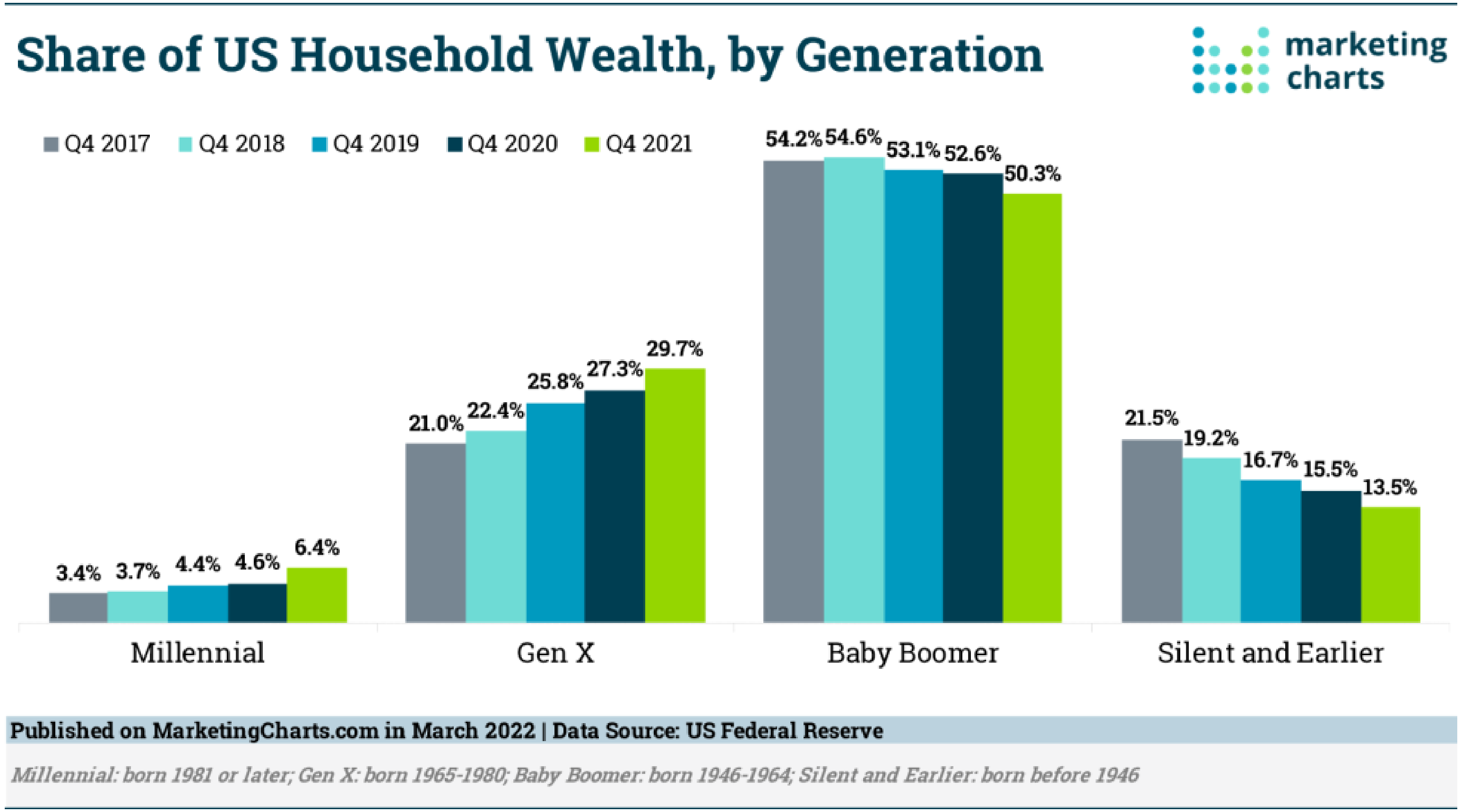
Ms. Slatko has extensive experience in the Federal retirement programs and training federal employees. She has been a trainer for retirement presentations at agencies throughout the DC area.

Course Objectives

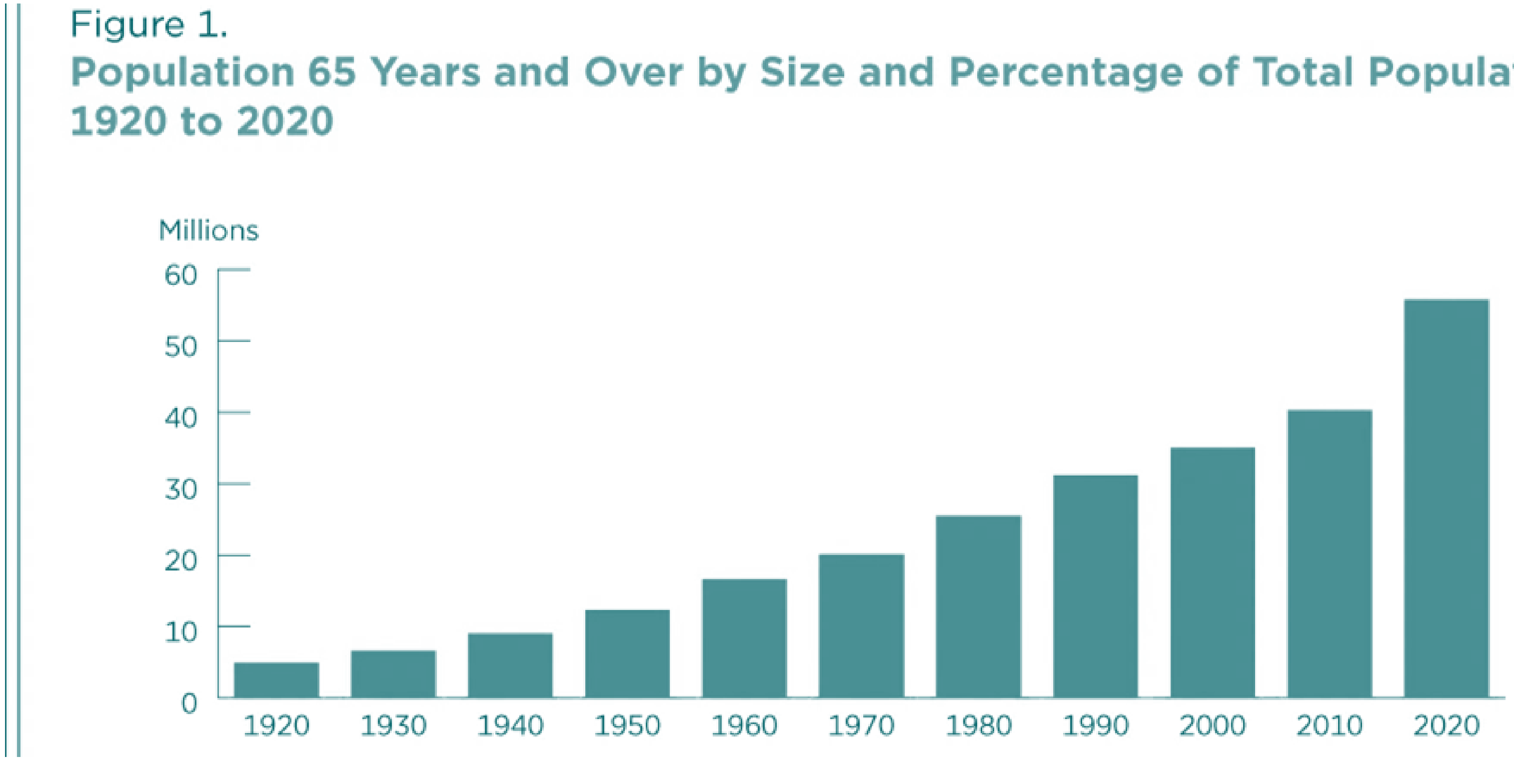
- Demonstrate an understanding of the communication styles and language suitable for senior clients and how to tailor presentations to them
- Describe the social, familial, physical, and cognitive changes that occur as people age
- Recognize the decision-making process seniors use to select financial professionals and the traits they seek in advisors
- Recognize the signs of diminished cognitive capacity and elder financial abuse
- Identify the specific steps professionals can take to provide ethical service to clients and to protect themselves from potential liability

Defining the Scope – Key Statistics

Baby-Boomers



Baby-Boomers – US Census



Your Senior Client

- 62+ (some definitions use 65+)
- Investors who have retired or who are nearing retirement
- Baby boomers comprise between 24.3% and 28% of the population
- Born between 1946 and 1964
- Control slightly over 51% of total wealth in the U.S.

Regulatory Guidelines and Rules

FINRA

- Of particular concern to FINRA is the suitability of recommendations to senior investors, communications targeting older investors, and potentially abusive or unscrupulous sales practices or fraudulent activities targeting senior investors.

- FINRA also is concerned about the proliferation of professional designations, particularly those that suggest an expertise in retirement planning or financial services for seniors, such as "certified senior adviser," "senior specialist," "retirement specialist" or "certified financial gerontologist.“ Firms that allow the use of any title or designation that conveys an expertise in senior investments or retirement planning where such expertise does not exist may violate NASD Rules 2110 and 2210, NYSE Rule 472, and possibly the antifraud provisions of the federal securities laws. In addition, some states prohibit or restrict the use of senior designations.

FINRA

- FINRA Rule 4512 (Customer Account Information) requires members to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account. The trusted contact person is intended to be a resource for the member in administering the customer's account, protecting assets and responding to possible financial exploitation.

- FINRA Rule 2165 (Financial Exploitation of Specified Adults) permits, under FINRA rules, a member that reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted to place a temporary hold on a securities transaction or disbursement of funds or securities from the account of a "specified adult" customer. Specified adults include a natural person age 65 and older or a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.

FINRA – Securities Helpline for Seniors

- In 2015, FINRA launched the toll-free FINRA Securities Helpline for Seniors® to provide older investors with a supportive place to get assistance from knowledgeable FINRA staff related to concerns they have with their brokerage accounts and investments.

- Senior investors can call FINRA's toll-free FINRA Securities Helpline for Seniors (844-57-HELPS or 844-574-3577) from 9:00 a.m. – 5:00 p.m. ET, Monday through Friday, and get neutral, knowledgeable assistance with:

  - Understanding how to review investment portfolios or account statements;
  - Concerns about the handling of a brokerage account; and
  - Investor tools and resources from FINRA, including BrokerCheck®.

SEC - Enforcement

- The SEC's Division of Enforcement has a Retail Strategy Task Force, which was set up in 2017 to investigate fraudulent schemes that frequently target the most vulnerable members of the investing public, including senior investors.

- There's a specific category of misconduct that falls under the purview of the Securities and Exchange Commission (SEC), which is securities fraud – or the misuse and misappropriation of funds or assets (such as securities) by brokers and other investment advisers. For those who detect such misdeeds, the SEC has established a Whistleblower Program to report and potentially reward whistleblowers for their information.

SEC - Enforcement

- September 2018 Action Alleging $1 Million Scheme:
  - Defrauded retail brokerage customers out of more than $1 million in a long-running scheme. Most of the injured customers were elderly with little to no financial expertise and were particularly vulnerable. Several of the alleged victims were suffering from Alzheimer's disease or other forms of dementia, and at least five of the victims passed away during the course of the fraud.

- April 2018 Action Alleging $2.4 Million Ponzi Scheme and a Related $1.4 Million Offering Fraud:
  - At least 30 elderly victims were lured into investing approximately $2.4 million of their retirement savings with baseless promises and claims of outsized investment returns.

- March 2018 Action Alleging Fraud by Prominent Pastor:
  - $3.4 million from 29 mostly elderly investors, some of whom liquidated their annuities, to invest in worthless bonds.

NASAA – Guidelines and Actions

- NASAA remains focused on protecting senior investors from fraud and financial exploitation.
- In 2014, NASAA created a Senior Issues and Diminished Capacity committee dedicated to this issue. The following year, NASAA launched a senior-focused website, ServeOurSeniors.org, to serve as a resource for the financial services industry, policymakers, and senior investors and their caregivers.
- In January 2016, NASAA approved the Model Act to Protect Vulnerable Adults from Financial Exploitation. To date, numerous states have adopted the Model Act or substantially similar legislation or regulations, and additional states are considering doing so.*

*States that passed the Model Act or similar legislation or regulations include Alabama, Arkansas, Delaware, Indiana, Louisiana, Maryland, Mississippi, Montana, New Mexico, North Dakota, Texas, Vermont and Washington. As of May 1, 2017, states that saw bills or regulations similar to the Model Act introduced in their legislatures include Alaska, Colorado, Kentucky, Michigan, Minnesota, New York, and Oregon.

Poll Question

Senior Safe Act

Senior Safe Act

- **The Senior Safe Act was signed into federal law in 2018 and protects "covered financial institutions" which include investment advisers, broker-dealers, and transfer agents and their eligible employees, from liability in any civil or administrative proceeding in instances where those employees make a report about the potential exploitation of a senior citizen (defined as not younger than 65 years) to a covered agency. The immunity established by the Senior Safe Act is provided on the condition that:**

  - Certain employees receive training on how to identify and report exploitative activity against seniors before making a report, and

  - Reports of suspected exploitation are made "in good faith" and "with reasonable care."

  - The Senior Safe Act incentivizes reporting, but it does not mandate any action. It provides certain individuals and financial institutions with immunity from liability in any civil or administrative proceeding for reporting potential exploitation of a senior citizen (65+) to certain entities if training conditions are met.

Senior Safe Act, cont.

- It was designed to train financial professionals to detect and report cases of suspected senior financial abuse. Who is covered under the Act?
  - An employee who serves as a supervisor or in a compliance or legal function (including as a Bank Secrecy Act officer), for a covered financial institution; OR
  - A registered representative, investment adviser representative, or insurance producer affiliated or associated with a covered financial institution.
- The Senior Safe Act does not mandate that any employees be trained. However, to qualify for the immunity provided by the law, training must be provided to and completed by the employees who are eligible for immunity (see above) and those employees who may come into contact with a senior citizen as a regular part of their professional duties or may review or approve the financial documents, records, or transactions of a senior citizen in connection with providing financial services to a senior citizen.

Poll Question

Cognitive, Physical, and Other Changes Seniors Experience

Cognitive Changes

- Memory Issues
  - Dementia
  - Alzheimer’s
  - Forgetfulness
  - Confusion

- Processing Issues
  - Slower to understand
  - Need more time to comprehend/decide

Physical Changes

- Mobility
  - Pain
  - Joint issues
- Tire more easily
- Sick more often
- Hearing Issues
  - Volume
  - Background noise

Other Changes

- Dependence on family/others for decisions
- Isolated
- Lonely
- Familial distrust or estrangement
- Depression and/or lethargy

Watch Out for These Symptoms

- Memory loss: is the client repeating orders, instructions, or questions?
- Difficulty speaking
- Difficulty with abstract thinking
- Disorientation: is the client confused over time, place, or simple concepts?
- Misplacing items
- Drastic mood swings
- Changes in personality
- Increased passivity
- Difficulty performing simple tasks
- Poor judgment

Poll Question

Ethical and Fiduciary Responsibilities

Ethical Mandates

- **Integrity** – to be straightforward and honest in all professional and business relationships. Integrity also means that members must not knowingly be associated with misleading information.

- **Objectivity** – not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others.

- **Professional Competence and Due Care** – to attain and maintain professional knowledge and skill at the level required to ensure that a client receives competent professional service, based on current professional standards; and act diligently and in accordance with applicable professional standards.

Ethical Mandates

- **Confidentiality** – to respect the confidentiality of information acquired in the professional relationship. Confidential information must not be disclosed to anyone outside of the client relationship, unless there is a duty or right to disclose, or disclosure is in the public interest and permitted by law.

- **Professional Behavior** – to comply with relevant laws and regulations and avoid any conduct that the financial advisor knows or should know might discredit the profession.

Fiduciary vs. Suitability Standards

Investment advisers and investment brokers, who work for broker-dealers, both tailor their investment advice to individuals and institutional clients. However, they are not governed by the same standards.

Investment advisers work directly for clients and must place clients' interests ahead of their own, according to the Investment Advisers Act of 1940. The fiduciary standard is a legal requirement for financial advisors to put their client's interest ahead of their own, avoid or disclose conflicts of interest, and offer complete and accurate investment advice. It is the highest standard of care in equity or law and it is regulated by the SEC or state securities regulators. It is based on the principle that a fiduciary must act with the needs of the beneficiaries in mind, as a prudent person would.

Brokers, however, serve the broker-dealers they work for and must only believe that recommendations are suitable for clients. This suitability standard is set by the FINRA.

Fiduciary Standards

- Investment advisers are bound to a fiduciary standard that is regulated by the SEC or state securities regulators, both of which hold advisers to a fiduciary standard that requires them to put their client's interests above their own.

- Advisers must place their interests below that of their clients. It consists of a duty of loyalty and care. For example, advisers cannot buy securities for their accounts prior to buying them for clients and are prohibited from making trades that may result in higher commissions for themselves or their investment firms.

- It also means advisers must do their best to make sure investment advice is made using accurate and complete information and that the analysis is as thorough as possible. Avoiding a conflict of interest is important when acting as a fiduciary, which means that advisers must disclose any potential conflicts. Additionally, advisers need to place trades under a "best execution" standard, meaning they must strive to trade securities with the best combination of low cost and efficient execution.

Suitability and KYC

Suitability Questions

- Is the customer currently employed? If so, how much longer does he or she plan to work?
- What are the customer's primary expenses? For example, does the customer still have a mortgage?
- What are the customer's sources of income? Is the customer living on a fixed income or anticipate doing so in the future?
- How much income does the customer need to meet fixed or anticipated expenses?

Suitability Questions, cont.

- How much has the customer saved for retirement? How are those assets invested?

- How important is the liquidity of income-generating assets to the customer?

- What are the customer's financial and investment goals? For example, how important is generating income, preserving capital or accumulating assets for heirs?

- What health care insurance does the customer have? Will the customer be relying on investment assets for anticipated and unanticipated health costs?

Product Suitability

- FINRA's examiners are focusing on recommendations to seniors, particularly those that involve the following:

  - Products that have withdrawal penalties or otherwise lack liquidity, such as deferred variable annuities, equity indexed annuities, some real estate investments and limited partnerships;
  - Variable life settlements;
  - Complex structured products, such as collateralized debt obligations (CDOs);
  - Mortgaging home equity for investment purposes; and
  - Using retirement savings, including early withdrawals from IRAs, to invest in high-risk investments.

KYC

- Remember that under the Know Your Customer rules:
  - Eligibility does not necessarily equal suitability
  - Customer net worth alone is not determinative of whether a particular product is suitable for an investor.
  - Even if the client qualifies as an "accredited investor" under Reg D, not all eligible investments are necessarily suitable.
  - Understand your client's level of financial sophistication

Poll Question

Decision-Making and Your Senior Client

Strengths in Decision-Making

- They know what they want
- Investing experience
- They have a good idea of their budget
- Willingness to speak up

Potential Issues

- Embarrassment over not understanding issue or concept
- Undue pressure from family to make unwanted decisions
- Over reliance on family members who have a different agenda
- Elder abuse or coercion

Recognizing Elder Abuse and Financial Exploitation

Financial Exploitation

- The **Senior Safe Act** defines “exploitation” as “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or a fiduciary, that:
  - uses the resources of a senior citizen for monetary or personal benefit, profit, or gain; or
  - results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings, or assets.”

Elder Abuse Symptoms – Financial Exploitation

- The investor gives a power of attorney to someone that, to the investor's securities professional, appears inappropriate
- Indications that the investor does not have control over or access to his/her money
- The investor's mailing address has been changed to an unfamiliar and unexplained address
- Inability of the securities professional to speak directly to the investor, despite attempts to do so
- The investor appears to be suddenly isolated from friends and family
- There is a sudden, unexplained or unusual change in the investor's transaction patterns
- There are unexplained disbursements made in an investor's account that are outside of the norm
- The sudden appearance of a new individual involved in the investor's financial affairs

Financial Exploitation – Red Flags

- Sudden changes in their bank accounts, such as adding new names onto accounts and cards
- Finding unpaid bills, letters from collection agencies or past due notices from creditors even if the person has adequate financial resources
- Previously uninvolved relatives showing up and claiming their rights to an elder's property or possessions
- The sudden transfer of assets to someone outside the family
- A change in spending habits, such as no longer wanting to go shopping or out to eat
- They're acting worried or stressed out about money

What to Do if You Suspect Elder Abuse

Report suspected cases of elder abuse or financial exploitation:

- Follow protocols of your firm and compliance officer.
- Alert state security regulator.
- Call 911 or the local police if the suspected victim is in immediate danger.
- Call the Adult Protective Services if the suspected victim is not in immediate danger.
- Report financial abuse to your local District Attorney’s office and ask them to prosecute the person who took advantage of your loved one.
- Call your statewide, 24-hour Adult Protective Services Hotline: to report suspected abuse, neglect, or financial exploitation of an adult age 60 or older or a person with disabilities age 18-59.
- Find resources to report elder abuse and financial exploitation on the U.S. Department of Justice’s website.

Poll Question

Communications and Language for Your Senior Clients

Communication and Language Issues

- Volume
- Background
- Speed
- Jargon

Communication and Language Solutions

- Speak more slowly and clearly
- Meet in a quiet place
- Ask frequent questions to make sure they understand or to see if they need you to clarify
- Explain financial terms. Speak in non-financial terms, when possible
- Explain procedures

Tailoring Presentations

Presentation Success with Senior Clients

- Plan on one or two topics per meeting
- Give them the topic in advance and ask them to write down any questions they have and bring to the meeting
- Use charts
- Plan for a quiet room
- If you have beverages, make sure they are easy to manipulate (bottle tops off for water, easy spouts on coffee)
- Ask questions to determine their level of understanding
- Send a follow up email to summarize discussion and any decisions made

Presentation Success with Senior Clients, cont.

- Ask if they would prefer a family member be present*
- Let them ask their questions first
- Speak simply, but not condescendingly
- Give them materials to take home
- Watch for signs of any abuse or lack of comprehension

*Some attorneys report that the closer a family member is to a decision, the more likely there will be family disagreements later

Seminars and Marketing to Seniors

Marketing Do’s

Approval by Compliance Officer:

- Marketing materials
- Seminar script
- Meal with seminar
- Outside firm or sponsorship of seminar
- Giveaways

Marketing Don'ts

FINRA, the SEC, and State regulators are increasingly focused on seminars targeting senior investors:

- High Pressure Sales Tactics
- Lavish inducements
- Misrepresentations regarding the nature of the seminar
- Exaggerated promises

Poll Question

Best Practices for Firms

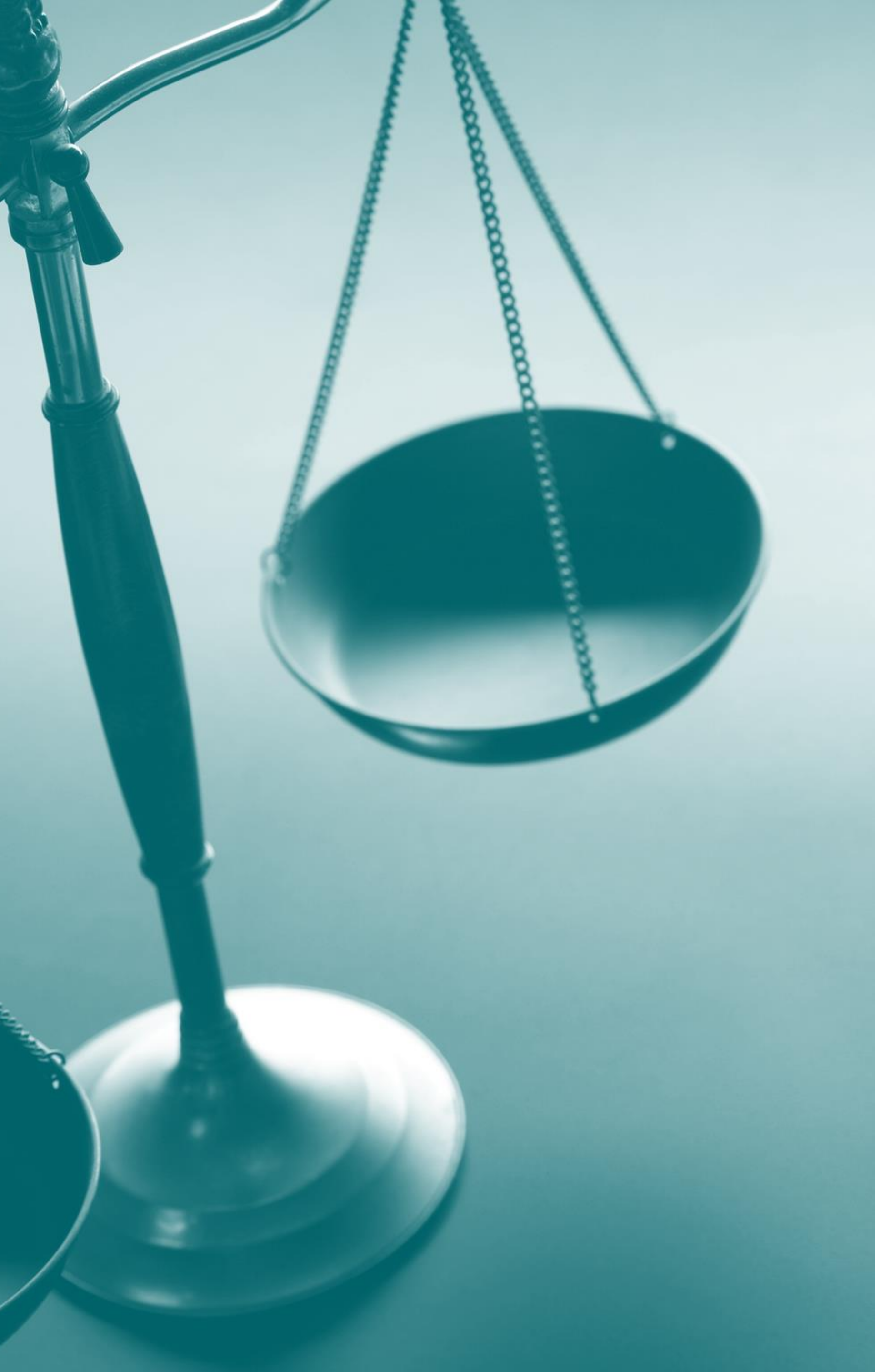
Best Practice Suggestions

- Here are several suggestions for best practices and risk management:

  - Obtain contact information for persons who are trusted by the Senior Client and have the Senior Client agree that you may contact them if you have concerns
  - Provide training to the advisors and staff in your firm to identify red flags for diminished capacity and elder financial abuse and develop policies to escalate the matter when red flags are identified
  - Require annual updated training to ensure a high level of awareness within your firm
  - Review each of the SEC’s requests, determine the appropriate responses for your firm, and document those decisions in your policies, and review and update those practices periodically

Guidelines for Effective Communications

- Increasing the frequency of contact with senior investors to remain informed about changes in investors' financial needs, employment status, health, and other life events.
- Encouraging securities professionals to talk to investors about having an emergency or alternate contact on file with the firm, such as a trusted family member or other trusted individual.
- Educating investors about the benefits of having a power of attorney and when appropriate, encouraging investors who are in good health to share details of their financial affairs with trusted family members, estate lawyers and/or other professionals to help ensure that if the investor's health deteriorates, their financial affairs will be properly handled.
- Documenting conversations with investors in case they have problems with lack of recall or to help resolve any misunderstanding.
- Sending follow-up letters to investors after conversations to document and reiterate what was discussed.
- Avoiding financial jargon, using plain language, and having larger font versions of marketing materials available.
- Providing brochures that explain to investors how to identify, locate, organize and store important documents so that they are easily accessible in case of an emergency. Many firms produce brochures, newsletters and magazines aimed at educating senior investors.



Ethics Guidelines for Senior Clients

- New CFA Standards, effective Jan. 1, 2024:
  - Members and Candidates must act with and maintain the competence necessary to fulfill their professional responsibilities.
  - Disclose to clients and prospective clients the nature of the services provided, along with information about the costs to the client associated with those services.
  - Members and Candidates must avoid or make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity and interfere with respective duties to their clients, prospective clients, and employer. Members and Candidates must ensure that such disclosures are prominent, are delivered in plain language, and communicate the relevant information effectively.
- Fiduciary Standards:
  - Acting with undivided loyalty and utmost good faith.
  - Providing full and fair disclosure of all material facts.
  - Not misleading clients.
  - Avoiding conflicts of interest, such as when the advisor profits more if a client uses one investment instead of another or trades frequently and disclosing any potential conflicts of interest.
- Suitability Requirements

Poll Question

Resources

- https://www.investor.gov/additional-resources/information/older-investors
- https://www.nasaa.org/
- https://www.finra.org/search?search_api_fulltext=senior
- https://metamorphosisready.com
- https://www.sec.gov/files/how-the-sec-works-to-protect-senior-investors.pdf
- https://www.ncoa.org/older-adults/money

Questions and Answers

Thank you for attending!

Please feel to reach out with any comments or questions:

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