



Consumer Federation of America



STUDENT BORROWER PROTECTION CENTER

August 14, 2023

Submitted online via

<https://www.regulations.gov>

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex R)
Washington, DC 20580

**Re: FTC Collaboration Act of 2021 Study (Project No. P238400)
88 Fed. Reg. 38510 (June 13, 2023)**

1. Executive Summary

Consumer Reports, Consumer Federation of America, National Consumer Law Center (on behalf of its low-income clients), National Community Reinvestment Coalition, National Consumers League and Student Borrower Protection Center appreciate the opportunity to provide these comments regarding the FTC Collaboration Act of 2021, which directs the Federal Trade Commission (FTC) to conduct a study on facilitating and refining existing efforts with State Attorneys General (AGs) to prevent, publicize, and penalize frauds and scams being perpetrated on individuals in the United States.

The importance of information sharing and collaboration between state and federal law enforcement agencies charged with protecting the public from fraud and other unfair, deceptive and abusive business practices cannot be overstated. Collaboration is essential not only to identify illegal practices that harm consumers, but to facilitate a comprehensive and effective strategy to stop fraudsters before they have stolen money from individuals and families. Criminals know no boundaries; they leverage technology to perpetrate their schemes quickly and are oftentimes unknown until it is too late. Staying ahead of these players requires rigorous and easy lines of communication between partners, including private attorneys and non-profit organizations, which oftentimes are the first to hear about scams on the ground.

The undersigned laud the efforts made thus far by the FTC and AG partners to collaborate on information sharing and enforcement initiatives to further their mission.¹ We encourage the FTC to invest more resources to enhance collaboration and ease the burden associated with information sharing on its state partners.

While the study will focus on collaboration between the FTC and AGs, which is the focus of our comments, the importance of collaboration on fraud prevention and remediation clearly goes far beyond these agencies. Thus, we have included some suggestions that involve working with other agencies, including the federal banking agencies, the agencies that oversee payment systems, the Department of Justice and the Department of the Treasury. Indeed, one of our most important overall recommendations is that the FTC develop a Fraud Task Force to ensure more regular information sharing and cooperation among all of the various agencies that see and deal with individual pieces of the fraud landscape.

These comments first cover the undersigned's recommendations and advice on information sharing, including with regards to the FTC's Consumer Sentinel Network (Sentinel) and the role of other relevant non-AG state and local agencies, stakeholders, industry and payment services. They then address the importance of enforcement collaboration between state and federal agencies, and private attorneys, in the wake of *AMG Capital Management* and initiatives to strengthen state unfair and deceptive acts and practices (UDAP) statutes. Next, the comments address ways to promote effective responses to consumer complaints, simplify fraud reporting for consumers and promote consumer education. Last, they provide specific suggestions to address unique issues relating to the role of payment services in combatting fraud.

2. Recommended enhancements to information sharing

To effectively target bad actors and reduce the billions of dollars in financial harms that consumers experience each year, the FTC should improve upon information sharing and collaboration with AGs. The FTC has expertise, resources, and information from which many state agencies would benefit tremendously. There are several key steps the FTC can take in this regard.

A. Maximize use of and participation in the FTC's Consumer Sentinel Network

The FTC's Sentinel is an excellent resource for law enforcement agencies. It provides contact information for consumer witnesses, narratives, documents and other valuable information. Currently, however, only 16 AGs are contributors to the Sentinel's database for

¹ See, e.g., Press Release, FTC, *FTC, Law Enforcers Nationwide Announce Enforcement Sweep to Stem the Tide of Illegal Telemarketing Calls to U.S. Consumers* (July 18, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-law-enforcers-nationwide-announce-enforcement-sweep-stem-tide-illegal-telemarketing-calls-us>.

consumer complaints.² The FTC should survey AGs to find out why they are not participating and formulate a plan to work with these states and to address any obstacles they face that prevent them from participating. Information from all AGs will improve the FTC's ability to identify trends in consumer complaints and fraudulent conduct and will add more consumers to a centralized database for purposes of locating consumers for testimony or to provide refunds. The FTC should also enlist AGs to reach out to local police departments, state and county consumer protection offices, and other state or local agencies that may receive complaints, to encourage them to join Sentinel.

To ensure maximum participation by AGs and others in Sentinel the FTC should minimize the burden on contributors of sharing information by ensuring that its database is as accessible and easy-to-use as possible. To the extent it does not already do so, the FTC can assess and evaluate the resources and technologies necessary for AGs and others to become effective contributors and help provide resources, training and technological support.

The FTC should develop a standard set of information to include in Sentinel reports for consumer fraud cases. A particularly important example is to encourage contributors to provide information, whenever possible, about the payment type, the payment processor and the receiving institution in the instances of fraudulently induced payments by consumers. This information can be a powerful tool to recover consumers' money and can also help to identify trends in how fraudsters receive stolen funds. In other types of cases, the FTC should maintain regular communication with AGs about the type of information upon which the FTC relies or has found useful to take further action. *See*, Section 4(B), *infra*.

B. Ensure prompt communication on fraud cases and investigations

The FTC should encourage and facilitate early outreach from AGs to the FTC on any fraud trends or potential enforcement targets. When this information is provided early on, it may enable the FTC to share resources to assist states, such as reports, data, or other information about trends and to move more quickly to enforcement that will stop the practices and save consumers' money. It can also ensure that the FTC is looking out for the same trends when it reviews and analyzes consumer complaints. Sharing information about enforcement targets may also allow the FTC to locate and prioritize complaints about the target, share investigative information or data about the target, and share other information that will be useful for investigative and enforcement strategies.

Early outreach can be accomplished by scheduling regular calls and roundtables with AGs to discuss fraud trends or other subject matters. This keeps the collaboration initiative top of mind for both the FTC and states. To the extent that they are not already occurring, regular calls

² See FTC, *Consumer Sentinel Network Data Contributors*, available at <https://www.ftc.gov/enforcement/consumer-sentinel-network/data-contributors> (last visited on August 1, 2023).

and roundtables would also allow states to share with and learn from the FTC, and to learn from each other to develop multi-state investigations, participate in consumer education initiatives, and share strategies to the extent permissible.

The FTC should also endeavor to keep AGs up to date on its enforcement actions, including when cases may affect residents of their state, when court rulings may have an impact on the state agency, and the implications of consent orders on future conduct by the target of the enforcement action. State offices can use this information to effectively respond to consumer inquiries about federal enforcement actions, develop educational initiatives with a localized focus, and assist in their own enforcement actions.

C. Expand the scope of agencies and stakeholders with which the FTC shares information relating to consumer fraud

While the request for comments focuses on collaboration between the FTC and AGs, a much broader set of agencies has a role to play in preventing and remedying fraud. The players and payment systems that enable fraud go well beyond the jurisdiction or expertise of the FTC or AGs. Several agencies see different pieces of the fraud chain, and putting those pieces together helps to provide a broader, more holistic picture of the fraud landscape to identify avenues for improvement. More information sharing and collaboration among all concerned is essential.

We recommend that the FTC work with other state and federal agencies to establish a Fraud Task Force. That task force should include AGs as well as the following agencies:

- The banking agencies that oversee the financial institutions that handle wire transfers, Zelle transfers, ACH transactions, and credit and debit card payments: The Office of Comptroller of the Currency (OCC); Federal Reserve Board (FRB); Federal Deposit Insurance Corp. (FDIC); and National Credit Union Administration (NCUA).
- FRB offices that oversee the Fedwire service that is used in most high-dollar frauds, the newly launched FedNow, the ACH system, and the Federal Reserve Banks involved in check clearing.
- The Department of Justice (DOJ) units that handle aspects of fraud, including the Federal Bureau of Investigation and its Internet Crime Complaint Center (IC3), and the DOJ and U.S. Attorney's offices that pursue criminal fraud cases.
- The Treasury Department and its Financial Crimes Enforcement Network (FINCEN).
- The Consumer Financial Protection Bureau (CFPB)
- State banking and financial regulators.

These groups must work together seamlessly to stay ahead of fraudsters, by sharing information, having regular dialogues, identifying trends, and developing strategies to prevent consumer fraud.

D. Promote industry efforts to create shared fraud lists

In addition to information sharing between the FTC, AGs and the state and federal regulators discussed above, the FTC should encourage and seek to leverage industry efforts to develop fraud detection networks and information sharing. For example, in the financial sector, initiatives such as SardineX³ and Beacon⁴ were recently launched in response to increased fraud in digital payments and real-time payment systems. SardineX is intended as a real-time fraud detection network made up of a consortium of financial institutions and fintech organizations, including banks, card networks, payment processors, and fintechs, which will include a shared database where participants can access fraud data on entities transacting across the network. Beacon, launched by Plaid, is intended as an anti-fraud network enabling financial institutions and fintech companies to share critical fraud intelligence via API across Plaid. Members contribute by reporting instances of fraud and can use the network to detect if a specific identify has already been associated with fraud.

Both initiatives are intended to improve information sharing and communication across the industry, in particular by pooling information from a range of entities including non-traditional entities and leveraging technology for real-time data and analysis. The FTC can play a role in monitoring and encouraging the development and expansion of such industry initiatives, as broader and more comprehensive networks will provide more useful results. The FTC could also explore coordinating with such initiatives to access industry data and analysis on fraud incidences and fraudulent identities, including potentially aligning or incorporating consistent, standardized fraud metrics.

E. Make complaint data more broadly available to the public

The FTC, AGs, and other agencies collect complaints and other data that allow those with access to make better informed policy recommendations, policy decisions, and enforcement actions. In many cases, these agencies have some of the largest databases in their field. The FTC is one of these, receiving millions of fraud reports each year. Unfortunately, Sentinel is only available to registered law enforcement organizations, sealing away the data from the vast majority of the general public.

While the FTC has taken steps to make Sentinel data more useful for consumers and other non-law enforcement audiences through the [Tableau Public system](#),⁵ key data is still not publicly available. Currently, civil society groups, researchers, policymakers at all levels, and

³ Join sardineX, Sardine, available at <https://go.sardine.ai/sardinex> (last visited Aug. 3, 2023).

⁴ Alain Meier, *Introducing Beacon, the Anti-Fraud Network*, Plaid (June 22, 2023), available at <https://plaid.com/blog/introducing-plaid-beacon/>.

⁵ Tableau, *FTC*, available at <https://public.tableau.com/app/profile/federal.trade.commission> (last visited Aug. 3, 2023).

private litigants are largely barred from accessing much of Sentinel’s information beyond what is available in the Tableau Public system.

Consumer groups believe that, to the extent practicable, more data from Sentinel reports should be made available. For example, a consumer should be able to do general queries for names of particular companies against Sentinel data. This would allow individual consumers to learn if a company they have been contacted by has also been reported by other consumers. Additionally, such publicly available data would allow private litigants to better inform their work on their cases, a boon particularly in states with AGs who are not as proactive on consumer protection and public interest issues.

3. Enforcement collaboration between state and federal agencies is essential to ensuring comprehensive, long-term results and to make consumers whole

A. Addressing *AMG Capital Management*

The ruling in *AMG Capital Management, LLC v. Federal Trade FTC*, 141 S.Ct. 1341 (2021), has rendered collaboration between AGs and the FTC a critical tool to fill in the tremendous gap created by the Supreme Court in providing restitution to victims of wrongdoing. The Court held in *AMG Capital* that the FTC does not have the authority to seek equitable relief, including refunds and injunctions, for victims of consumer fraud and deception under its traditional unfair and deceptive acts and practices (UDAP) authority in Section 13(b) of the FTC Act. Without this authority, the FTC is unable (on its own) to utilize its enforcement power and resources in traditional UDAP cases to ensure that the perpetrators of unfair and deceptive practices do not retain their ill-gotten gains. As the Supreme Court previously recognized, “[n]othing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief.” *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). The FTC had recovered over \$11.2 billion in refunds in the 5 years leading up to the *AMG Capital* decision.⁶

The importance of restitution and equitable relief in a consumer protection enforcement action cannot be overstated. Seeking restitution in an enforcement case serves an important deterrent effect for businesses and bad actors who recognize that they may not keep their ill-gotten gains when faced with a lawsuit from the FTC; it rectifies some of the harm consumers suffer when they have been defrauded; and it creates a fairer marketplace for other honest businesses.

⁶ See National Association of Attorneys General Website, Multistate Letter at 3, *available at* https://ag.ny.gov/sites/default/files/2021.06.28_multistate_letter_re_ftc_final_final.pdf.

Every state’s UDAP statute allows the AG to seek restitution from defendants for initial violations of the statute,⁷ and most state UDAP statutes closely track the FTC Act’s prohibition of unfair or deceptive acts and practices.⁸ By partnering with AGs in litigation, a single suit can ensure that eligible consumers receive restitution through their own state consumer protection agency.⁹ In an amicus brief filed by 29 states and the District of Columbia in *AMG Capital*, AGs emphasized the utility of partnering with the FTC and describe at length the benefits mutually conferred upon the agencies through collaboration.¹⁰ The FTC can share its resources and expertise with state agencies, such as review of voluminous investigative documents and records, analysis of complex financial records, and information sharing efforts. The FTC should also consider collaborating with the CFPB and other federal agencies for the same reasons.

Prior to *AMG Capital*, collaboration was an important tool – after *AMG Capital*, it is critical. The other primary tool that the FTC may utilize to obtain restitution is through Section 19 of the FTC Act, pursuing violations of trade practices rules or violations of administrative cease-and-desist orders. This approach is long and cumbersome, and it does not provide the flexibility of Section 13(b) to account for the ever-growing variety of unfair and deceptive conduct facing consumers. The *AMG Capital* decision wiped out a major FTC enforcement tool, but by partnering with AGs, the FTC can help close this gap.

B. Ensure that state Unfair and Deceptive Acts and Practices statutes are strong

It is axiomatic that for state law enforcement, regulators, and private actors to be meaningful partners to the FTC in protecting consumers, the state laws that these stakeholders can enforce must provide meaningful consumer protections. The FTC’s UDAP authority under Section 5 of the FTC Act, for example, is national in scope and can be applied to any “acts or practices in or affecting commerce.”¹¹ Although all states have a form of UDAP statute, each is generally limited to the state’s geographic jurisdiction, the range of covered conduct varies

⁷ See, Carolyn Carter, National Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws* 28 (March 2018), <https://www.nclc.org/resources/how-well-do-states-protect-consumers/>

⁸ See *id.* at 12-15.

⁹ See, e.g., FTC Website, Press Release, FTC, States Sue Rental Listing Platform Roomster and its Owners for Duping Prospective Renters with Fake Reviews and Phony Listings, *available at*, <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-states-sue-rental-listing-platform-roomster-its-owners-duping-prospective-renters-fake-reviews>.

¹⁰ Brief for Illinois et al. as Amicus Curiae, *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021), *available at* https://oag.ca.gov/sites/default/files/20201207152632568_AMG%20v.%20FTC%20Illinois%20Amicus%20Brief%20Final%20to%20File.pdf

¹¹ 15 USC 45; see generally Fed. Reserv. Bd., *Consumer Compliance Handbook: FTC Act* (June 2008), *available at* <https://www.federalreserve.gov/boarddocs/supmanual/cch/200806/ftca.pdf>.

dramatically, and some statutes have significant gaps.¹² This creates different opportunities, needs, and challenges for collaborations across the country.

The FTC’s report should therefore include model legislation and a discussion of the tenets of strong consumer protection laws—UDAP or otherwise—that the FTC believes would increase coordination with state and private parties in protecting consumers. These tenets include, but are not limited to: comprehensive protections against unfair, deceptive, and abusive acts and practices; private rights of action, including the ability to bring class claims on behalf of similarly situated consumers; meaningful relief, including restitution and punitive damages, that do not constitute the mere cost of doing business for bad actors; broad definitions of protected persons; broad applicability with no industry-specific carve outs; no reliance requirements; and fee shifting provisions.

The FTC should also remind AGs that they have the authority to enforce the ban on unfair, deceptive and abusive acts and practices in the Consumer Financial Protection Act.¹³

The FTC should also deploy its staff and resources to areas of the country that have weaker consumer protections or historically lower instances of enforcing those protections, relative to states in which AGs, regulators, and private actors actively meet consumers’ needs. Put differently, the FTC should seek out conduct or jurisdictions for which the FTC may, for practical or legal reasons, be consumers’ sole option for protection. Although the FTC’s request for information is nominally focused on identifying opportunities to collaborate, it is equally important for the FTC to determine where collaboration is not likely, and to incorporate that finding into its report and subsequent activities.

C. Consider adding the CFPB as a party to enforcement actions to access the civil penalty fund

The FTC and AGs who are contacted by fraud victims may feel that there is little they can do if the money is often long gone and the fraudster cannot be found or is judgment proof. Thus, it is difficult to access and provide funds needed to compensate victims. The FTC and AGs should consider reaching out to the CFPB to join in suits against parties within the CFPB’s jurisdiction when recovery may be a problem. The CFPB has a civil penalty fund that can be used to compensate victims who have not received full compensation for their harm through

¹² See generally Carolyn Carter, National Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws* (March 2018), <https://www.nclc.org/resources/how-well-do-states-protect-consumers/>; see, e.g., Cal. Dep’t of Fin. Prot. & Innovation, *California Consumer Financial Protection Law*, available at <https://dfpi.ca.gov/ca-consumer-financial-protection-law/#:~:text=Under%20the%20California%20Consumer%20Financial.and%20consumer%20credit%20reporting%20companies> (last visited Aug. 3, 2023).

¹³ See 15 U.S.C. §§ 5531, 5552.

redress paid by the defendant in their case.¹⁴ The CFPB's recent action in partnership with 11 states against the tech sales boot camp Prehired for its predatory lending and debt collection practices serves as an excellent example of how law enforcement can access the fund when the fraudster or scammer itself cannot pay out damages.¹⁵

D. Reflect the importance of private enforcement, alongside federal and state enforcement

In conducting its study and issuing its report, we urge the FTC to stress the importance of private enforcement in the landscape of consumer protection. Although government action is necessary to prevent and penalize fraud, it is not sufficient. Further, government action generally arises once a critical mass of consumers has been harmed by an unlawful practice, which leaves consumers with little recourse until that point has been reached. Too often in the consumer protection context we see the manifestation of the legal maxim “justice delayed is justice denied.”

This is a feature, not a bug, of government action. Neither the FTC nor AGs can represent individuals in their private actions, and funding realities require government offices to justify any allocation of resources on the bases of both the severity of an action and the number of consumers whom it affects. Attorneys General may be the People's Lawyer,¹⁶ but they cannot be a lawyer for every person in every instance.

Private actions, however, do not have those same limitations. Individuals who have been the victim of consumer fraud or unfair and deceptive acts and practices can assert their own rights in court in a more timely manner than a large government action. These cases play at least three important roles. First, they can deliver relief to harmed consumers in a timely manner. Second, they deter bad actors. Finally, they act as canaries in the coal mine for the government, helping to identify both bad actors and the legal theories that can be used in building larger enforcement actions.

Unfortunately, the important role that private action plays is often diminished or overlooked entirely. Industry lobbyists propagate the myth that consumers' ability to enforce their own protections will lead to a deluge of frivolous litigation.¹⁷ Forced arbitration clauses and class action bans in contracts leave consumers without access to the courts, and even when they

¹⁴ See CFPB, *Civil Penalty Fund*, available at <https://www.consumerfinance.gov/enforcement/payments-harmed-consumers/civil-penalty-fund/>.

¹⁵ Press Release, CFPB, *State Partners and CFPB Sue Prehired For Illegal Student Lending Practices* (July 13, 2023), available at <https://www.consumerfinance.gov/about-us/newsroom/state-partners-and-cfpb-sue-prehired-for-illegal-student-lending-practices/>.

¹⁶ *The People's Lawyer*, Nat'l Assoc. Of Attys Gen, available at <https://www.naag.org/news-resources/podcasts/>

¹⁷ Britta Lokting, *Lawyer Up: Class-Action Suits are Thriving in New York*, N.Y. Times (Apr. 27, 2023), <https://www.nytimes.com/2023/04/27/nyregion/class-action-lawsuits-nyc.html>.

try to pursue claims through arbitration, companies put up roadblocks. Laws are written without fee shifting provisions, which leaves low-income consumers with few means of finding legal representation. Even federal Legal Services Corporation-funded legal services impose income restrictions and class action bans that limit their ability to represent any consumer who has fallen victim to fraud or scams.¹⁸

We urge the FTC to address these points in its report. Specifically, in assessing the efficacy of existing state laws and in proposing model legislation, as discussed above, the FTC must stress that state laws should include private rights of action to permit private enforcement. The FTC should also consider non-law enforcement activities to support private litigation, such as sponsoring training for private practitioners and legal services attorneys, allocating available recovery funds to Access to Justice programs, and advocating for lifting restrictions on Legal Services Corporation-funded organizations.

While this study may not be the place to address forced arbitration, we urge the FTC to use the tools at its disposal to address the harms of forced arbitration and to urge the CFPB and Congress to restore consumers' day in court. With respect to the use of arbitration for debt collection matters, the FTC previously issued a report highlighting concerns including: (1) binding consumers to resolve disputes through arbitration without meaningful choice or awareness; (2) bias or the appearance of bias in arbitration proceedings; (3) procedural unfairness in arbitration proceedings; and (4) requiring consumers to pay substantially more to participate in arbitration proceedings than in comparable court proceedings.¹⁹ Those concerns are not limited to debt collection,²⁰ and restoring consumers' access to the courts is a critical piece of the effort against fraud.

3. Promote effective responses to consumer complaints

A. Provide the AGs with more tools to combat fraud

AGs may sometimes feel that there is nothing they can do to help defrauded consumers when the money is gone and they cannot reach the fraudster. The FTC could help by developing a game plan for proactive steps state AGs can take to assist defrauded consumers.

As a preliminary matter, the FTC and AGs should push the CFPB and Congress to improve the remedies for defrauded consumers. Three measures in particular are needed:

¹⁸ *LSC Restrictions and Other Funding Sources*, Legal Services Corporation, <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/lsc-restrictions-and-other-funding-sources> (last visited Aug. 2, 2023).

¹⁹ FTC, *Repairing A Broken System Protecting Consumers in Debt Collection Litigation and Arbitration* at ii (July 2010), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>.

²⁰ See, e.g., [Comments of Five Organizations Focused on Protecting Consumers](#); Docket No. CFPB2023-0018; Statement of Policy Regarding Prohibition on Abusive Acts or Practices at 26-35 (July 3, 2023), available at <https://www.regulations.gov/comment/CFPB-2023-0018-0009>.

- Bank wire transfers should be covered by the Electronic Fund Transfer Act (EFTA)'s unauthorized transfer protections and error resolution procedures.²¹ Consumers do not even have basic, effective federal protection when money is stolen from them through a wire transfer.
- The EFTA should be amended or interpreted to protect consumers when they are fraudulently induced into sending money to a fraudster,²² as the United Kingdom has done.²³ Payment systems and financial institutions will have more incentive to develop and use innovative methods to prevent, detect, and remedy fraud if they are responsible for fraud on their networks.²⁴
- Consumers must regain their access to courts when their rights have been violated rather than being forced into arbitration, a secretive, biased and lawless process. *See*, Section 3(D), *supra*.

AGs should also support bills to strengthen their laws against unfair and deceptive practices and ensure that they have a private right of action.²⁵ *See*, Section 3(B), *supra*.

Additionally, the FTC should help AGs combat fraud by:

- ***Making sure that contact information for consumers is in the FTC's database***, either through direct reports by the consumers or by contributing that information to Consumer Sentinel. That will enable the consumer to be part of any restitution fund if the FTC eventually pursues the wrongdoers.

²¹ Although bank wire transfers are electronic fund transfers, the EFTA, passed in 1978, exempts transfers, other than ACH transfers, made “by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer.” 15 U.S.C. § 1693a(7)(B). That exemption has been interpreted to apply to FedWire and other major bank wire transfer services. Reg. E, 12 C.F.R. § 1005.3(c)(3) and Official Interpretation of 3(c)(3)-3. However, today wire transfers are used much more by consumers than they were in 1978, and consumers can increasingly send wire transfers from their banking app or website, making it easier for fraudsters to access that channel. *See* NCLC *et al.*, [*Statement for the Record, What's in Your Digital Wallet? A Review of Recent Trends in Mobile Banking and Payments, Hearing Before the House Financial Services Taskforce on Financial Technology*](#) at 10-11 (April 28, 2022), available at <https://www.govinfo.gov/content/pkg/CHRG-117hhr47649/pdf/CHRG-117hhr47649.pdf>.

²² *See id.* at 13-14.

²³ *See* Josh Einis, Payments Journal, [*UK's Payments Regulator Sets New Rules to Protect Victims of Online Bank Fraud*](#) (June 9, 2023), available at <https://www.paymentsjournal.com/uks-payments-regulator-sets-new-rules-to-protect-victims-of-online-bank-fraud/#:~:text=The%20PSR's%20new%20regulations%20will,adapt%20and%20implement%20necessary%20changes>.

²⁴ *See* Carla Sanchez-Adams, American Banker, Bank Think: *It is essential that we protect consumers from fraud over P2P networks* (Mar. 15, 2023), available at <https://www.americanbanker.com/opinion/it-is-essential-that-we-protect-consumers-from-fraud-over-p2p-networks>.

²⁵ *See* Carolyn Carter, NCLC, *Consumer Protection in the States: a 50-State Evaluation of Unfair and Deceptive Practices Laws* (March 1, 2018), available at <https://www.nclc.org/resources/how-well-do-states-protect-consumers/>.

- ***Following the money.*** We have heard from one AG that they began having far greater success in recovering funds for fraud victims once they began contacting not only the consumer's bank or payment service but also the entity that received the funds and holds the account of the fraudster or money mule. Even if the funds are already gone, it might be possible to trace them to the next step down the line. Or the institution might be willing to return the funds as a courtesy or to curry favor with their regulator. The FTC can help to publicize success stories and strategies such as this, not just to state AGs but also to the other agencies listed above and even the general public, such as legal aid offices, senior centers, and credit counselors who might see these cases.
- ***Identifying fraud help lines at financial institutions.*** Critical to following the money swiftly is having the right contact.
- ***Educating AGs about the strategies for recovering gift cards*** and provide them contact information. With quick action, sometimes gift card companies can block and return the funds.²⁶
- ***Developing a hotline for dealing with seniors*** that AGs, banks, and others can call for help when dealing with an older customer who is being defrauded. Banks report to us that they sometimes try to dissuade older consumers from sending money, but when they cannot convince them they feel the need to follow their customer's instructions. A hotline could be staffed with trained personnel who know psychological techniques that may be effective and resources or services that can be brought in and can provide guidance for banks about what their options are if they believe their customer is being defrauded.

B. Simplify fraud reporting for consumers

The FTC should work with the CFPB and AGs to simplify fraud reporting for consumers. Consumers may report fraud to many different places – the local police department, the FBI, an AG, the CFPB, or the FTC. Sometimes police refuse to take fraud reports, viewing fraud as a civil matter. Once a consumer is turned away once place, they may give up. We advise consumers to file a complaint in as many places as possible, but that is cumbersome and not always realistic. Consumers also may find that they are asked for the same information multiple times from different agencies.

Encouraging broad participation in Consumer Sentinel, including all AGs along with local police, is one way to ensure that the consumer's information gets to the right place. The

²⁶ Contact information for common gift cards can be found in Lauren Saunders, NCLC, *Getting Money Back for Scammed Consumers* (Dec. 15, 2020), available at <https://library.nclc.org/article/getting-money-back-scammed-consumers>.

FTC and AGs should also work together to:

- Develop standardized complaint intake forms that can be used by many different agencies.
- Provide a range of easily accessible channels (e.g. in person, phone, e-mail, web, mobile app) for consumers to submit complaints and grievances.
- Include options to report fraud and other complaints in multiple languages.

Fraud reporting must be as simple and universal as possible in order to be effective.

C. Identify contacts at financial institutions and payment services along with fraud hotlines

Key to any hope of recovering funds is reaching the right person immediately. One bank official told us that they find it easier to help a fraud victim if they know the right contact at the institution that received the fraudulent payment. That same bank official also admitted if the situation was reversed, they would not answer the phone if they did not recognize the caller ID.

The FTC could help resolve this problem by working with the bank regulators and CFPB to urge banks and payment services to put together a list of contacts at larger institutions for government agencies working on fraud cases. For example, Nacha already has an ACH Contract Registry that it recommends to be used to contact banks that receive a fraudulent credit-push payment and to request a hold on funds.

The FTC could also urge financial institutions to develop a public fraud hotline number, which might be different than the one used by government agencies. That hotline should be staffed with personnel trained and empowered to take the immediate steps needed to address a fraud complaint, regardless of whether the institution is on the sending or receiving side. It is critical for consumers to be able to speak to a live person when calling that hotline without having to provide an account number, because they may not have it readily accessible or, in instances where fraudsters created a fake account, they would not know the account number. The institutions can and should comply with their routine security protocols to identify the callers.

D. Collaborate with other agencies to develop guidance for payment services and financial institutions responding to consumer fraud complaints

The FTC should also collect information from AGs and work with the CFPB and the banking agencies to develop guidance for how payment services and financial institutions should handle complaints and fraud inquiries. The guidance should address steps to take whether the company that receives the inquiry holds the consumer's account or the fraudster's or money mule's account.

The FTC and AGs can use their interactions with these payment services and institutions to push them to improve fraud prevention and remediation. In more problematic cases, the FTC and AGs should take enforcement action in their jurisdictions. The FTC and AGs should also forward to bank regulators examples of both problem cases showing the need for more guidance (and possibly supervision or enforcement activity), and also success stories that show best practices.

Guidance should emphasize:

- Enacting procedures to ensure swift action in response to a complaint to catch funds before they are gone, whether the institution that receives the complaint is the sending or receiving institution.
- Contacting the receiving institution to request return of funds, instead of responding “sorry, you sent the money, there is nothing we can do.”
- For the receiving institution, immediately freezing any funds upon receipt of a credible request or other red flags of fraud.
- Resolving complaints in a timely fashion within established timeframes and informing consumers.
- Systematically tracking complaint data, conducting root cause analysis to identify recurring or systemic issues, and improving an institution’s products, services, and processes to address such issues going forward.
- Where a valid complaint concerned or arose from a policy or practice that applies to many consumers, providing a remedy to all consumers affected by the policy or practice.
- Reporting aggregated complaints statistics to relevant regulatory authorities on a regular basis, as well as how underlying issues identified were addressed.

Clear procedures and training are important so that call centers, chat monitors, tellers, and others know how to act quickly. Even if a payment has already processed and is outside any window to recall (i.e., bank wire transfer) or there are no procedures for a recall (i.e., Zelle or Venmo), funds may still be in the receiving institution’s account, and it may be possible to freeze them while the situation is assessed.

For example, Nacha has suggested a 10-step “immediate response checklist” for responding to credit-push fraud:²⁷

1. Receive Complaint.
2. Consult with Originator [consumer if the consumer sent the payment].²⁸
3. Determine if transaction resulted from a scam or an error.
4. Determine options for recovery.
5. Contact the Receiving Depository Financial Institution (RDFI). Consult the ACH Contact Registry to obtain contact information for an RDFI.
6. Determine funds availability.
7. Request a HOLD on funds.
8. Determine the need for an indemnification agreement.
9. Determine the best method for return of funds.
10. Recredit the Originator.

Guidance may be needed on when to consider freezing funds and how a freeze interacts with general rules for Fedwire, FedNow, and other services that generally require that funds be made immediately available. For example, the new FedNow rules have an exception that allows a hold where there is reasonable cause to believe that a payment may be related to fraudulent activity.²⁹ Regulators could also make clear that anti-money laundering obligations take precedence over funds availability rules when there are significant red flags that a payment is unlawful.

It would also be helpful if the FTC, AGs, CFPB and bank regulators clarified the obligations of an institution (including a nonbank payment app or a bank) if a consumer objects that their account was frozen inappropriately or they cannot access their account. This might mean identifying potential unfair, deceptive or abusive practices³⁰ or clarifying that the inability to access an account in order to make an electronic fund transfer, or a call about a freeze requesting information about how to unfreeze the account, is an error under the EFTA.³¹

²⁷ *Id.*

²⁸ In the ACH system, credit push payments are more likely initiated by businesses sending money to vendors or consumers than by consumers. Nacha’s suggested steps seem primarily aimed at business email compromise frauds. But the issues are similar for consumer frauds.

²⁹ 12 C.F.R. § Pt. 210, Subpt. C, App. A, Section 210.44 (“if the beneficiary's bank has reasonable cause to believe that a particular payment order may be related to fraudulent activity, the beneficiary's bank may notify its Federal Reserve Bank that it requires additional time to determine whether to accept the payment order, including to investigate the suspected fraudulent activity.”)

³⁰ *See, e.g.,* Eggiman v. Bank of America, 2023 WL 2647071 (D. Mass. Mar. 27, 2023) (finding that bank had a reasonable basis for suspecting irregular activities justifying account freeze pending an investigation, but refusing to dismiss claims for breach of contract claim, breach of covenant of good faith and fair dealing, and unfair or deceptive practices as freeze for 15 months, along with bank’s statements that it could do nothing more, led to an inference that the bank froze the account beyond the time needed to complete its investigation).

³¹ 15 C.F.R. § 1005.11(a)(1)(ii), (vii). Yick v. Bank of Am., 539 F. Supp. 3d 1023 (N.D. Cal. 2021) (granting preliminary injunction; finding strong likelihood of success that bank failed to conduct an adequate, good faith investigation of unauthorized charges and simply froze accounts based on faulty screening process); Consent Order,

Data designed for public consumption may also be useful to AGs, who could use the data to highlight trends and to point consumers to ways to protect themselves. The value of the availability of this data has been shown by the public availability of the [CFPB consumer complaint database](#) and CPSC's [SaferProducts.gov](#) incident report complaint data. Consumer commenters urge the FTC to look to these agencies' databases as a model for a more open and accessible Consumer Sentinel Network.

5. Develop specific initiatives to target unique issues posed by specific payment systems, including wire transfers and faster payment services

Fraud is only successful when the fraudster has a means to obtain the consumer's money. The FTC and AGs, along with the other agencies listed above, should enhance their collaboration and information sharing to identify the different players along the chain that enable a fraudster to take funds from a defrauded consumer or business. The operators of payment systems and the banks and money service businesses that handle payments all have responsibilities under anti-money laundering laws to ensure that their services are not used for unlawful purposes, to know their customers, and to monitor their customers' accounts for unlawful activity. As a result, they should play a key role in preventing, spotting and remedying fraud.

The FTC has long identified and spotlighted the way particular payment devices have been used by fraudsters, such as gift cards, crypto-assets, and prepaid reload packs. The FTC's fraud reports show which payment methods fraudsters use,³² and specific spotlights provide warnings to consumers and the public. These initiatives help consumers and others spot scams and have led to rules prohibiting telemarketers from using particular payment methods.

The FTC and AGs have also on occasion brought cases against payment services that were turning a blind eye to fraud on their systems. For example, the FTC and AGs brought cases against Western Union,³³ and the FTC has a pending case against Walmart for its role in facilitating fraudulent funds sent over the MoneyGram, Western Union, and other networks.³⁴

In re Bank of Am., N.A., CFPB No. 2022-CFPB-0004 (July 14, 2022), available at <https://files.consumerfinance.gov> (finding that bank committed unfair practices by using automated fraud filter to reject error claims and to freeze accounts).

³² See FTC, All Fraud Reports by Payment Method,

<https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudLosses>.

³³ See, e.g., FTC, Press Release, Western Union Admits Anti-Money Laundering Violations and Settles Consumer Fraud Charges, Forfeits \$586 Million in Settlement with FTC and Justice Department (Jan. 19, 2017), available at <https://www.ftc.gov/news-events/news/press-releases/2017/01/western-union-admits-anti-money-laundering-violations-settles-consumer-fraud-charges-forfeits-586>; Office of the Attorney General for the District of Columbia, Press Release, *In Settlement with District, Western Union Agrees to Enact Anti-Fraud Program to Protect Consumers from Wire Fraud* (Jan. 31, 2017), available at <https://oag.dc.gov/release/settlement-district-western-union-agrees-enact>.

³⁴ See Press Release, FTC, *FTC Files Amended Complaint Charging that Walmart Facilitated Scams Through Its Money Transfer Services That Fleeced Customers Out of Hundreds of Millions* (June 30, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-files-amended-complaint-charging-walmart-facilitated-scams-through-its-money-transfer-services>.

However, more information from various sources is necessary to develop a better picture of possible approaches to prevent and mitigate fraud. Too often, information received by payment systems, the institutions that use them, and their regulators is fragmented, making it difficult if not impossible to spot patterns.

To address fragmentation, the FTC, AGs and other agencies can contribute the information that comes to them to help identify parties in the payment chain that could do more to prevent fraud or, in worst case scenarios, that should be held responsible as facilitators. For example:

- The FTC, AGs and other agencies should always attempt to obtain and identify information related to the receiving institution and any payment processor and to report these to the broadest extent possible to the Consumer Sentinel Network.
- The FTC and AGs should report to federal and state bank regulators any fraud that involves a bank or credit union on either the sending or receiving end. They should also feed information to the bank regulators about trends involving particular banks that need attention.

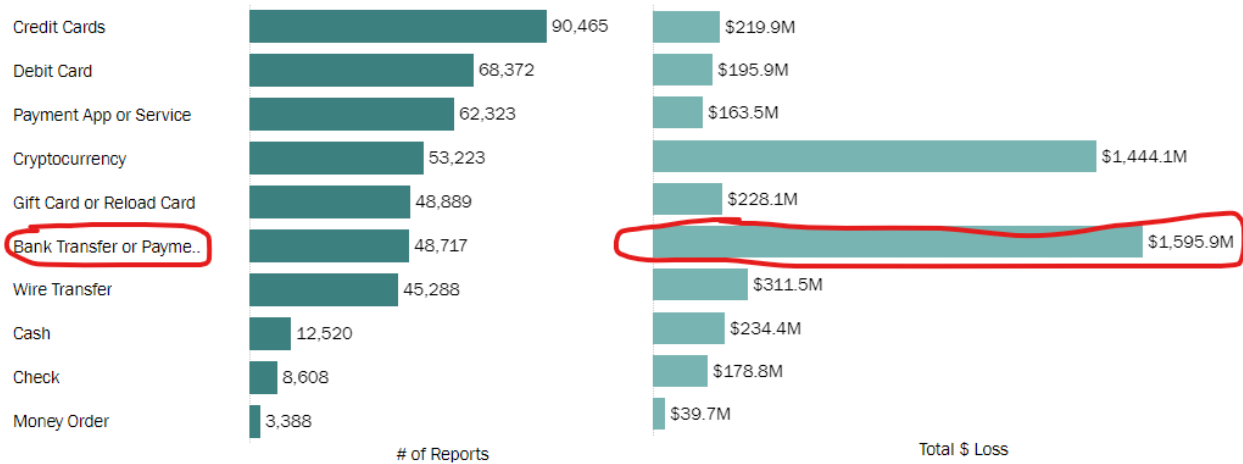
Similarly, fraud perpetrated through Fedwire or other wire transfer services, Zelle (whether through RTP or FedNow), the ACH system, checks, and other payment rails should be reported to the operators of those rails to enable them to address fraud trends and weak points.

We especially urge the FTC and AGs to devote attention to bank wire transfers. While we recognize that the FTC and AGs do not regulate banks (though AGs have enforcement authority), they do have information that can be helpful in addressing the use of wire transfers.

The FTC's latest fraud data show that, in terms of dollars lost, "Bank Transfer or Payment" is the largest payment method used by fraudsters. It also seems safe to assume that the lion's share of those losses by dollar volume are through bank wire transfers, which can process very large transfers, and not Zelle. (The "Wire Transfer" category includes only nonbank transfers like Western Union and MoneyGram.) Cryptocurrency is close behind, and some losses through cryptocurrencies may start as bank wire transfers to crypto banks or exchanges.³⁵

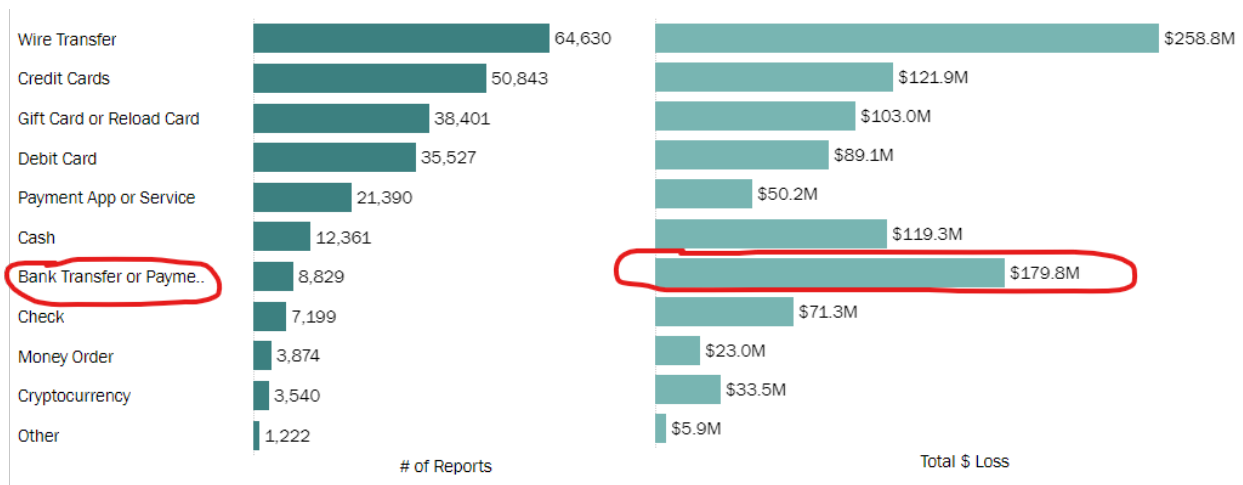
³⁵ See Michael Paluska, ABC Action News (Florida), Cryptocurrency scam drains retired St. Pete victim's life savings How to spot online scams (June 19, 2023), available at <https://www.abcactionnews.com/news/region-pinellas/cryptocurrency-scam-drains-retired-st-pete-victims-life-savings>.

2022 Fraud Reports to FTC by Payment Method



Compared to 2019, it is especially dramatic to note how the bank transfer category has overtaken nonbank wire transfers, and how astronomically it has grown – nearly ninefold in five years.

2019 Fraud Reports to FTC by Payment Method



(The dollar losses in these two charts significantly understate actual losses, as only 12% (2019) to 17% (2022) of reports included information on payment method, and many fraud losses are not reported to the FTC.)

We have heard devastating reports from consumers about how criminals have used wire transfers to take thousands of dollars from people. In one case, an older woman lost her home as a result. Here are other examples:

- After receiving a call about fraud on her account, Ann Booras followed instructions and wired money as instructed. Panicking, she “drove to the nearest Wells

Fargo branch, with the man still on the phone, and told a teller someone was attacking her accounts. Silently, the teller warned her - the thief was actually the man on the phone. 'I had tears running down my face, I was literally shaking because I realized I had just sent \$25,000 to who knows where,' Booras said. She pleaded with bank employees to stop those wire transfers -- fast. But to her shock, no one would help. 'I'm sorry we're all busy. We're backed up with appointments back to back. You need to go to another branch, but we can't help you here,' Booras said she was told."³⁶

- After a consumer was the victim of a SIM swap,³⁷ a wire transfer was used to transfer \$35,000 from his bank account to an account in another state.³⁸ He is a cancer patient and navigating the bank appeal process has been extremely stressful.

Bank wire transfers have not received nearly enough attention as a fraud method, and the FTC and AGs, working with other regulators, can help to change that.

While there is a fair amount of knowledge about how consumers are defrauded into sending funds through wire transfers, no one seems to be collecting or analyzing information about the accounts into which funds are sent. While some of these questions can only be answered by the banks, bank regulators, or wire transfer operators, the FTC and AGs can help by flagging and sharing information about these cases at the front end and ensuring that they receive attention from those who can analyze other parts of the chain, both the institutions themselves and the regulators who oversee them.

For example, are there patterns showing that fraudulent wire transfers are disproportionately:

- Domestic or international? Our anecdotal evidence suggests that most fraudulent wire transfers first go to a U.S. bank, though of course some are international.
- To larger banks, smaller banks, or specific banks?
- To specific countries or foreign banks?
- To newly opened accounts or older ones? If new, were they opened with a stolen but actual identity or a synthetic one? If preexisting accounts are being used as money mules, are there common characteristics or patterns such as older consumers?

³⁶ Michael Finney & Renee Koury, ABC7, *Wells Fargo bankers tell East Bay customer they're too busy to stop wire scam* (June 21, 2023), available at <https://abc7news.com/bank-impostor-scam-wells-fargo-wire-transfer-fraud-scammer-pretends-to-be/13407340/#:~:text=Wells%20Fargo%20bankers%20tell%20East,busy%20to%20stop%20wire%20scam&text=The%20victim%20was%20still%20on,SAN%20RAMON%2C%20Calif>.

³⁷ See Luke Barr, ABC News, *'SIM swap' scams netted \$68 million in 2021: FBI* (Feb. 15, 2022), available at <https://abcnews.go.com/Politics/sim-swap-scams-netted-68-million-2021-fbi/story?id=82900169>.

³⁸ April 11, 2022 email from attorney, on file with NCLC.

- How is the payment typically transferred out or withdrawn? By one or more wire transfers? Gift card purchase? ATM withdrawal? Other type of transfer?

These questions could also be asked about the use of Zelle in payment scams, though the answers would likely be somewhat different.

The same is true for person-to-person (P2P) apps such as PayPal, Venmo and the Cash App (“Payment App or Service” in the charts above), which have shown a significant increase in the number of fraud reports, though the dollar losses are well below bank transfers. These payment services are within the FTC’s jurisdiction (as well as the CFPB’s) and have an especially compelling ability and obligation to stop fraud. These payment services hold both the consumer’s account and the fraudster’s account and operate the payment system in the middle. As a result, they are more easily able to freeze and return any fraudulent transaction without fear of loss or need for indemnification.

The more information that AGs report to the FTC and CFPB about fraud committed through these platforms, and the more that agencies work together to identify trends, the more avenues there will be for stopping fraud.

6. Promote effective education to raise awareness about fraud

Financial education can help to raise consumer awareness and equip consumers with the ability to identify and prevent fraud. It is critical to emphasize that education alone cannot solve the fraud problem, as fraudsters are adept at using a variety of techniques to persuade consumers and deflect public messages. As discussed above, payment systems have duties to prevent fraud on their systems, and efforts to deny those systems to criminals and to use new technologies may be more effective than consumer education. Nonetheless, education, when effective, is an important part of the war on fraud.

The FTC, state AGs, other regulatory agencies, and other public and private stakeholders should collaborate on financial education efforts to combat fraud, particularly given that well-designed financial educational tools require resources to develop. For example, educational materials and tools could be developed at a national level and shared with state actors which may have more limited resources and capacity.

Such tools should be developed utilizing best practices for financial education. Materials and tools should incorporate behavioral design insights to effectively engage audiences, with clear and actionable messages. Financial educational tools should be tailored for different consumer segments (for example, elderly consumers) and rigorously tested with consumers in order to ensure their effectiveness. The testing should determine whether the education leads to behavior change, such as reduced frequency in falling for fraud, not just to increased knowledge. A study by FINRA in investment fraud containing data about levels of knowledge gains about

fraud and post-education susceptibility to fraud showed that knowledge gains were much higher than levels of change in susceptibility.³⁹

The FTC should work with a range of stakeholders to leverage existing channels to ensure that financial education materials and tools reach a broad range of consumers. In addition, key messages could be integrated into teachable moments, such as during distribution of government benefits. Effective educational messages should be integrated by private payment entities as well, including banks and nonbank providers, at the very point at which the consumer initiates a payment transaction, in order to have greater impact and resonance with consumers.

7. Conclusion

The undersigned consumer advocacy organizations appreciate the opportunity to provide input to the FTC in its efforts to curb fraud through enhanced collaboration with state AGs and private stakeholders.

For questions or further information regarding these comments, please contact Shennan Kavanagh at skavanagh@nclc.org.

Respectfully submitted,

Consumer Reports
Consumer Federation of America
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
Student Borrower Protection Center

³⁹ *Can Educational Interventions Reduce Susceptibility to Financial Fraud?* FINRA Investor Education Foundation (March 2021), available at <https://www.finrafoundation.org/sites/finrafoundation/files/can-educational-interventions-reduce-susceptibility-to-financial-fraud.pdf>.