BACKGROUND

- The following suite of tools (FEIST) was developed by Webber CPA, PLLC in conjunction with a federal grant to Enhance Adult Protective Services awarded by the Administration for Community Living (ACL) to the New York State Office of Children & Family Services (OCFS).

- The grant provides training on the tools and access to a community-based forensic accountant for financial exploitation cases to two pilot sites: Onondaga County and Queens County

- Training on these forms was conducted at both sites in April 2017

- Access to a forensic accountant is available via APS Supervisors in those areas
The Elder Abuse Prevention Interventions (EAPI) Initiative, launched in NYS in 2012 under a different grant from ACL, piloted the use of forensic accountants (and geropsychiatrists) on enhanced multi-disciplinary teams (E-MDTs) dedicated to elder abuse cases.

In 2016, both NYS and NYC funded additional E-MDTs, all focused on elder abuse.

The OCFS grant from ACL provides funding for forensic accounting services for any adult financial exploitation cases, not just financial exploitation of the elderly.

Use of a forensic accountant for these cases will be determined using the document, *When and How to Refer a Case to a Forensic Accountant*, after a case worker has conducted their own investigation using the Financial Exploitation Investigation Suite of Tools.

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**HISTORY OF FORENSIC ACCOUNTING FOR ABUSE CASES**

- Step 1: Client Data
- Step 2: Client Questions
- Step 3: Income & Expenses
- Step 4: Client Account Log
- Step 5: Document Review Guide
- Step 6: Bank Statement Summary
- Step 7: Investment Statement Summary
- Step 8: Red Flags Checklist
- When and How to Use a Forensic Accountant

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**FINANCIAL EXPLOITATION INVESTIGATION SUITE OF TOOLS**
RELATING FEIST TO APS TRAINING AND PRACTICE

• What is the Financial Exploitation Investigation Suite of Tools (FEIST)?
  • FEIST is a set investigative tools for APS caseworkers.
  • FEIST is built on foundations already in place, including:
    • Broken Trust, a Guide to APS Professionals for Investigating Financial Exploitation and Power of Attorney Abuse, and
    • the APS training course on financial exploitation
  • All three resources focus on the warning signs of financial abuse: in the client’s home, in the client’s demeanor, in questionable financial transactions, and in suspicious relationships.

RELATING FEIST TO APS TRAINING AND PRACTICE

• Considerations for implementation:
  • Clients may be unable or unwilling to respond to FEIST or to some portion of it.
  • FEIST should be especially helpful when reporting to the police or taking other action, including any legal interventions. However, using FEIST is no guarantee. Intervention is what makes a case successful.
  • FEIST gives case workers the confidence to continue applying investigative skills in future financial exploitation cases.
  • FEIST provides a helpful structure, but it is not to be rigidly applied.
  • FEIST works in tandem with online databases use by APS (ASAP.Net and APS.Net)
RELATING FEIST TO APS TRAINING AND PRACTICE

- Tools used in conjunction with FEIST:
  - Standard APS form letter for requesting financial information and records from banks and other financial institutions.
  - Template 15-day letter for requesting an accounting from an agent in a POA.

EXISTING GUIDANCE

- New York State Office of Children & Family Services, and Brookdale Center for Healthy Aging
  - Protective Services for Adults Desk Guide: A Guideline to PSA
    - https://brookdale.org/tools-resources/desk-guides/
- Investigating Financial Exploitation: PSA Caseworker Participant Handbook (provided at APS New Worker Institute & standalone training)
- Contact OCFS Bureau of Adult Services
FINANCIAL EXPLOITATION

- NYS Social Services Law §473(6)(g)
  - Financial exploitation is the improper use of an adult’s funds, property, or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.
  - Financial exploitation includes, but is not limited to:
    - Extortion
    - Unexplained disappearance of funds or valuables
    - Inappropriate use of phone, food, or other resources
    - Transfer of real property
    - Transfer of other assets (vehicles, firearms, etc.)
    - Caregiver refuses to use client funds to meet essential needs or services
    - Misuse of adult’s home
    - Identity Theft
    - Scams

FINANCIAL EXPLOITATION BY A PERSON THE CLIENT KNOWS

- Family, friend, acquaintance, caregiver, person acting with a power of attorney, court-appointed guardian, other fiduciary, or trusted insider at a financial institution
  - Stealing cash, jewelry, other items of value
  - Improper access (e.g., benefit checks, ATM or credit cards)
  - Forging elder’s signature
  - Obtaining money/property by coercion, misrepresentation, fraud, undue influence
  - Charging excessive fees for basic care services
FINANCIAL EXPLOITATION BY A STRANGER

- Facebook
- IRS, Internet/Fraud scams
- Con-artists claiming to represent a bogus organization such as a charity, lottery, sweepstakes, or law enforcement agency
- Scams, e.g., “Grandparent scam”
- Unscrupulous salespeople or contractors
- Identity theft
- Reverse mortgage scams
- Insurance fraud scams
- Health care fraud

FINANCIAL EXPLOITATION: PENAL LAW PROVISIONS

- NYS Penal Law, Section 155

<table>
<thead>
<tr>
<th>Stolen</th>
<th>Crime</th>
<th>Level</th>
<th>Class</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property &lt;$1,000</td>
<td>Petit Larceny</td>
<td>Misdemeanor</td>
<td>A</td>
<td>Fine</td>
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<tr>
<td>Property &gt;$1,000</td>
<td>Grand Larceny 4th Degree</td>
<td>Felony</td>
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<td>1-4 years, Probation</td>
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<td>Credit/debit card</td>
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<td>Firearm</td>
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<td>Motor vehicle &gt;$100</td>
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<td>Cell phone</td>
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<tr>
<td>Property &gt;$3,000</td>
<td>Grand Larceny 3rd Degree</td>
<td>Felony</td>
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<td>1-7 years, Probation</td>
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<td>ATM withdrawal</td>
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<tr>
<td>Property &gt;$50,000</td>
<td>Grand Larceny 2nd Degree</td>
<td>Felony</td>
<td>C</td>
<td>1-15 years, Probation</td>
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<tr>
<td>Property obtained by extortion</td>
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</tr>
<tr>
<td>Property &gt;$1,000,000</td>
<td>Grand Larceny 1st Degree</td>
<td>Felony</td>
<td>B</td>
<td>1-25 years</td>
</tr>
</tbody>
</table>
FINANCIAL EXPLOITATION: PENAL LAW PROVISIONS

- NYS Penal Law, Section 260.25
  - A person is guilty of endangering the welfare of an incompetent or physically disabled person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect.

INABILITY TO MANAGE FINANCES

- Squandering
- Failure to pay bills
- Inaccurate knowledge of finances
- Irresponsible credit purchases
- Uncashed checks
- Large amounts of cash on hand
- Giving money away
- Other
REMEDIES & RESOURCES

- Financial Exploitation or Inability to Manage Finances
  - Law enforcement/district attorney
  - Legal aid
  - Guardianship
  - Representative/protective payee
  - Civil attorney
  - Mediation
  - MDTs
  - Forensic accountants
  - Attorney General
  - Nonprofit service providers
  - NYS Department of Financial Services (DFS)

INVESTIGATION: INTAKE & CONSIDERATIONS

- Intake
  - Client
  - Living situation
  - Involved parties
  - Suspected perpetrator

- Considerations
  - Is criminal conduct suspected?
  - If so, what type?
  - Has a police report been filed?
  - Is suspected perpetrator primary caregiver?
  - Is suspected perpetrator receiving public benefits?
  - Will suspected perpetrator be present for the Client interview?
  - Based on the referral, what evidence might help to verify this case?
STEP 1: CLIENT DATA

- *Step 1: Client Data* summarizes client information to facilitate the clear, concise communication of important data to other parties involved in an investigation.

- Access to APS data is governed by the APS confidentiality statute.

- Not only should the form contain demographic information, it should also contain a summary of the alleged exploitation as communicated by the referral source or observed by APS in the space provided.
STEP 2: CLIENT QUESTIONS

- Step 2: Client Questions provides a structure for asking probing questions and documenting the client’s responses. For each question, indicate yes, no, or unknown/unwilling to answer, and describe any additional details noted. References to other FEIST documents are included to assist with completing related Steps where applicable, and space is provided for workers to document any observations they have during their visits that could be indicators of abuse.

- Step 2: Client Questions also assists the worker with recognizing when further investigation may not be necessary. Questions 1 through 24 are intended to identify whether financial exploitation may be occurring; if so, Questions 25 through 44 are intended to help the worker dig deeper and recognize the full scope of the abuse.

- Rapport must be built with the client before broaching these questions, and it may take many visits.

| Financial Exploitation Investigation Suite of Tools: Step 2: Client Questions |
|-----------------------------|--------------------------|--------------------------|
| Agency Worker               | Case No.                 | Referral Date            |
| Client Questions             | Response                 | Description/Action       |
| 1. Are you experiencing problems or concerns related to care or finances? |
| 2. Does your income cover your regular expenses, including your monthly bills, and are you able to manage your own finances? |
| 3. Has your heat or electricity ever been shut off? When? Have you ever been evicted or threatened with eviction? Is your rent or mortgage up to date? |
| 4. Does anyone else live with you? If yes, identify person(s) in Step 1. |
| 5. Does that person contribute to household expenses? |
| 6. Are you satisfied with the care you have been receiving or has anyone prevented you from getting the necessary food, clothes, medical supplies or care, or receiving your mail? If yes, identify person(s) in Step 1. |
| 7. Do you have regular income? How much and from what sources? Government benefits, pension, other? If yes, indicate in Step 3. |


For each income source, indicate the approximate amount of each payment, and the frequency of payment (monthly, quarterly, annually, etc.). For each regular expense item, list the payee, amount, and frequency of payment.

Based on what is known about the client’s income and expenses, the worker can use Step 3: Client Income & Expenses to determine whether the client’s income covers his/her bills.

<table>
<thead>
<tr>
<th>Income Source</th>
<th>Amount</th>
<th>Frequency</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Social Security</td>
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<td>Disability benefits</td>
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<td>Other government benefits</td>
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<td>Pension(s)</td>
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<td>Investment income</td>
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<td>Wages</td>
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<td>Rental income</td>
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<td>Inheritance</td>
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<td>Insurance proceeds</td>
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<td>Others</td>
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<tr>
<th>Expense</th>
<th>Amount</th>
<th>Frequency</th>
<th>Notes</th>
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<td>Mortgage</td>
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<td>Rent</td>
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<td>Facility rent (skilled nursing, assisted living, etc.)</td>
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<td>Home Equity Line of Credit</td>
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<td>Utilities</td>
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<td>Cable</td>
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<td>Car loan</td>
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<td>Real estate taxes</td>
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<td>Medical</td>
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<tr>
<td>Loan payment(s)</td>
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</table>

Does income appear to cover regular expenses? (Circle one)
Step 4: Client Account Log assists workers with creating a list of accounts held by the client, and to assist them with tracking the related documents requested and received. Information captured in Step 4: Client Account Log includes financial institution name, account type and number, ownership information (individual, joint, POA listed, etc.), dates when the accounts were opened and closed, time period for which statements or related documents were requested, and dates those documents were received.

If statements and related documents are forwarded to a third party, either alone or as part of a complete referral package, Step 4: Client Account Log acts as a “Table of Contents” for the documents so that they are presented to the third party in an organized format.

<table>
<thead>
<tr>
<th>Financial Institution Name</th>
<th>Account Number</th>
<th>Ownership/Type</th>
<th>Open Date</th>
<th>Close Date</th>
<th>Time Period Requested</th>
<th>Date Received</th>
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<td>Checking Accounts</td>
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<td>Savings Accounts/Money Market Accounts</td>
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<td>Investment Accounts</td>
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<td>Real Property and Other Assets</td>
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<td>Loans, Credit, and Other Debt</td>
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REQUESTING BANK RECORDS

- Use APS standard request or other standard protocol
- Request should include each of the following items
  - Signature card and account opening documents
  - Power of Attorney documents on record
  - Bank statements for all accounts owned individually and jointly by client
  - Withdrawal slips/offsets
  - Canceled checks (front and back)
  - Deposited items (front and back)
  - Deposit slips
  - Wire transfer details (origin/destination account number)
  - Bank checks
  - Mortgage/loan statements/records
  - Credit card statements

OFFICIAL REQUEST FOR CUSTOMER RECORDS

Pursuant to Gramm-Leach-Bliley Act (GLBA) 15 U.S.C. §§6802(e)(3) and 15 U.S.C. §6802(e)(3)(B) and New York State Social Services Law Section 473:

I, ____________________________, an Adult Protective Services Investigator operating under the laws of the State of New York, am conducting an authorized investigation of alleged financial exploitation of a vulnerable adult.

I hereby request records from ________________ for all accounts relating to ________________ for the period of ___________ to ___________, including but not limited to:

- Bank statements for all accounts, including checking, savings, money market, certificates of deposit
- Copies of all checks and withdrawals from the account(s) (front and back) including offsets
- Copies of all deposits and deposit items
- Customer Profile showing all accounts, including opening and/or closing dates
- All Power of Attorney documents and signature cards
- Statements for any loans, lines of credit, or credit cards and copies of advances
- Other:

Please provide these documents on or before ________________________

Signature: ____________________________

Phone: ____________________________

Title: ____________________________

Address: ____________________________

Agency ID (if applicable): ____________________________
GRAMM-LEACH-BLILEY ACT

  - (a) Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.
  - (e) Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—
    - (3)(B) to protect against or prevent actual or potential fraud,
    - (8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

REQUESTING CREDIT INFORMATION

- Consumers are entitled to one free annual credit report from each of the three credit reporting agencies.
- Credit reports can be requested online, via telephone, or by mail with client consent.
- Credit card statements can usually be downloaded online, but may also be obtained via mail with client consent.

- **Equifax**
  - Equifax Information Services, LLC
  - PO Box 105169, Atlanta, GA 30348
  - 1-800-525-6285/www.equifax.com

- **Experian**
  - PO Box 9554, Allen, TX 75013
  - 1-888-397-3742/www.experian.com

- **TransUnion**
  - Fraud Victim Assistance Department
  - PO Box 6790, Fullerton, CA 92834-6790
  - 1-800-680-7289/www.transunion.com
STEP 5: DOCUMENT REVIEW GUIDE

- Step 5: Document Review Guide provides a list of other types of documents that workers may want to request as part of their investigations.

- To assist workers in reviewing these records, Step 5: Document Review Guide provides some “Considerations for Review”, which are questions designed to point workers to specific pieces of information within certain documents that may be relevant to their investigation. Any findings noted while reviewing these documents should be described in the “Notes” section.

- It is important to note that workers do not have to request all of these documents to conduct an investigation. Action items from Step 2 and “Considerations for Review” given in Step 5: Document Review Guide help workers narrow down the specific documents that may be relevant to a case.

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**Financial Exploitation Investigation Suite of Tools**

**Step 5: Document Review Guide**

<table>
<thead>
<tr>
<th>Document</th>
<th>Considerations for Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power of Attorney documents</td>
<td>When was it executed? Did the Client have capacity at that time? Who is authorized as agent for the Client? What are his/her powers? Are they exercised appropriately, if at all? Is agent receiving compensation? Is there a gift rider? Does the bank have a copy of a valid POA to allow the person to act on the account? Should an accounting be requested from the agent under POA (11-day letter)?</td>
</tr>
<tr>
<td>Health Care Proxy documents</td>
<td>What are the Client's wishes for medical care? Who is authorized to make decisions on Client's behalf? Have past decisions aligned with Client directives?</td>
</tr>
<tr>
<td>Wills</td>
<td>Are beneficiaries appropriately designated? Who is the Executor? When was it signed?</td>
</tr>
<tr>
<td>Deeds</td>
<td>Do County Clerk records reflect property ownership as described by Victim? Any recent transfers?</td>
</tr>
<tr>
<td>Mortgage applications, agreements, repayment records</td>
<td>Does the Client have a mortgage? On what property? When was it signed? Who signed it? When is it expected to be paid off?</td>
</tr>
<tr>
<td>Reverse mortgage applications, agreements, and draw requests</td>
<td>Does the Client have a reverse mortgage? On what property? When was it signed? By whom? How much has been withdrawn?</td>
</tr>
</tbody>
</table>
Step 6: Bank Statement Summary assists workers in performing an initial analysis of deposit and withdrawal trends in the client’s bank accounts (checking, savings, money market accounts, certificates of deposit). Beginning balances, ending balances, deposits, and withdrawals are usually summarized on the first page of each bank statements, and should be input in the appropriate fields.

If completed electronically, only beginning balances, deposits, and withdrawals should be entered into the spreadsheet. Ending balances, totals, and net activity fields will automatically calculate.

If observed deposit or withdrawal patterns deviate from what the worker knows about the client’s normal income and expenses, a more detailed review of bank statements is necessary to determine the cause of these changes.
DETAILED REVIEW OF BANK STATEMENTS

- Use Step 8: Red Flags Checklist as a guide
- Focus on patterns: what they were vs. what they are now
  - Deposits
  - Withdrawals
  - Account fees
- If public records indicate the transfer, sale or purchases of a home, or a new mortgage or mortgage payoff, look for related proceeds or withdrawals
- Look at nonfinancial information on the statements:
  - Changes of ownership
  - Changes of POA
  - Changes of address
  - Whether the client enrolled in electronic statements

STEP 7: INVESTMENT STATEMENT SUMMARY

- Deposits, withdrawals, and “changes in market value” are often listed on the first pages of an investment account statement, and should be input in the appropriate fields in Step 7: Investment Statement Summary. If observed deposit/withdrawal patterns deviate from what the worker knows about the client’s normal income and expenses, a more detailed review of investment statements is necessary to determine the cause of these changes.
- If completed electronically, only beginning balances, deposits, withdrawals, and changes in market value should be entered into the spreadsheet. Ending balances, totals, and net activity fields will automatically calculate.
STEP 8: RED FLAGS CHECKLIST

- **Step 8: Red Flags Checklist** serves as a summary of all “Red Flags” of abuse noted during the worker’s investigation. Space exists within the tool for the worker to reference the indicator or specific example of financial exploitation so that when submitted as part of the complete referral package, the third party may efficiently assess the case, review the relevant evidence, and take appropriate action.

- Place a checkmark next to each red flag to alert a reviewer or third party, and reference where in the referral package the worker has included evidence of that indicator.
The Financial Exploitation Investigation Suite of Tools provides a detailed framework for gathering records, conducting a thorough investigation, and ultimately, if necessary, presenting these records in an organized manner to a third party for assistance with investigation and intervention:

- Completed form for Step 1: Client Data
- Completed form for Step 2: Client Questions
- Completed form for Step 3: Client Income & Expenses
- Completed form for Step 4: Client Account Log
- Completed form for Step 6: Bank Statement Summary
- Completed form for Step 7: Investment Statement Summary
- Completed form for Step 8: Red Flags Checklist
- All statements and supporting records obtained from financial institutions, marked with findings from Step 2, Step 5 & Step 8.
- List of other parties involved with case and contact information.
- Any other relevant documents obtained in Step 2 or Step 5.
- Any deadline associated with the proposed intervention
TYPICAL CASE REFERRALS

- Legal Aid
- Guardianship
- Law Enforcement
- Attorney General
- Department of Financial Services (DFS)
- Representative Payee/Protective Payee
- Civil Attorney
- MDT/E-MDT
- Forensic Accountant

WHAT IS A FORENSIC ACCOUNTANT?

- **Forensic**: relating to the use of scientific knowledge or methods in solving crimes; relating to, used in, or suitable to a court of law (Merriam Webster)
- **Forensic accountants** provide evidence of financial matters for legal proceedings, both civil and criminal. For APS, forensic accountants may provide assistance with financial exploitation cases by:
  - Consulting with caseworker/supervisor when financial abuse is suspected
  - Reviewing bank and other records to determine whether an allegation is verified
  - Issuing a concise, written report summarizing findings for use by APS, Client, law enforcement, court evaluator, and other interested parties
  - Providing expert witness testimony in court for guardianship, criminal or civil cases
WHEN AND HOW TO REFER A CASE TO A FORENSIC ACCOUNTANT

- Case characteristics that may merit the use of a forensic accountant:
  - Urgency: APS caseloads are too high to perform a thorough and timely review of records
  - Complex account structure: The client has multiple bank and/or investment accounts, multiple institutions, and frequent funds transfers
  - Duration: The period of abuse is unknown or suspected to have occurred over many years
  - Comingling of funds: Client and caretaker/suspected perpetrator share resources
  - Unknown spending habits: Client spending patterns are unknown and not easily observable based on initial review of records
  - Multiple perpetrators are suspected: Missing funds must be appropriately attributed to respective perpetrators in order to move forward
  - Guardianship is desired: Petition may be enhanced by forensic accounting report
  - Law enforcement involvement is desired: Police require more evidence of exploitation in order to investigate a case
  - Client acknowledgment: Forensic accounting report may assist client or family with understanding the nature and extent of abuse

CASE EXAMPLE

- Facts
  - The client is an 80-year-old woman who resides in a condo in Liverpool under the care of nurse aides, while her sons handle her finances, which include multiple checking, savings, certificate and investment accounts.
  - Wells Fargo, the client's investment broker, called APS because one of the sons just tried to liquidate and close one of the client's retirement accounts with a POA document that Wells Fargo did not have on file.
CASE EXAMPLE

- FEIST Steps
  - Step 1
  - Step 2
  - Step 3
  - Step 4
  - Step 5
  - Step 6
  - Step 7
  - Step 8
  - When and How to Refer a Case to a Forensic Accountant

- Evidence
  - Value of investment accounts has dropped significantly over the past few months
  - Investment account statements show online transfers to various bank accounts
  - Bank accounts show same patterns: decreasing balances and money moving back and forth

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THANK YOU!