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## ONE YEAR LATER: FINRA RULES 2165 AND 4512

### FINRA RULE 2165

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NEW YORK, FEBRUARY 2019

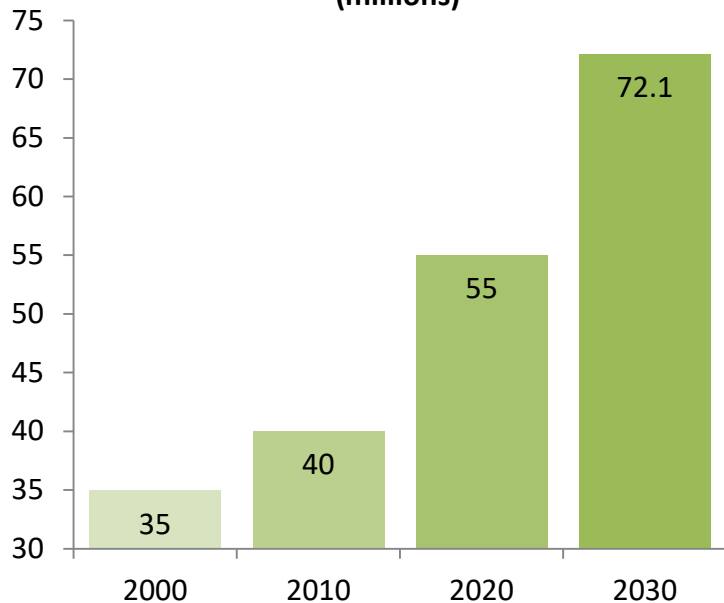
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# The Importance of Protecting a Growing Senior Population

# 10,000...

10,000 Americans will turn 65 every day  
Through 2030.

Projected Increase of 65+ Age Group  
(millions)



## Why is it so important to protect Senior Investors?

America's senior population is growing rapidly, and is one of the most highly targeted groups for financial exploitation. Further, because many seniors are retired, they are unable to recover from significant financial losses.

- Currently, Americans over the age of 50 account for **77%** of all financial assets in the United States (and more than half of them utilize financial advisors)
- In 2011, the 65+ age group numbered **41.4 million**
  - +18% since 2000
  - 13.3% of the U.S. population
- By 2030...
  - All Baby Boomers will have turned 65
  - Seniors aged 65+ will account for **18%** of the nation's population

*Life expectancies are on the rise and cases of reported elder abuse are increasing. **This is not a problem that is going away.***

# The Reason for Concern



>50%

## Familiar Faces

- Unfortunately, more than half of all senior financial exploitation is perpetrated by **friends, family members, or caregivers**. This exploitation can be wide-ranging, is often the most difficult to prevent, and is the most under-reported form of senior financial exploitation. A victim of such exploitation may even seek to cover-up such abuse out of feelings of guilt, shame, or loyalty.

- A Metlife study found that seniors lose at least **\$2.9 billion** each year to **financial exploitation in media-reported cases\***



\$2.9 B



1 in 44

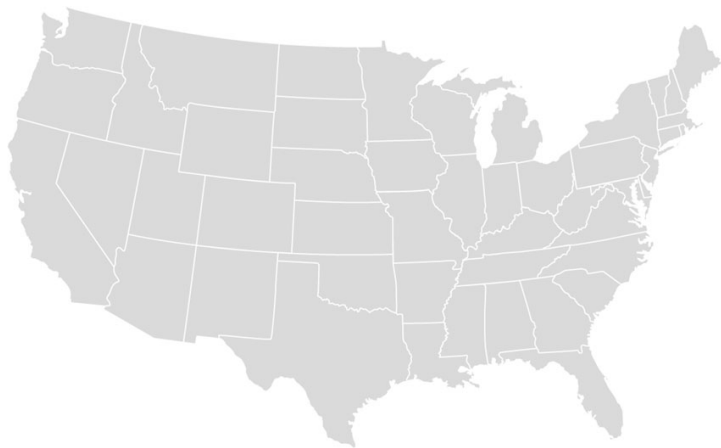
- The National Adult Protective Services Association estimates that only **1 in 44 cases of financial abuse are ever reported to the authorities**



1 in 5

- It is estimated that **1 in 5** Americans aged 65 or older have been **victimized by financial fraud**

# Report & Hold Laws / Rules



## Anatomy of a Report & Hold Law

### Reporting Pathway

- Provide a path for financial advisors to voluntarily report suspected abuse to the appropriate securities administrator, who have the expertise necessary to effectively investigate such issues.

### Third-Party Contacts

- Develop a limited process by which financial services firms could reach out to certain closely related third-parties when there is concern about exploitation or diminished capacity.

### Transaction/ Disbursement Holds

- Allow financial services firms to hold suspect transactions for a flexible period of time in order to allow **sufficient time for a state to investigate** or extend the hold if necessary.

### Ensure Operational Effectiveness

- It is important to ensure that any Report & Hold law is statutory in nature and is operationally effective and efficient for all financial services institutions, regardless of size or business model.

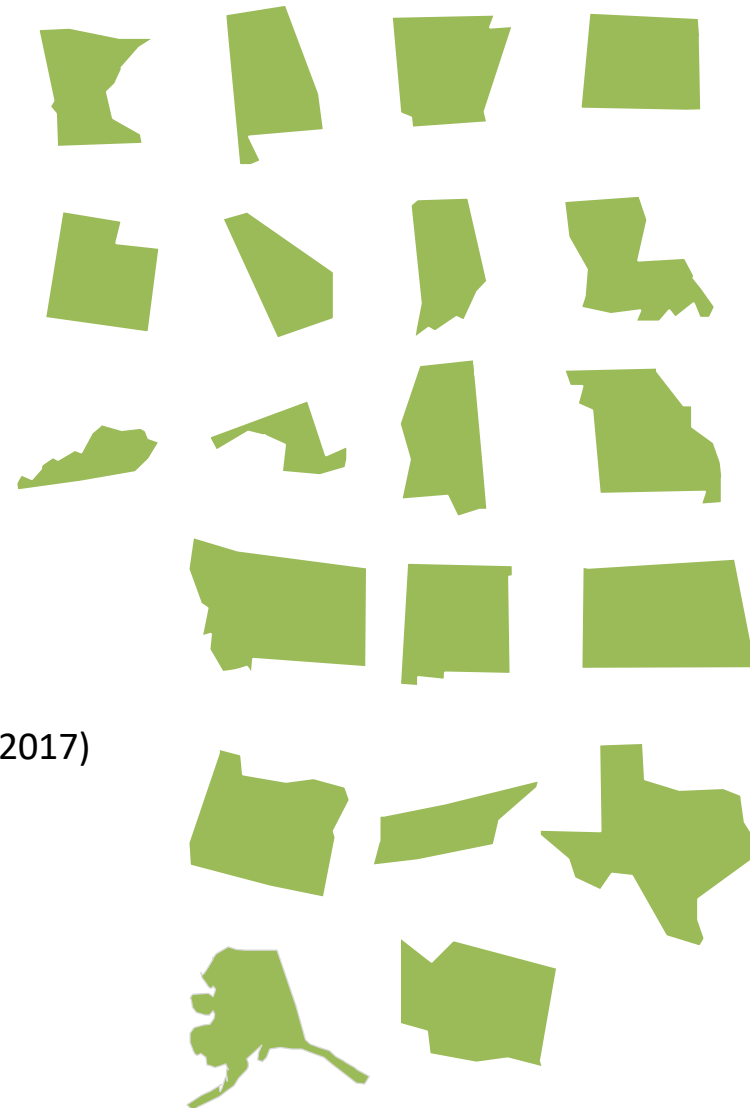
# State Report & Hold Laws

## Laws:

**Alabama** – Act No. 2016-141  
**Alaska** – Chapter 65 SLA 2018  
**Arkansas** – Act No. 668 (2017)  
**Colorado** – Chapter 289, Session Laws of 2017  
**Delaware** – Title 31 Chapter 39 Delaware Code (2015)  
**Indiana** – Act. No. 221 (2016)  
**Kentucky** – Acts 2018, Ch. 127  
**Louisiana** – Act No. 580 (2016)  
**Maryland** – Ch. 838, 2017  
**Minnesota** – Ch. 161, Laws of 2018  
**Mississippi** – Sec. 75-71-413 MS Code of 1972 (2017)  
**Missouri** – RSMo 409.600-409.630 (2015)  
**Montana** – Chapter 84 (2017)  
**New Mexico** – Chapter 106 of 2017  
**North Dakota** – New Section in Ch. 10-04-08.5, Code of ND (2017)  
**Oregon** – Chapter 514, 2017 Laws  
**Tennessee** – Pub. Ch. 424 (2017)  
**Texas** – Art. 581-45 Vernon's TX Civil Statutes (2017)  
**Utah** – Sec. 61-1-201 – 206 Utah Code Annotated  
**Washington State** – Ch. 133, Laws of 2010

## Rules:

**Vermont** – Regulation S-2016-01



## Rule 2165

- Provides a safe harbor from FINRA Rules 2010, 2150 and 11870, allowing firms to temporarily hold suspicious disbursements for up to 25 days (or longer if ordered by a court or state agency of competent jurisdiction).
- Focuses on disbursements, but could be expanded to include transactions.
- Includes recordkeeping and compliance requirements.
- Effective February 5, 2018.

Full text of the rule:

[http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=12784](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=12784)

## To put the hold in place:

- Notify the trusted contact and all parties authorized to transact business on the account of the hold and the reason for the hold within two days
- Do not need to notify the trusted contact or any party who the firm believes is exploited the customer
- Recordkeeping requirements of the disbursement requests, and findings with regard to the potential exploitation that led to the hold
- Need procedures regarding the identification, escalation and reporting of matters related to financial exploitation

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# New FINRA Rule



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October  
2015

Regulatory Notice 15-37: FINRA seeks comment on proposed adoption of FINRA Rule 2165 to permit qualified persons of firms to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.

<http://www.finra.org/industry/notices/15-37>

October  
2016

SR-FINRA-2016-039: FINRA files with the Securities and Exchange Commission a proposed rule change to adopt FINRA Rule 2165.

Federal Register Notice: [http://www.finra.org/sites/default/files/rule\\_filing\\_file/SR-FINRA-2016-039-federal-register-notice.pdf](http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-039-federal-register-notice.pdf)

January  
2017

FINRA files a response to comments on Rules 4512 and 2165:

[http://documents.sifma.org/State\\_Gov\\_Relations/StatE\\_News/2014/FINRA\\_Response\\_to\\_Comments/](http://documents.sifma.org/State_Gov_Relations/StatE_News/2014/FINRA_Response_to_Comments/)

January  
2017

FINRA files amendments to Rule 2165: [http://www.finra.org/sites/default/files/rule\\_filing\\_file/SR-FINRA-2016-039-amendment1.pdf](http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-039-amendment1.pdf)

March  
2017

Regulatory Notice 17-11: Securities and Exchange Commission approves adoption of Rule 2165.

<http://www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf>

February  
2018

FINRA Rule 2165, on the Financial Exploitation of Specified Adults, goes into effect.

[http://finra.complinet.com/en/display/display.html?rbid=2403&record\\_id=17538&element\\_id=12784](http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=17538&element_id=12784)

## **FINRA Request for Comment**

**October 2015**

Regulatory Notice 15-37: FINRA seeks comment on proposed adoption of FINRA Rule 2165 to permit qualified persons of firms to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.

<http://www.finra.org/industry/notices/15-37>

## **SIFMA Files Comments**

**December 2015**

SIFMA files comments on FINRA Regulatory Notice 15-37: [http://www.finra.org/sites/default/files/15-37\\_SIFMA\\_comment.pdf](http://www.finra.org/sites/default/files/15-37_SIFMA_comment.pdf)

## **FINRA Responds to Comments**

**January 2017**

FINRA files a response to comments on Rules 4512 and 2165:

[http://documents.sifma.org/State Gov Relations/StatE News/2014/FINRA Response to Comments/](http://documents.sifma.org/State_Gov_Relations/StatE_News/2014/FINRA_Response_to_Comments/)

## **Interagency Guidance**

Agencies provide guidance on privacy laws and reporting financial abuse of seniors:

[http://documents.sifma.org/State Gov Relations/StatE News/2014/interagency\\_guidance/](http://documents.sifma.org/State_Gov_Relations/StatE_News/2014/interagency_guidance/)



**Q. May a member place a temporary hold on a securities transaction pursuant to Rule 2165?**



**Q. Under Rule 2165, may a member that has a reasonable belief of financial exploitation of a Specified Adult regarding a disbursement or disbursements place a temporary hold or restrictions on an entire account if the member permits legitimate disbursements from the account?**



**Q. May a member extend a temporary hold beyond the period indicated in Rule 2165? In addition, would the member need to report the agency's request to FINRA?**

# Additional FINRA Rules and Resources



## Senior Investors Webpage

- [www.finra.org/industry/senior-investors](http://www.finra.org/industry/senior-investors)
- Contains information on Rules, Notices, Guidance, News Releases, Investor Education and Examinations

## FINRA-Identified Rules Relevant to Senior Investors

- **Regulatory Notice 16-12:** Guidance on Firm Responsibilities for Sales of Pension Income Stream Products
- **Regulatory Notice 11-52:** Obligations Regarding Supervision of Registered Persons Using Senior Designations
- **Regulatory Notice 07-43:** Obligations Regarding Senior Investors and Highlighting Industry Practices to Serve Senior Customers

## Available FINRA Guidance Topics

- 2165/4512 FAQs and Podcasts on Senior Designations, FINRA's 2015 Exam Priorities, Protecting Senior Investors and Considerations for Working with Seniors.

