

# THE AGE OF FRAUD

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*We think of scams primarily as a problem for older adults. Indeed, in the past few years, states and the federal government have undertaken a range of legal actions designed to prevent seniors, as a distinct class, from scams—from more harshly punishing perpetrators of scams directed towards older adults to authorizing financial institutions to closely monitor and rapidly freeze the accounts of their older clients. But this successful, popular, and bipartisan law reform movement has taken place without a thorough empirical understanding of whether, in fact, seniors fall victim to scams more frequently than other age groups.*

*This study analyzed whether older adults were victimized by scams more frequently than younger adults during roughly the first year of the 2020 COVID-19 pandemic. A group of Americans 65 and older ( $n = 364$ ) and a group ages 25–35 ( $n = 388$ ) were recruited online and asked to complete a short survey about their experiences with frauds and scams during the pandemic. The results were statistically analyzed to assess whether there were any differences in how the two groups were solicited by, engaged with, and aware of consequences from four specific common scams of the pandemic, and additional scams not specifically described.*

*The results unsettle conventional wisdom on the shape of scam victimization. The younger group engaged with scams three times more frequently than the older group, and this disparity was statistically significant (12% to 4%;  $\chi^2 = 16.41$ ;  $p = .000051$ ). Moreover, more younger adults engaged with scams than older adults as a percentage of those who had been solicited—that is, younger adults were more susceptible to scams. Although further research is required, in designing legal and policy solutions to the challenge of frauds and scams, we must acknowledge that the problem may not be limited to—nor even be most prevalent among—seniors.*

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## I. INTRODUCTION

In the early days of the 2020 COVID-19 pandemic, one California woman was very worried about contracting the virus.<sup>1</sup> At some point during that difficult time, she was approached by a scammer who promised that he could get her access to a vaccine in exchange for money.<sup>2</sup> The woman, concerned about meeting her financial needs with only a part-time job, took out a personal loan to pay the scammer.<sup>3</sup> But there was no vaccine. The woman reports experiencing lasting consequences from the loan, struggling to repay it and suffering long-term financial and mental health challenges as a result.<sup>4</sup>

The woman in this story was just thirty-two years old.<sup>5</sup> That may be surprising. We tend to think of scams and frauds as primarily a problem for older adults, who are perceived as being lonely, more trusting, and possibly experiencing cognitive decline.<sup>6</sup> Indeed, widespread conventional and legal

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<sup>1</sup> Younger Group Survey Response 74, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., Jesse R. Morton & Scott Rosenbaum, *An Analysis of Elder Financial Exploitation: Financial Institutions Shirking Their Legal Obligations to Prevent, Detect, and Report This “Hidden” Crime*, 27 *ELDER L.J.* 261, 262–63 (2020) (“Elder financial exploitation is a major, and growing, issue in the U.S.—to the tune of up to \$36 billion per year—with some estimating that as many as one in five Americans over the age of sixty-five has been victimized by financial exploitation.”); see also Johnny Parker, *Company Liability for a Life Insurance Agent’s Financial Abuse of an Elderly Client*, 2007 *MICH. ST. L. REV.* 683, 685 (2007) (“In summary, the elderly are prime targets of scam artists because they are perceived as more trusting, less aware of their surroundings, and easier to handle.”).

wisdom has it that older adults are more vulnerable to scams because of cognitive changes that take place with aging, and because they may be wealthier.<sup>7</sup> An enormous amount of legal energy has been expended in recent years on addressing the perceived social problem of seniors falling victim to scams.<sup>8</sup>

This prevailing assumption about the shape of fraud victimization has propelled an enormously successful movement in law reform.<sup>9</sup> Indeed, over just the past five years, there has been widespread legislative, prosecutorial, regulatory, and even social action at both the state and federal level to combat a purported epidemic of seniors falling victim to fraud.<sup>10</sup> These measures have almost invariably treated senior frauds and scams as a distinct social problem that calls for a distinct legal solution, and they have treated seniors—and those that defraud them—differently in the law than other groups.<sup>11</sup> For instance, in 2018, the Financial Industry Regulatory Authority (FINRA) authorized financial institutions to report certain suspicious transactions to law enforcement free of liability—but only on the accounts of their clients over 65.<sup>12</sup> In the meantime, states have introduced a broad spectrum of legal measures to protect seniors from falling victim to scams—from

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<sup>7</sup> See, e.g., Mary F. Radford, *What if Granny Wants to Gamble? Balancing Autonomy and Vulnerability in the Golden Years*, 45 ACTEC L.J. 221, 235 (2020) (noting a recent survey found that “98% of respondents believed that seniors are susceptible to scams, only one in ten of the older Americans surveyed believed this could actually happen to them”); see also Shana Siegel, *How Isolation and COVID Make Seniors More Vulnerable to Fraud and Exploitation*, NAT. L. REV. (Feb. 18, 2021), <https://www.natlawreview.com/article/how-isolation-and-covid-make-seniors-more-vulnerable-to-fraud-and-exploitation> [<https://perma.cc/8BMD-FQC4>] (“We have long known that seniors are more vulnerable to financial abuse. The COVID pandemic has only amplified this problem due to the increased social isolation and stress it has wrought.”).

<sup>8</sup> See, e.g., Taylor Lemick, *Society’s Response to the ‘Invisible’ Abuse of Elders: Understanding and Addressing the Financial Abuse of Society’s Most Vulnerable Citizens*, 23 ELDER L.J. 152, 153 (2015) (“To properly protect elders, Illinois must amend its laws to include financial institutions as mandatory reporters.”); Camilla O. McRory, *Protecting Senior Citizens*, 35 MD. B.J. 26, 27 (2002) (“Scams against seniors and other consumer protection issues relating to seniors is an issue of concern to every attorney . . . .”); 12 U.S.C. § 3423 (2022); FINRA, SENIOR SAFE ACT FACT SHEET (2019), [https://www.finra.org/sites/default/files/2019-05/senior\\_safe\\_act\\_factsheet.pdf](https://www.finra.org/sites/default/files/2019-05/senior_safe_act_factsheet.pdf) [<https://perma.cc/84HQ-S3MU>].

<sup>9</sup> See *infra* Part II.A.

<sup>10</sup> See *infra* Part II.A.

<sup>11</sup> See, e.g., Nina A. Kohn, *Elder (In)justice: A Critique of the Criminalization of Elder Abuse*, 49 AM. CRIM. L. REV. 1, 1 (2012) (discussing legal trend towards criminalizing conduct directed towards older adults differently than the same conduct directed towards others).

<sup>12</sup> FIN. INDUS. REGUL. AUTH. RULE 2165 (Financial Exploitation of Specified Adults) (effective Feb. 5, 2018), <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165> [<https://perma.cc/54UF-7HXC>] (authorizing financial institutions with a reasonable belief that financial exploitation of an elderly account holder is occurring to place a temporary hold on the account and contact a trusted contact of the account holder free of liability). This measure also extends to adults with “a mental or physical impairment that renders the individual unable to protect his or her own interests.” *Id.*

authorizing banks to freeze and review certain transactions made by seniors<sup>13</sup> to creating entirely new crimes for defrauding an older adult.<sup>14</sup>

The bipartisan, national, and broadly popular push for law reform has taken place without a clear empirical understanding of whether, in fact, older adults are more frequently victimized by scams than other age groups.<sup>15</sup> Indeed, while hypotheses abound in the scholarly literature and popular press for why seniors are more vulnerable to scams, there is almost no good evidence as to whether they in fact fall victim to scams more than other groups do.<sup>16</sup> Instead, the data we have are scant and contradictory.<sup>17</sup> In 2017, the most comprehensive empirical analysis of the incidence of elder financial frauds and scams to date summarized the state of play by acknowledging that “it is unclear whether older adults experience higher rates of fraud-scam victimization than other age groups.”<sup>18</sup>

The study presented in this Article seeks to shed light on whether seniors are in fact more frequently victimized by scams than other age groups.<sup>19</sup> It does so by asking about participants’ experiences with common scams during roughly the first year of the COVID-19 pandemic, a salient, discrete time period notable for the opportunity it offered scammers.<sup>20</sup> Two groups—one of adults ages 65 or older (n = 364, the “Older Group”) and one of adults ages 25–35 (n = 388, the “Younger Group”)—were recruited

<sup>13</sup> H. File No. 3064, 89th Leg. Reg. Sess. (Minn. 2016).

<sup>14</sup> TENN. CODE ANN. § 39-15-502 (2019) (establishing a felony offense for knowingly financially exploiting an elderly or vulnerable adult).

<sup>15</sup> See, e.g., Peter A. Lichtenberg, Daniel Paulson & S. Duke Han, *Examining Health and Wealth Correlates of Perceived Financial Vulnerability: A Normative Study*, 4 INNOVATION IN AGING 1, 2 (2020) (acknowledging “considerable debate about whether older adults are more susceptible to fraud than other age groups”); Jingjin Shao, Qianhan Zhang, Yining Ren, Ziyang Li & Tian Lin, *Why Are Older Adults Victims of Fraud? Current Knowledge and Prospects Regarding Older Adults’ Vulnerability to Fraud*, 31 J. ELDER ABUSE & NEGLECT 225, 237 (2019) (first citing David Burnes, Charles R. Henderson, Christine Sheppard, Rebecca Zhao, Karl Pillemer & Mark S. Lachs, *Prevalence of Financial Fraud and Scams Among Older Adults in the United States: A Systematic Review and Meta-Analysis*, 107 AM. J. PUB. HEALTH e13, e13–e21 (2017); and then citing Michael Ross, Igor Grossman & Emily Schryer, *Contrary to Psychological and Popular Opinion, There is No Compelling Evidence That Older Adults Are Disproportionately Victimized by Consumer Fraud*, 9 PERSP. ON PSYCH. SCI. 427 (2014)) (“There is strong debate about whether older adults experience higher levels of fraud victimization than other age groups . . .”).

<sup>16</sup> See *id.*; see also Jeffrey L. Bratkiewicz, “Here’s a Quarter, Call Someone Who Cares”; *Who is Answering the Elderly’s Call for Protection from Telemarketing Fraud?*, 45 S.D. L. REV. 586, 588 (2000) (“Telemarketers are thought to prey upon the elderly because of (1) their availability, (2) their frailty, and (3) their financial resources.”).

<sup>17</sup> See *infra* Part III.A.

<sup>18</sup> Burnes et al., *supra* note 15, at e14.

<sup>19</sup> By “victimized” by a scam, I refer generally to an individual’s falling for and suffering consequences because of a scam. For reasons discussed throughout, such victimization is difficult to measure directly, and the measures used in this study are proxies.

<sup>20</sup> See, e.g., Chad G. Marzen, *COVID-19 Vaccine Distribution: A Brief Proposal for Future Pandemics*, 21 WAKE FOREST J. BUS. & INTELL. PROP. L. 377, 382 (2021) (discussing how the pandemic offered opportunities for scammers to promise “false cures,” “fake COVID-19 tests,” and “fraudulent charges for COVID-19 vaccines and fake vaccine appointments” that “often target seniors”).

on the online crowdsourcing platforms Amazon Mechanical Turk and Prolific and asked to take a short survey. The survey asked participants whether they had been approached by someone who made any of four fraudulent promises common during the pandemic: (1) early access to a vaccine;<sup>21</sup> (2) claims that additional information or money was required for access to a federal stimulus check;<sup>22</sup> (3) fraudulent offers of treatments for COVID-19;<sup>23</sup> and (4) generic claims that an individual's bank or other financial account had been locked.<sup>24</sup> Participants were then asked to report whether they had engaged with the scam by clicking a link, paying money, or disclosing personal information. The survey also included a catch-all final question prompting participants to discuss any other experiences with frauds or scams during the pandemic.

The results unsettle our conventional wisdom about the shape of the problem of fraud in the United States. The Younger Group reported having engaged with scams during the pandemic three times more frequently than the Older Group (12% to 4%), and these results were statistically significant ( $\chi^2 = 16.41$ ;  $p = .000051$ ). This finding—that younger adults were more likely to report engaging with and falling victim to scams—persisted however the data were sliced, whether looking at a particular subset of the scams or all of them together, and whether looking at scam engagement *simpliciter* or the negative consequences following therefrom. Moreover, although there was no statistically significant difference in the overall rate at which the Older Group and Younger Group reported being solicited for scams, younger adults who were solicited were more likely to engage with scams than older adults who were solicited, to a statistically significant degree (19% to 7%,  $\chi^2 = 13.51$ ;  $p = .00024$ ). This means that younger adults who were approached by scammers were more susceptible to falling victim to scams than were older adults who were approached by scammers.

This study suggests that our assumptions about scams and how to respond to them may be misguided. Although further, nationally representative research across different time periods will be required, this study suggests that the problem may not be, as we have assumed, an issue largely confined to older adults. This empirical fact does not necessitate the conclusion that we ought to abandon the legal approach of treating senior scams as a discrete problem worthy of a discrete legal solution. It might be that taking advantage of older adults is qualitatively worse as an ethical matter.<sup>25</sup> But to the extent that the justification for treating scams targeting seniors differently in the law is the quantitative claim that they are more frequently victimized (and this, in fact, appears to be the primary justification in popular, legal,

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<sup>21</sup> See *infra* note 147.

<sup>22</sup> See *infra* note 148.

<sup>23</sup> See *infra* note 149.

<sup>24</sup> See *infra* note 150.

<sup>25</sup> See *infra* Part II.B.

political, and academic discourse),<sup>26</sup> we may have to rethink that approach. At a minimum, we may no longer be able to justify treating senior scams differently in the law with easy recourse to the assumption that they are more frequently victimized.

Empirical findings so divergent from widespread popular and academic assumptions demand some explanation. As such, this study's results must be squared with the robust literature in psychology and gerontology demonstrating that individuals undergo various cognitive changes that may make them more vulnerable to scams as they age.<sup>27</sup> For starters, I suggest three reasons why it might be that seniors could be victimized by scams less frequently than (or at comparable levels to) other age groups, notwithstanding the widespread public and scholarly assumption to the contrary. First, it might be that efforts to combat senior scams—perhaps most prominently, awareness-raising efforts—are working, and that seniors are no longer the group most frequently victimized, even if they may abstractly be the most vulnerable (a possibility with some anecdotal support in the data).<sup>28</sup> Second, it could be that the cognitive changes coincident with aging revealed in lab studies do not have the hypothesized relationship to fraud victimization in the real world.<sup>29</sup> Finally, and most invidiously, it might be that our assumptions about the unique fraud vulnerability of older adults are driven to some extent by ageist stereotypes.<sup>30</sup>

This Article has four Parts. First, I offer a brief overview of the novel, unique, and rapidly evolving legal status of senior frauds and scams, emphasizing the extent to which the public impetus for law reform appears to be primarily driven by the empirical assumption that seniors are scammed more frequently than other adults. Part III offers a literature review of efforts to ascertain senior scam victimization incidence to date and discusses this study's methodology. In Part IV, the results are presented, demonstrating that in the study population, younger adults were more likely to report engaging with scams (and suffering consequences from doing so) than older adults no matter how the data were parsed. Finally, in Part V, I discuss the implications of these findings both for academia and discussions of the problem of fraud in the public sphere.

## II. THE LEGAL CONTEXT OF SENIOR FRAUDS AND SCAMS

The legal system increasingly treats frauds and scams targeting older adults differently than those that target others. We punish perpetrators of senior scams more harshly, authorize financial institutions to take more

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<sup>26</sup> See *infra* Part II.C.

<sup>27</sup> See *infra* Part IV.A.

<sup>28</sup> See *infra* Part V.A.1.

<sup>29</sup> See *infra* Part V.A.2.

<sup>30</sup> See *infra* Part V.A.3.

proactive measures to prevent them, and devote more funding and prosecutorial wherewithal to tackling the problem of seniors falling victim to scams. This movement has taken place in legislation and regulation, at the state and federal level, and even in the social sphere. In short, society, and the legal system in particular, has devoted tremendous academic and practical resources to the problem of senior financial scams on the apparent assumption that it is a unique problem that merits unique explanations and legal responses.

In this Part, I offer background on the law and scholarship of senior financial frauds and scams. First, I summarize the broad trend in recent years towards treating senior scams as a distinct social problem worthy of a distinct legal solution. Next, I discuss the potential justifications for this trend, and argue that the primary justification—although there are others—is the quantitative empirical claim that seniors are more commonly victimized by scams than are other groups. Finally, I explain that although this claim has never been strongly supported, it has been assumed by a large body of academic research seeking to explain why seniors are more commonly victimized, as well as in popular discourse and calls for law reform.

Before diving in, a brief word on terminology. Financial frauds and scams targeting “seniors,” “elders,” or “older adults” are a species of “senior financial exploitation,” where a person improperly obtains money or other things of value from a person age sixty-five or older.<sup>31</sup> Senior financial exploitation can be divided into two basic categories: (1) “elder financial abuse,” “when an older adult’s resources are improperly or illegally used by a person in a relationship involving an expectation of trust;” and (2) “elder financial frauds and scams,” “perpetrated by a stranger or someone else outside of a conventional or legally-defined trust relationship.”<sup>32</sup> There is evidence that the former is more common,<sup>33</sup> and such intimate financial

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<sup>31</sup> See, e.g., NINA A. KOHN, *ELDER LAW: PRACTICE, POLICY, AND PROBLEMS* 492 (2d ed. 2020) (defining elder financial exploitation).

<sup>32</sup> Burnes et al., *supra* note 15, at e14; see also JEFFREY HALL, DEBRA L. KARCH & ALEX CROSBY, *ELDER ABUSE SURVEILLANCE: UNIFORM DEFINITION AND RECOMMENDED CORE DATA ELEMENTS* 35 (2016), [https://www.cdc.gov/violenceprevention/pdf/ea\\_book\\_revised\\_2016.pdf](https://www.cdc.gov/violenceprevention/pdf/ea_book_revised_2016.pdf) [<https://perma.cc/Q4VW-2BT7>] (defining elder financial frauds and scams as “deception carried out for the purpose of achieving personal gain while causing injury to another party. An intentional distortion of truth initiated to convince another to part with something of value or to surrender a legal right.”).

<sup>33</sup> See, e.g., KOHN, *supra* note 31, at 494 (“Elder abuse victims who are not living in institutional settings are most likely to have been victimized by family members (primarily adult children and spouses of the victims). Female victims are especially likely to have been victimized by a family member.”); see also *Senior Fraud*, NEV. CONSUMER AFFS. DEP’T BUS. & INDUS., [https://consumeraffairs.nv.gov/Alerts/Senior/Senior\\_Fraud/](https://consumeraffairs.nv.gov/Alerts/Senior/Senior_Fraud/) [<https://perma.cc/KJ7F-45EX>] (“Over 90% of all reported elder fraud is committed by an older person’s own family members, most often their adult children, followed by grandchildren, nieces and nephews, and others.”); Jesse R. Morton & Scott Rosenbaum, *An Analysis of Elder Financial Exploitation: Financial Institutions Shirking Their Legal Obligations to Prevent, Detect, and Report This “Hidden” Crime*, 27 *ELDER L.J.* 261, 265 (2020) (“[T]he most common abuser is someone who is entrusted to care for the elder, and of those abusers, 60% of abusers are family members.”).

abuse has been studied extensively as a challenge of institutional design for monitoring fiduciary and intimate relationships.<sup>34</sup> But there has been a recent explosion of interest in the latter—third-party frauds or scams targeting seniors—both in the academic literature and in legal and financial practice.<sup>35</sup> This Article is focused on “elder financial frauds and scams” and the extent to which older adults are more frequently victimized by third-party scams as compared to younger adults. It does not examine exploitation by fiduciaries, caretakers, or family members.

### A. Law Reform on Senior Financial Frauds and Scams

In the past several years, protecting seniors from scams has become an extremely active area of legal and regulatory reform at the federal and state levels, coupled with broad social efforts to raise awareness of the problem of senior scams. These efforts are directed towards protecting seniors specifically; that is, they are not equally extended across the age range. For instance, the Office of the Investor Advocate of the United States Securities and Exchange Commission (SEC) has referred to senior financial frauds as the “crime of the 21st century” and has committed to undertake a variety of affirmative measures to combat them.<sup>36</sup> More recently, the SEC has ap-

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<sup>34</sup> See, e.g., Burnes et al., *supra* note 15, at e14 (“[O]ur knowledge about the prevalence of elder financial exploitation is mostly limited to the category of elder financial abuse.”); Catherine A. Seal, *Remedies*, 26 VOICE OF EXPERIENCE (2014) (“If a case involves the improper transfer and potential recovery of an asset or a defendant against whom there is a strong likelihood of recovery, pursuit of civil remedies may be appropriate. If the suspicious activity or fraud was done under authority of a power of attorney, a request for accounting by the agent should be made if such accountings are authorized under state law.”); Susan J. Aziz, *Los Angeles County Fiduciary Abuse Specialist Team: A Model for Collaboration*, 12 J. ELDER ABUSE & NEGLECT 79 (2000) (discussing techniques to deter elder financial abuse committed by fiduciaries); see generally Robert H. Sitkoff, *An Agency Costs Theory of Trust Law*, 89 CORNELL L. REV. 621 (2004) (discussing the agency cost challenges and risks of bifurcating beneficial interest and legal title).

<sup>35</sup> See, e.g., Burnes et al., *supra* note 15, at e13, e14; Morton & Rosenbaum, *supra* note 33, at 263–64; see also Rebecca C. Morgan, Pamela B. Teaster & Randolph W. Thomas, *A View from the Bridge: A Brief Look at the Progression of Cases of Elder Financial Exploitation Prosecutions*, 25 ELDER L.J. 272 (2017) (summarizing developments in state prosecution of elder financial frauds and scams); Kate Fazzini, *Here’s How Online Scammers Prey on Older Americans, and What They Should Know to Fight Back*, CNBC (Nov. 23, 2019, 10:31 AM), <https://www.cnn.com/2019/11/23/new-research-pinchpoints-how-elderly-people-are-targeted-in-online-scams.html> [https://perma.cc/3CG9-AMEN] (“Older adults also lose large sums to online frauds like email compromise and wire fraud . . .”); *Elder Fraud*, FBI, <https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/elder-fraud> [https://perma.cc/GF2J-X3P5] (“Each year, millions of elderly Americans fall victim to some type of financial fraud or confidence scheme, including romance, lottery, and sweepstakes scams, to name a few.”).

<sup>36</sup> See STEPHEN DEANE, SEC, ELDER FINANCIAL EXPLOITATION: WHY IT IS A CONCERN, WHAT REGULATORS ARE DOING ABOUT IT, AND LOOKING AHEAD 7 (2018) (citing METLIFE MATURE MARKET INST., NAT’L COMM. FOR THE PREVENTION OF ELDER ABUSE & CTR. FOR GERONTOLOGY AT VA. POLYTECHNIC INST. & STATE UNIV., THE METLIFE STUDY OF ELDER FINANCIAL ABUSE: CRIMES OF OCCASION, DESPERATION, AND PREDATION AGAINST AMERICA’S ELDERS 5 (2011), <https://tcombudsman.org/uploads/files/issues/mmi-elder-financial-abuse.pdf>



proved a series of regulations proposed by the Financial Industry Regulatory Authority (FINRA)—the self-regulatory organization of the financial services industry—designed to empower financial institutions to protect older adults from financial exploitation and scams.<sup>37</sup> Rule 2165, for example, permits financial institutions to report suspicious transactions made by “specified adults” considered to be at highest risk for financial exploitation—those over sixty-five or with mental disabilities—to state Adult Protective Services authorities without triggering liability under banking privacy rules.<sup>38</sup> Similarly, the Senior Safe Act, which went into effect in 2018, permits financial institutions to report suspicious transactions on the accounts of customers sixty-five years or older to Adult Protective Services without violating banking privacy rules.<sup>39</sup> This change followed the 2017 Elder Abuse Prevention and Prosecution Act, which increased funding for prosecution and victim compensation in elder abuse cases generally.<sup>40</sup>

A similar flurry of activity has also taken place at the state level.<sup>41</sup> Several states have gone further than the Senior Safe Act and authorized financial institutions not just to report the suspicious transactions of seniors, but to freeze them pending review by internal procedures or state authorities.<sup>42</sup> Other states have created a new, distinct crime—with stiffer penalties than ordinary fraud—for theft from an older or otherwise vulnerable adult.<sup>43</sup> This move towards specialized criminal penalties for scamming or defrauding older adults reflects a broader trend towards criminalization in elder law—a “rapid proliferation of laws and policies that facilitate a criminal justice response to elder abuse.”<sup>44</sup> Many states, including California, have introduced new crimes that broadly punish individuals who cause “unjustifiable pain or mental suffering” to an older adult.<sup>45</sup> Much of the conduct penalized by

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[<https://perma.cc/J9SH-RPL5>], <https://www.sec.gov/files/elder-financial-exploitation.pdf> [<https://perma.cc/CR5Z-HGBZ>].

<sup>37</sup> See Morton & Rosenbaum, *supra* note 6, at 263–64 (“To address and attempt to mitigate the growing issue of elder financial exploitation, the Financial Industry Regulatory Authority (‘FINRA’), the Security Exchange Commission (‘SEC’), and other agencies have recently enacted various guidance and rules specifically designed to better protect seniors and other at-risk adults, such as those who are disabled.”).

<sup>38</sup> See, e.g., FIN. INDUS. REGUL. AUTH. RULE 2165 (Financial Exploitation of Specified Adults) (effective Feb. 5, 2018), <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165> [<https://perma.cc/54UF-7HXC>].

<sup>39</sup> See 12 U.S.C. § 3423 (2022); FINRA, SENIOR SAFE ACT FACT SHEET (2019), [https://www.finra.org/sites/default/files/2019-05/senior\\_safe\\_act\\_factsheet.pdf](https://www.finra.org/sites/default/files/2019-05/senior_safe_act_factsheet.pdf) [<https://perma.cc/84HQ-S3MU>].

<sup>40</sup> See 34 U.S.C. § 21711.

<sup>41</sup> See Heather Morton, *Financial Crimes Against the Elderly 2016 Legislation*, NAT’L CONF. OF STATE LEGISLATURES (Sept. 20, 2016), <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2016-legislation.aspx> [<https://perma.cc/CB3T-GSEK>].

<sup>42</sup> See, e.g., H. File No. 3064, 89th Leg. Reg. Sess. (Minn. 2016).

<sup>43</sup> See, e.g., TENN. CODE ANN. § 39-15-502 (2019) (establishing a felony offense for knowingly financially exploiting an elderly or vulnerable adult).

<sup>44</sup> Kohn, *supra* note 11, at 1.

<sup>45</sup> See, e.g., CAL. PENAL CODE §§ 368(b)(1)-(2) (West 2022).

these statutes—for instance, theft—was already criminal, and these state statutes simply enhance the penalty where the victim is an older adult.<sup>46</sup> But increasingly, these statutes have even extended to conduct that would not be criminal had it not been directed towards an older adult.<sup>47</sup>

Despite this broad move towards protecting seniors as a class from fraud and scams (and despite the occasional dissenting voice),<sup>48</sup> most commentators in the legal academy argue that these reforms have not gone far enough, advocating for further measures such as making financial professionals mandatory reporters of suspicious transactions involving older adults.<sup>49</sup> These legal developments have been broadly collaborative—receiving bipartisan support<sup>50</sup> and endorsement from regulators,<sup>51</sup> interest groups representing the financial services industry,<sup>52</sup> and older adults<sup>53</sup>—perhaps explaining the rapid pace of legal change in the absence of a clear empirical basis.

Indeed, these statutory, regulatory, and prosecutorial efforts have supported, and been supported by, a broader social movement to highlight and

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<sup>46</sup> See, e.g., TENN. CODE ANN. § 39-15-502 (2019) (establishing a felony offense for knowingly financially exploiting an elderly or vulnerable adult).

<sup>47</sup> See Kohn, *supra* note 11, at 10 (“[M]any of the statutes that criminalize behavior that previously would not be the basis for criminal sanction is that they outlaw ‘abusive’ behavior even in situations in which the victim may not see the behavior as abusive or may have consented to it.”). For example, Washington has criminalized consensual sexual contact between a disabled person over the age of sixty and any person that provides them with paid transportation. See *id.* at 10–11 (citing WASH. REV. CODE § 9A.44.100(1)(f) (2010)).

<sup>48</sup> *Id.* at 20 (criticizing the trend toward criminalizing elder abuse differently than pre-existing crimes).

<sup>49</sup> See, e.g., Lemick, *supra* note 8, at 153 (“To properly protect elders, Illinois must amend its laws to include financial institutions as mandatory reporters.”); see also Morgan et al., *supra* note 35, at 272 (“For years now, or so it seems, when referencing the current state of elder abuse, the comment made was that the response to elder abuse is where responses to domestic violence and child abuse were twenty years ago. We continue to make this statement, but the time gap never seems to lessen. It always seems to be twenty years behind.”); Morton & Rosenbaum, *supra* note 6, at 264 (“[S]tatistics plainly show that financial institutions are failing, in many instances, miserably, at upholding their legal obligations under the Bank Secrecy Act (‘BSA’) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (‘Patriot Act’) to monitor for and report suspicious activity that may indicate elder financial exploitation.”); Neal Reynolds, *Elder Financial Exploitation. Are We Doing Enough?* BANKING MKTG. CTR. (Feb. 14, 2020), <https://www.bankmarketingcenter.com/blog/post/2020/02/14/financial-exploitation> [https://perma.cc/4KQQ-59UJ].

<sup>50</sup> The Senior Safe Act, co-authored by Susan Collins (R-Me.) and Claire McCaskill (D-Mo.), was signed into law by President Trump. *The Senior Safe Act Becomes Law*, BRESSLER AMERY & ROSS (June 11, 2018), <https://www.bressler.com/publication-237> [https://perma.cc/C9FK-DMDH].

<sup>51</sup> See, e.g., STEPHEN DEANE, SEC, HOW THE SEC WORKS TO PROTECT SENIOR INVESTORS 5 (2019), <https://www.sec.gov/files/how-the-sec-works-to-protect-senior-investors.pdf> [https://perma.cc/FG8Z-8CTQ].

<sup>52</sup> See, e.g., *Senior Investor Protection Toolkit*, SEC. INDUS. FIN. MKT. ASS’N, <https://www.sifma.org/resources/general/senior-investor-protection-toolkit/> [https://perma.cc/63G6-6VQB].

<sup>53</sup> See, e.g., Victoria Sackett, *New Law Targets Elder Financial Abuse*, AARP (May 24, 2018), <https://www.aarp.org/politics-society/government-elections/info-2018/congress-passes-safe-act.html> [https://perma.cc/8PF6-9KJF].

raise awareness of the perceived distinctive problem of senior scams.<sup>54</sup> For instance, in announcing legislation co-sponsored with Senator Amy Klobuchar entitled the Senior Fraud Prevention Act, Senator Susan Collins argued that “[r]aising awareness about financial scams is key to protecting seniors’ hard-earned savings, particularly among older Americans who are more likely to be targeted.”<sup>55</sup> Indeed, federal<sup>56</sup> and state<sup>57</sup> agencies and private organizations such as financial institutions<sup>58</sup> have devoted substantial resources to raise awareness of the danger of senior scams among their constituents and clients. In short, over the past decade, lawmakers—supported by interest groups, academics, and public commentary—have devoted growing legal resources to protecting older adults, as a class and as distinct from the general population, from scams and fraud.

This trend has carried through the 2020 COVID-19 pandemic. At the onset of the pandemic, many commentators anticipated that financial scams targeting seniors would increase.<sup>59</sup> They cited fear and social isolation as increasing seniors’ vulnerability to fraud.<sup>60</sup> And lawmakers have responded

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<sup>54</sup> See, e.g., National Today, *National Senior Fraud Awareness Day—May 15, 2023*, <https://nationaltoday.com/national-senior-fraud-awareness-day/> [<https://perma.cc/76NF-VJD6>] (“National Senior Fraud Awareness Day was established in 2018 and has remained an annual occurrence.”); Lakiya Scott, *Scam Stop 901 Brings Awareness to Elder Abuse*, FOX13 MEMPHIS (June 16, 2022), <https://www.fox13memphis.com/news/local/scam-stop-901-brings-awareness-elder-abuse/SVNA65QQOVBH17GRE264GDGEY/> [<https://perma.cc/6PPQ-5446>] (describing a campaign called “Scam Stop 901 . . . launched by District Attorney General Amy Weirich’s office in an attempt to raise awareness about scams targeting vulnerable adults”).

<sup>55</sup> Press Release, Amy Klobuchar, Klobuchar, Collins Legislation to Prevent Fraud Targeting Seniors Signed into Law (Mar. 16, 2022), <https://www.klobuchar.senate.gov/public/index.cfm/2022/3/klobuchar-collins-legislation-to-prevent-fraud-targeting-seniors-signed-into-law> [<https://perma.cc/2KY5-BN3K>].

<sup>56</sup> See, e.g., Bridget Small, *Share FTC Materials Here, There, and Everywhere*, FED. TRADE COMM’N CONSUMER ADVICE (May 14, 2021), <https://consumer.ftc.gov/consumer-alerts/2021/05/share-ftc-materials-here-there-and-everywhere> [<https://perma.cc/9CA2-65Q6>] (discussing “Pass It On,” FTC materials “designed to encourage older adults to talk about scams that often target them”).

<sup>57</sup> See, e.g., *Tips for Preventing Elder Financial Exploitation*, NEW YORK STATE, <https://www.ny.gov/tips-preventing-elder-financial-exploitation> [<https://perma.cc/78D4-A7KV>].

<sup>58</sup> See, e.g., *Protecting Older Adults from Fraud & Scams*, WELLS FARGO, <https://www.wellsfargo.com/financial-education/basic-finances/build-the-future/protect-money/protecting-elderly/> [<https://perma.cc/U6SD-5GYW>].

<sup>59</sup> See, e.g., Maggie Miller, *Scammers Step Up Efforts to Target Older Americans During Pandemic*, THE HILL (Dec. 2, 2020, 6:00 AM), <https://thehill.com/policy/cybersecurity/528259-scammers-step-up-efforts-to-target-older-americans-during-pandemic> [<https://perma.cc/9VL8-4AVT>] (“Older adults have faced a barrage of online scams during the COVID-19 pandemic, with the upcoming holiday season and increased consumer spending likely to intensify the problem.”); Will Maddox, *Elder Financial Abuse Is a ‘Virtual Pandemic,’ and on the Rise*, D MAG. (Sept. 30, 2020, 11:00 AM), <https://www.dmagazine.com/healthcare-business/2020/09/elder-financial-abuse-is-a-virtual-pandemic-and-is-on-the-rise/> [<https://perma.cc/W39T-ETKB>] (“The COVID-19 pandemic is exacerbating a growing problem for seniors in the United States: elder financial abuse.”).

<sup>60</sup> See, e.g., Julie Jargon, *How to Protect Seniors from Online Fraud and Phone Scams*, WALL ST. J. (Jan. 23, 2021, 11:37 PM), <https://www.wsj.com/articles/how-to-protect-seniors-from-online-fraud-and-phone-scams-11611410401> [<https://perma.cc/C4QP-6N4J>] (“The isolation many older adults are experiencing during the pandemic has exacerbated the problem

to this perception with legislation, including the federal Protecting Seniors From Emergency Scams Act, designed to prevent scammers from defrauding seniors during the pandemic.<sup>61</sup>

### B. Why Treat Senior Scams Differently?

Why have we all apparently agreed to treat scams that target seniors as a distinct legal problem? After all, the legal system doesn't generally design laws that apply only to adults of certain ages without good reason.<sup>62</sup>

The growing legal trend towards treating financial crimes differently when the victims are older could be justified in one of two ways. First, it might be that seniors are quantitatively scammed more frequently than other age groups. If this were true, senior scams might represent a discrete social problem that would call for a discrete legal solution. In this way, we could think of these laws protecting seniors as analogous to the law reform movement in the 1980s to raise the drinking age in the United States—a move that treated younger adult citizens differently from those older than twenty-one in the law.<sup>63</sup> The public justification for raising the drinking age was the empirical claim that it was primarily adults ages eighteen to twenty responsible for causing drunk driving fatalities<sup>64</sup> (coupled with empirical claims about the vulnerability of the young brain).<sup>65</sup> If these assumptions turned out to be wrong—and in fact eighteen- to twenty-year-olds were not more likely to drive drunk or were not more vulnerable to long-term brain damage<sup>66</sup>—

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[of senior financial scams.]”); Colleen Long, Michael Balsamo & Rodney Muhumuza, *Coronavirus-related Crimes Capitalize on Global Fear, Panic*, AP NEWS (Mar. 24, 2020), <https://apnews.com/article/public-health-United-nations-health-us-news-ap-top-news-ec678534da3d8a6817c285650414ccf4> [<https://perma.cc/MFW7-LEQX>] (“As the coronavirus pandemic spreads, so too do the crimes related to it—transgressions that capitalize on fear, panic and the urge to lay blame, and add to the burden on law enforcement trying to protect vulnerable citizens.”).

<sup>61</sup> H.R. 7699, 116th Cong. (2020).

<sup>62</sup> Cf. Nina A. Kohn, *A Framework for Theoretical Inquiry into Law and Aging*, 21 THEORETICAL INQUIRIES L. 187, 194 (2020) (noting that “whether the law *should* treat older adults differently” is a “core theoretical concern” of elder law).

<sup>63</sup> See 23 U.S.C. § 158 (limiting federal highway funding to states that did not raise their drinking age to twenty-one).

<sup>64</sup> See, e.g., Anne T. McCartt, Laurie A. Hellinga & Bevan B. Kirley, *The Effects of Minimum Legal Drinking Age 21 Laws on Alcohol-Related Driving in the United States*, 41 J. SAFETY RSCH. 173, 173 (2010) (noting both that “[a]t the same blood alcohol concentration (BAC), young drivers are far more likely to get into fatal or non-fatal crashes” and that “zero tolerance and minimum legal drinking age (MLDA) laws are the primary legal countermeasures against underage drinking and driving in the United States”).

<sup>65</sup> See, e.g., Patricia K. Kokotailo, *Alcohol Use by Youth and Adolescents: A Pediatric Concern*, 125 PEDIATRICS 1078, 1078 (2010) (“Results of recent neuroscience research have substantiated the deleterious effects of alcohol on adolescent brain development and added even more evidence to support the call to prevent and reduce underaged drinking.”).

<sup>66</sup> For those interested, there is substantial evidence that raising the drinking age has lowered traffic fatalities, see, e.g., William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, 17 J. STU. ALCOHOL & DRUGS SUPPLEMENT 108, 108 (2014) (“Recent research on the age 21 MLDA has reinforced the position that the current law has served the

then there would be no justification for treating the class of adults ages eighteen to twenty differently than other adults with respect to access to alcohol.<sup>67</sup> Similarly, it might be that the justification for treating frauds directed at seniors is that they are empirically more likely to be victimized; and similarly, this justification would not survive the finding that they are not.

In the public sphere, this first justification—the quantitative claim that seniors are defrauded more frequently than other age groups—seems to do most of the work in justifying differential treatment of financial crimes targeting the elderly.<sup>68</sup> Indeed, it is mainstream conventional wisdom (within the legal academy and the broader public sphere) that older adults are more frequently the victim of scams,<sup>69</sup> and this conventional wisdom is regularly relied upon in arguments for law reform tailored to protect seniors from fraud and scams.<sup>70</sup> For instance, the Consumer Financial Protection Bureau calls for increased action against senior scams—but not scams against other

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nation well by reducing alcohol-related traffic crashes and alcohol consumption among youths, while also protecting drinkers from long-term negative outcomes they might experience in adulthood, including alcohol and other drug dependence, adverse birth outcomes, and suicide and homicide.”). But the differential treatment of adults under twenty-one may still be objectionable on other grounds, *see, e.g.*, James Toomey, *The Drinking Age and Law Enforcement on College Campuses*, BILL OF HEALTH (Oct. 22, 2018), <https://blog.petrieflom.law.harvard.edu/2018/10/22/the-drinking-age-and-law-enforcement-on-college-campuses/> [<https://perma.cc/WP7D-X9YV>] (“My argument is that the MLDA of 21, rather than the more traditional and globally accepted younger alternatives, inhibits campus law enforcement by making it more difficult for the police to build and maintain the community relationships that make good law enforcement possible.”).

<sup>67</sup> *Cf.*, *e.g.*, German Lopez, Sorry, *College Students, but the Drinking Age Should Stay at 21*, VOX (Jan. 19, 2016, 3:50 PM), <https://www.vox.com/2016/1/19/10761802/drinking-age> [<https://perma.cc/47MD-S3JJ>].

<sup>68</sup> *See, e.g.*, Jim Gold, *10 Common Ways Seniors Get Scammed*, MONEYTALKSNEWS (July 27, 2021), <https://www.moneytalksnews.com/major-scams-that-can-wreck-your-retirement/> [<https://perma.cc/7TAB-9M3A>] (“It’s a sad fact that scammers often target the people with the most to lose, and the least chance to catch on or fix things.”).

<sup>69</sup> *See, e.g.*, *Senior Fraud*, NEV. CONSUMER AFFS. DEP’T BUS. & INDUS., [https://consumeraffairs.nv.gov/Alerts/Senior/Senior\\_Fraud/](https://consumeraffairs.nv.gov/Alerts/Senior/Senior_Fraud/) [<https://perma.cc/FP7J-2HZX>] (“Older Americans are targeted for fraud because they are the most likely demographic to have money in savings, own their home, and have excellent credit . . . all of which a fraudster will attempt to take advantage of. Also, seniors are less likely to report fraud.”); McMaster Univ., *Older Adults Increasingly Targeted by Fraud and Scams*, McMASTER OPTIMAL AGING PORTAL (Mar. 19, 2018), <https://www.mcmasteroptimalaging.org/blog/detail/blog/2018/03/19/older-adults-increasingly-targeted-by-fraud-and-scams> [<https://perma.cc/53WG-6Y9R>] (“The financial exploitation of older adults has been recognized as a serious problem . . . .”); ACFE, *Elderly Fraud Scams: How They’re Being Targeted and How to Prevent It*, THE FRAUD EXAMINER [<https://perma.cc/4U2D-JSVY>] (“Unfortunately, this is not uncommon . . . . [T]hose over the age of 65 are more likely to have lost money due to a financial scam than someone in their 40s.”).

<sup>70</sup> *See* Lemick, *supra* note 8, at 152 (“These experts found—in a study released by the White House Symposium in 2012—that 99% of elder Americans were ‘very vulnerable’ to financial scams because of weakening mental capacity, as well as other mild cognitive impairments, making the elderly particularly susceptible.”) (citing Elizabeth A. Richards, *Stop the Silence of Elder Abuse*, AM. NURSE TODAY (2011), <https://www.myamericannurse.com/stop-the-silence-of-elder-abuse> [<https://perma.cc/TBZ6-7Q6G>]; and then Maria Wood, *Study: Elder Financial Abuse on the Rise*, LIFEHEALTHPRO (June 15, 2012), <http://www.lifehealthpro.com/2012/06/15/study-elder-financial-abuse-on-the-rise> [<https://perma.cc/8R79-PV6Y>]).

adults—on the grounds that the problem is “widespread and damaging,”<sup>71</sup> and the SEC notes that “[o]lder Americans are often targets of investment fraud,” without offering the same warning to younger adults.<sup>72</sup> Indeed, it seems that at least the primary public justification for this law reform movement rises and falls with the validity of the empirical assumption that seniors are more frequently victimized by frauds and scams. The argument seems to be a lot like the argument for raising the drinking age.<sup>73</sup>

But there are other possible ways in which differential legal treatment of senior scams could be justified. Indeed, it might be that scamming an older person is qualitatively, morally worse than scamming younger adults,

<sup>71</sup> OFFICE OF FIN. PROT. FOR OLDER AMERICANS, CONSUMER FINANCIAL PROTECTION BUREAU, SUSPICIOUS ACTIVITY REPORTS ON ELDER FINANCIAL EXPLOITATION: ISSUES AND TRENDS 4 (2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_suspicious-activity-reports-elder-financial-exploitation\\_report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf) [<https://perma.cc/BP72-VMVZ>] [hereinafter CFPB Report] (“SARs indicate that elder financial exploitation is widespread and damaging.”).

<sup>72</sup> SEC, *Investor Alert for Seniors: Five Red Flags of Investment Fraud*, INV. ALERTS & BULLETINS (June 15, 2015), [hereinafter SEC Investor Alert] [https://www.sec.gov/oiea/investor-alerts-bulletins/ia\\_5redflags.html](https://www.sec.gov/oiea/investor-alerts-bulletins/ia_5redflags.html) [<https://perma.cc/X78Z-6NJM>].

<sup>73</sup> Although it is, of course, difficult to definitively prove that a given reason for a position on an issue of public concern is the primary reason, review of a range of arguments in this area leaves this distinct impression: the frequency of seniors falling victim to scams is typically the first reason cited for policy changes, coupled with explanations for the frequency of senior scams that are unique to seniors (i.e., the increased vulnerability of aging). Consider, for instance, the CFPB Report, which ties the conclusion of a need for “strong and diverse interventions by financial institutions, law enforcement, and social services, as well as the involvement of policymakers,” first and foremost to the finding that “elder financial exploitation is widespread and damaging.” CFPB Report, *supra* note 71, at 4. Further, consider Senator Susan Collins, who stated upon the signing of her co-sponsored legislation designed to prevent senior fraud, “Raising awareness about financial scams is key to protecting seniors’ hard-earned savings, particularly among older Americans who are more likely to be targeted.” See Press Release, Collins, Klobuchar Legislation to Prevent Fraud Targeting Seniors Signed Into Law (Mar. 18, 2022), <https://www.collins.senate.gov/newsroom/collins-klobuchar-legislation-to-prevent-fraud-targeting-seniors-signed-into-law> [<https://perma.cc/K3CH-BGEP>]. As for advocacy organizations, consider the first paragraph of SIFMA’s “Senior Investor Protection Toolkit,” justifying its advocacy on the topic:

Senior financial exploitation has been estimated to cost savers almost \$3 billion per year in cases that have been reported by the media, and it has been estimated that only 1 in 44 cases is ever reported to the authorities. Moreover, recent scientific advancements have shown that financial decision-making is often one of the first cognitive functions to decline—even high-functioning adults can develop this vulnerability as part of the normal aging process.

*Senior Investor Protection Toolkit*, SEC, INDUS. & FIN. MKTS. ASS’N, <https://www.sifma.org/resources/general/senior-investor-protection-toolkit/> [<https://perma.cc/DTZ3-3C3G>].

More broadly in the public sphere, consider the first paragraph of a recent article on the website of ID protection software ID Strong:

Senior scams are becoming a major epidemic. First, seniors have a lot of money in the bank from a life of working hard and saving. Second, seniors often aren’t aware of common scams, how they work, and they may be more trusting due to the time period they were raised.

David Lukic, *Top 10 Senior Scams and How to Prevent Them*, ID STRONG (Aug. 5, 2020), <https://www.idstrong.com/sentinel/top-senior-scams-and-prevention/> [<https://perma.cc/6WYL-NMNP>].

and the law ought to treat this behavior differently. In contrast to the justification for the drinking age, we might think of this qualitative kind of justification as analogous to punishing hate crimes more harshly than similar crimes with different motivations. Hate crimes are not more common than other crimes; we punish them more harshly because we think they are qualitatively different—and morally more blameworthy—than similar crimes with other motivations.<sup>74</sup>

This justification relies on a normative claim that can't necessarily be disproven with empirical findings. Indeed, it might be that it is deontologically worse in itself to commit a crime because of racial hate than for other motives like personal gain.<sup>75</sup> This could lead us to formally punish hate crimes more harshly even if they almost never occur.<sup>76</sup> But depending on our moral framework, a qualitative justification might depend on descriptive predicates. For example, if we are consequentialists, we might believe that hate crimes are qualitatively more morally blameworthy because they are more harmful.<sup>77</sup> Whether a crime with a particular motivation is in fact more harmful is an empirical question, and if it turned out that the victims of hate crimes (or their communities) did not experience greater psychological distress than other crime victims, we might lose our justification for punishing them more harshly.<sup>78</sup> Similar dynamics could justify punishing financial crimes targeting seniors specifically—it might be that taking advantage of an older adult may simply be despicable in itself, or it could be that seniors are qualitatively harmed more by scam victimization.

Although it appears that the primary justification for uniquely preventing scams against seniors is the empirical claim that these scams are more common,<sup>79</sup> some commentators also suggest that scamming older adults is qualitatively worse.<sup>80</sup> Sometimes, this claim seems deontological, such as when the financial advisor Michelle Singletary wrote in *The Washington*

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<sup>74</sup> See, e.g., Laura Meli, *Hate Crime and Punishment: Why Typical Punishment Does Not Fit the Crime*, 2014 U. ILL. L. REV. 921, 943–56 (2014) (summarizing arguments that hate crime laws are justifiable because they punish conduct that is morally worse than comparable crimes with other motives).

<sup>75</sup> See, e.g., FREDERICK M. LAWRENCE, PUNISHING HATE: BIAS CRIMES UNDER AMERICAN LAW 29 (1999) (justifying anti-hate crime laws on the grounds that crimes committed out of hate are morally more despicable than those committed for other reasons).

<sup>76</sup> See, e.g., *id.* at 163–69 (arguing that hate crime laws can be valuable by virtue of their symbolic condemnation of a particular motivation for crime).

<sup>77</sup> See, e.g., Konor Cormier, *Increase the Peace Means Increase the Penalty?: The Impact of the James Byrd, Jr. Hate Crimes Act in Texas*, 34 TEX. TECH. L. REV. 343, 348 (2003) (“The justification [for punishing hate crimes more harshly] is based on the principle that hate crimes cause a disproportionately severe impact on the victim and the community at large.”).

<sup>78</sup> *Id.*

<sup>79</sup> See, e.g., Morton & Rosenbaum, *supra* note 6, at 262–64 (arguing that banks are not fulfilling their legal duty to report suspicious transactions, which is problematic considering the scope of elder financial exploitation).

<sup>80</sup> See, e.g., Michelle Singletary, *The Scammers Who Bilked Seniors out of More Than Half a Billion Dollars*, WASH. POST (Mar. 5, 2018), <https://www.washingtonpost.com/news/get-there/wp/2018/03/05/the-scammers-who-bilked-seniors-out-of-more-than-half-a-billion-dollars/> [https://perma.cc/P6DT-EBF7].

*Post* that “[t]here should be a special place in Hades for criminals who commit financial fraud against seniors.”<sup>81</sup> But more commonly, the normative, qualitative claim appears to be consequentialist and based on the descriptive predicate that seniors who are defrauded are distinctly more harmed than other victims. This descriptive predicate is typically supported in two related ways—either that seniors are more financially vulnerable, and their loss of money more subjectively significant,<sup>82</sup> or that seniors may be less likely to smoothly recover from fraud losses because they are less likely to be working.<sup>83</sup>

In short, the conventional wisdom behind treating scams and frauds targeted at seniors differently in law and policy is that seniors are more commonly victimized. But some advocates and commentators have suggested that even if that were not true, scams victimizing seniors might be qualitatively worse than those that take advantage of others.

### C. *The Assumption of Distinctive Senior Fraud and Scam Victimization*

The conventional wisdom that seniors are more frequently defrauded than other age groups has never been supported by clear empirical evidence. Indeed, the academic literature widely recognizes that there is no strong evidence that older adults fall victim to scams more often than others.<sup>84</sup> Instead, the overwhelming majority of studies in this area have focused only on obtaining absolute prevalence figures for the fraud-scam victimization of se-

<sup>81</sup> *Id.*

<sup>82</sup> *See id.* (“No one deserves to be a victim of a scam, but it’s particular[ly] heinous when perpetrated on people who are living on fixed incomes or surviving on savings they can’t replenish.”).

<sup>83</sup> *See, e.g.,* Caroline Skinner & Samantha Springer, *Imposter Scams Use New Tech and Techniques to Steal Retirees’ Life Savings*, NBC NEWS (Dec. 15, 2019, 5:17 AM), <https://www.nbcnews.com/news/us-news/imposter-scams-employ-new-tech-techniques-steal-retirees-life-savings-n1101716> [<https://perma.cc/96KS-45AT>] (“With little or no way to work to earn back their money, victims are often left with few options after having been conned out of their life savings.”); Ronnie Cohen, *Financial Scams Target Millions of Older Americans Annually*, REUTERS (July 14, 2017, 11:02 AM), <https://www.reuters.com/article/us-health-seniors-fraud/financial-scams-target-millions-of-older-americans-annually-idUSKBN19Z1P3> [<https://perma.cc/C57N-T6T3>] (“[V]ictims of elder financial fraud and scams suffer financial losses from which they may never be able to recover.”).

<sup>84</sup> *See, e.g.,* Burnes et al., *supra* note 15, at e14 (noting that “it is unclear whether older adults experience higher rates of fraud-scam victimization than other age groups”); Lichtenberg et al., *supra* note 15, at 2 (acknowledging “considerable debate about whether older adults are more susceptible to fraud than other age groups”); Emily A. Mueller, Stacey A. Wood, Yaniv Hanoch, Yumi Huang & Catherine L. Reed, *Older and Wiser: Age Differences in Susceptibility to Investment Fraud: The Protective Role of Emotional Intelligence*, 32 J. ELDER ABUSE & NEGLECT at 3 (2020) (“[S]ome empirical evidence (and some anecdotal) suggest that older adults are more likely to fall prey to fraudsters. Whether age is a contributing factor, however, is an open question . . . . To our knowledge . . . there is limited empirical data examining age difference in susceptibility to financial fraud.”); Shao et al., *supra* note 15, at 237 (“There is strong debate about whether older adults experience higher levels of fraud victimization than other age groups . . . .” (citing Burnes et al., *supra* note 15 and Ross et al., *supra* note 15)).



niors, rather than comparing those prevalence figures to rates of victimization in other age groups.<sup>85</sup> Efforts to ascertain monetary amounts lost to senior fraud have similarly been concerned with absolute figures and have reached wildly divergent conclusions—differing by tens of billions of dollars.<sup>86</sup> And while there are a few studies purporting to find that seniors are scammed more frequently in certain contexts,<sup>87</sup> other studies have found precisely the opposite—that seniors are less likely to fall victim to scams than other age groups.<sup>88</sup>

Nevertheless, the assumption that seniors are more vulnerable to scams pervades both the academic literature and public discourse on the problem of fraud. Indeed, there is a robust academic literature aspiring to explain why older adults are defrauded more frequently than other adults.<sup>89</sup> Three reasons are typically offered.<sup>90</sup> The first is cognitive—that older adults undergo cognitive and psychological changes that make them more vulnerable to scams.<sup>91</sup> It is relatively uncontroversial that individuals with dementia or substantial age-related cognitive decline are more susceptible to scams as

<sup>85</sup> See, e.g., Burnes et al., *supra* note 15, at e13 (a meta-analysis of twelve studies on fraud-scam prevalence finding that “5.4% . . . of cognitively intact older adults living in the community are victims of financial fraud or scams each year in the United States”).

<sup>86</sup> Compare METLIFE, *supra* note 36 (concluding that \$2.9 billion is lost to senior financial fraud annually), with TRUE LINK FINANCIAL, THE TRUE LINK REPORT ON ELDER FINANCIAL ABUSE 2015 (2015), <http://documents.truelinkfinancial.com/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf> [<https://perma.cc/DE6L-3CH3>] (concluding that \$36.48 billion is lost to senior financial fraud annually).

<sup>87</sup> See, e.g., Ginny Fahs, Anil Dewan, Steve Buccini & Ora Tanner, *Centralizing Older Users in Government Design*, ASPEN TECH POL’Y HUB (2019) (“Strong empirical evidence suggests older adults are as vulnerable as young children in their interactions online . . .”).

<sup>88</sup> See, e.g., U.S. FED. TRADE COMM’N, PROTECTING OLDER CONSUMERS 2018-2019 (2019), [https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2018-2019-report-federal-trade-commission/p144401\\_protecting\\_older\\_consumers\\_2019\\_1.pdf](https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2018-2019-report-federal-trade-commission/p144401_protecting_older_consumers_2019_1.pdf) [<https://perma.cc/G4CQ-J9SX>] (“In 2018, older adults were still the least likely of any age group to report losing money to fraud, but their individual median dollar losses remained higher than for younger adults.”); see also, Michelle Singletary, *This Might Surprise You. Seniors Are Not More Susceptible to Scams; Younger Adults Are*, WASH. POST (Oct. 28, 2019, 7:01 AM), <https://www.washingtonpost.com/business/2019/10/28/this-might-surprise-you-seniors-are-not-more-susceptible-scams-younger-adults-are/> [<https://perma.cc/SC7M-GCKT>].

<sup>89</sup> See *infra* notes 94–96 and accompanying text.

<sup>90</sup> Cf. Bratkiewicz, *supra* note 16, at 588 (“Telemarketers are thought to prey upon the elderly because of (1) their availability (2) their frailty, and (3) their financial resources.”); Parker, *supra* note 6, at 686 (“The elderly have become the victims of choice for con men because (1) they are most likely to have a ‘nest egg,’ own their homes, and/or have excellent credit; (2) they are polite and trusting; (3) seniors are less likely to report fraud because they do not know to whom to report it, are too ashamed at having been defrauded, or do not know they have been defrauded; and (4) when they do report fraud, they often make poor witnesses, due to the effect of age on memory.”).

<sup>91</sup> See, e.g., Annie Nova, *As You Age, Your Brain Becomes Less Able to Detect Fraud*, CNBC (Apr. 30, 2018, 8:29 AM), <https://www.cnbc.com/2018/04/30/aging-brains-become-less-able-to-detect-fraud.html> [<https://perma.cc/2TEZ-6RCV>] (“As people grow old, they tend to concentrate on the positive. As a result, they may be more likely to get ripped off.”); see also Peter A. Lichtenberg, Rebecca Campbell, LaToya Hall & Evan Z. Gross, *Context Matters: Financial, Psychological, and Relationship Insecurity Around Personal Finance is Associated with Financial Exploitation*, 60 GERONTOLOGIST 1040, 1042 (2020) (“The studies cited above not only link financial decision-making declines to reduced condition—even

well as a wide variety of other forms of abuse.<sup>92</sup> But a growing body of research has shown that older adults without dementia undergo many more modest cognitive changes as they age.<sup>93</sup> Some researchers have hypothesized that these cognitive changes underlie assumed differences in scam victimization between older and younger adults,<sup>94</sup> researching physical changes in the brain to explain differences in individual scam susceptibility.<sup>95</sup> Researchers in this field are typically careful to acknowledge that these cognitive changes are heterogeneous and do not necessarily correspond to greater aggregate scam victimization of older adults.<sup>96</sup> But the media is less discerning, invoking

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without dementia—but also link brain regions and decision-making findings to scam susceptibility.”).

<sup>92</sup> See, e.g., Carole Roan Gresenz, Jean M. Mitchell, James Marrone & Howard J. Federoff, *Effect of Early-Stage Alzheimer’s Disease on Household Financial Outcomes*, 29 HEALTH ECON. 18, 18 (2020) (“We find robust evidence that early-stage AD places households at significant risk for large adverse changes in liquid assets.”); XinQi Dong, Ruijia Chen & Melissa A. Simon, *Elder Abuse and Dementia: A Review of the Research And Health Policy*, 33 HEALTH AFFS. 642, 647 (2014) (conducting a literature review on the elder abuse of individuals with dementia and concluding that “[e]lder abuse is common in people with dementia”); see also S. Duke Han, Patricia A. Boyle, Bryan D. James, Lei Yu & David A. Bennetta, *Mild Cognitive Impairment and Susceptibility to Scams in Old Age*, 49 J. ALZHEIMER’S DISEASE 845, 845 (2016) (finding that “the presence of [Mild Cognitive Impairment, a pre-clinical form of dementia] was associated with greater susceptibility to scams”).

<sup>93</sup> See generally, e.g., Gregory R. Samanez-Larkin & Brian Knutson, *Decision Making in the Ageing Brain: Changes in Affective and Motivational Circuits*, 16 NATURE NEUROSCIENCE 278 (2015) (describing cognitive changes of ordinary aging).

<sup>94</sup> See, e.g., Shao et al., *supra* note 15, at 232 (“There is growing evidence that older adults show reduced negative arousal to anticipated loss, thus they may engage in riskier financial decision making, and in turn make more suboptimal decisions during risk-seeking.” (citing Gregory R. Samanez-Larkin, Sasha E. B. Gibbs, Kabir Khanna, Lisbeth Nielsen, Laura L. Carstensen & Brian Knutson, *Anticipation of Monetary Gain but Not Loss in Healthy Older Adults*, 10 NATURE NEUROSCIENCE 787 (2007); and then Natalie L. Denburg, Catherine A. Cole, Michael Hernandez, Torricia H. Yamada, Daniel Tranel, Antoine Bechara & Robert B. Wallace, *The Orbitofrontal Cortex, Real-World Decision Making, and Normal Aging*, 1121 ANNALS N.Y. ACAD. SCI. 480 (2007))); see also Patricia A. Boyle, Lei Yu, Robert S. Wilson, Keith Gamble, Aron S. Buchman & David A. Bennett, *Poor Decision Making Is a Consequence of Cognitive Decline Among Older Persons Without Alzheimer’s Disease or Mild Cognitive Impairment*, 7 PLOS ONE e43647, e43647–48 (2012) (finding cognitive decline short of dementia is correlated with poor financial decision-making and suggesting that this underlies the contextual claim that “older persons comprise the vast majority of fraud victims”).

<sup>95</sup> See, e.g., Melissa Lamar, Konstantinos Arfanakis, Lei Yu, Shengwei Zhang, S. Duke Han, Debra A. Fleischman, David A. Bennett & Patricia A. Boyle, *White Matter Correlates of Scam Susceptibility in Community-Dwelling Older Adults*, 14 BRAIN IMAGING & BEHAV. 1521, 1522 (2020) (“[S]tudies in older adults without dementia reveal a portrait of scam susceptibility associated with higher age, lower wellbeing and social support, lower global cognitive functioning, as well as lower levels of health and financial literacy and income . . . . Furthermore, a more rapid global cognitive decline over time increases scam susceptibility even among non-demented older adults.”) (citations omitted).

<sup>96</sup> See, e.g., Shao et al., *supra* note 15, at 236 (“[R]esearch has failed to consider everyday factors, such as age-related changes in income and purchasing behaviors, which can affect the prevalence of consumer fraud across various age groups.”); Lichtenberg et al., *supra* note 91, at 1049 (summarizing variables accounting for different levels of susceptibility among different individual older adults).

ing this research in support of measures designed to specifically prevent elder scam victimization.<sup>97</sup>

Second, many commentators and government agencies attribute assumed higher rates of scam victimization among older adults to the fact that they are more trusting.<sup>98</sup> This claim is often ascribed to cognitive changes as well, suggesting that those changes in ordinary aging make older people more trusting than other adults.<sup>99</sup> It is often also hypothesized that the “generation which is now on the wane among us”<sup>100</sup> was raised to be more trusting of strangers than the generations that have followed.<sup>101</sup> However, the research on age-mediated differences in trust is complicated—a recent meta-analysis found that while older adults were more trusting than young adults in non-financial contexts, the differences between the two groups varied in financial contexts.<sup>102</sup>

Finally, commentators frequently suggest that seniors are scammed more because they are targeted more, and targeted more because they are perceived to have more money.<sup>103</sup> It is true that older adults are, on average,

<sup>97</sup> See, e.g., Robert Powell, *Opinion: How to Prevent Fraud from Ruining Your Retirement*, MARKETWATCH (Mar. 16, 2021, 10:26 AM), <https://www.marketwatch.com/story/how-to-prevent-fraud-from-ruining-your-retirement-11615770540> [<https://perma.cc/35R8-NW5K>] (“Cognitive changes in old age can make us more vulnerable to the risk of losing our nest egg through fraud.”) (quoting Michael Finke, a professor at the American College of Financial Services); David Brancaccio, *Age of Fraud: Are Seniors More Vulnerable to Financial Scams?* MARKETPLACE (May 16, 2019), <https://www.marketplace.org/2019/05/16/brains-losses-aging-fraud-financial-scams-seniors/> [<https://perma.cc/8PF6-HSY9>] (“Not only are older people heavily targeted by scammers, but surprising data suggest that, as we get older we become more vulnerable to fraud in so many of its forms.”); Olivia DaDalt, *Why Older Adults Are So Susceptible To Financial Fraud*, FORBES (Dec. 18, 2016, 8:00 AM), <https://www.forbes.com/sites/nextavenue/2016/12/18/why-older-adults-are-so-susceptible-to-financial-fraud/?sh=79846a5d2770> [<https://perma.cc/6VTS-CRW7>] (“Higher levels of trust among older adults may have something to do with actual changes in the brain.”); Janice Lloyd, *Why Are Elderly More Vulnerable to Scams? Brain Changes*, USA TODAY (Dec. 8, 2012, 8:00 AM), <https://www.usatoday.com/story/news/nation/2012/12/07/elderly-financial-exploitation-holidays/1746911/> [<https://perma.cc/V6JP-F8C3>].

<sup>98</sup> See, e.g., DaDalt, *supra* note 97 (“Part of the answer may be that they seem more trusting than other age groups, in general.”).

<sup>99</sup> See, e.g., Meghan Mott, *Brain Changes as Trust Rises with Age*, NIH RSCH. MATTERS (Dec. 17, 2012), <https://www.nih.gov/news-events/nih-research-matters/brain-changes-trust-rises-age> [<https://perma.cc/D2WS-VVMV>] (“Older adults are more likely than younger ones to perceive dishonest faces as trustworthy, according to a new study of social judgments and brain activity. The findings may help explain why older people are more likely to fall victim to fraud. . . . The functional MRI scans revealed significant differences in brain activity between the age groups.”).

<sup>100</sup> JAMES JOYCE, DUBLINERS 43 (Daniel R. Schwarz, ed., 1994).

<sup>101</sup> See, e.g., Sehar Siddiqi, Robert Zdenek & Karen Kali, *Financial Exploitation, GRANTMAKERS IN AGING* (2014), <https://www.giaging.org/issues/financial-exploitation/> [<https://perma.cc/QJ6R-JA68>] (“Many older adults are generally more trusting than others; part of it is cultural as they grew up at a time when etiquette required responding to a polite inquiry or plea from a stranger.”).

<sup>102</sup> Phoebe E. Bailey & Taren Leon, *A Systematic Review and Meta-Analysis of Age-Related Differences in Trust*, 34 PSYCH. & AGING 674, 680 (2019).

<sup>103</sup> See, e.g., *12 Common Senior Scams and How to Avoid Them*, BROOKDALE SENIOR LIVING (May 31, 2020), <https://www.brookdale.com/en/brookdale-life/blogs/2018/03/12-common-senior-scams-and-how-to-avoid-them.html> [<https://perma.cc/ES48-7YLF>].

much wealthier than younger adults.<sup>104</sup> And there are many scams that particularly target older adults—such as scams in which a caller pretends to be an individual’s grandchild—which simply would not work if directed towards younger adults.<sup>105</sup> But there are also many scams targeting younger adults—such as scholarship scams—that would not work if targeted at older adults.<sup>106</sup> Moreover, there is little evidence that wealthier individuals—older adults or otherwise—are consistently targeted more frequently for scams than are less wealthy individuals.<sup>107</sup>

In short, although the empirical assumption that seniors are more commonly victimized by scams has never been robustly justified, it has been assumed by a broad body of academic literature seeking to explain why it is so. Moreover, it has served as the primary justification for one of the most successful nationwide and bipartisan efforts in legal and regulatory reform in the past decade.<sup>108</sup>

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(“Fraudsters target seniors because they’re more likely to have nest eggs . . . .”); McCall Robinson, *These Common Scams Target Seniors—How to Avoid Them*, MARKETWATCH (Nov. 15, 2018, 6:52 AM), <https://www.marketwatch.com/story/these-common-scams-target-the-elderlyhow-to-avoid-them-2018-11-15> [<https://perma.cc/9JY5-CZ5V>] (“Unfortunately, con artists see the elderly population as an easy and vulnerable target. Mike Rothman, president of the American Securities Administrators Association, told CNBC that scammers take this approach because the current elderly population is one of the wealthiest we’ve seen with such hefty retirement savings. Where the money goes, the con artists follow.”); *Scam Alert: Financial Abuse of Older Adults Expected to Skyrocket During Pandemic*, INST. ON AGING (May 27, 2020), <https://blog.ioaging.org/aging/scam-alert-financial-abuse-of-older-adults-expected-to-skyrocket-during-pandemic/> [<https://perma.cc/DGR2-9PUN>] (“Plain and simple, older Americans’ wealth is the primary reason they are targeted by scammers.”).

<sup>104</sup> See, e.g., OXFORD ECONOMICS, *THE LONGEVITY ECONOMY* (2016) (finding that eighty-three percent of the wealth in the United States is held by people over fifty years of age); *The Rising Age Gap in Economic Well-Being*, PEW RSCH. CTR. (Nov. 7, 2011), <https://www.pewresearch.org/social-trends/2011/11/07/the-rising-age-gap-in-economic-well-being/> [<https://perma.cc/9HMM-E9NQ>] (“Households headed by older adults have made dramatic gains relative to those headed by younger adults in their economic well-being over the past quarter of a century, according to a new Pew Research Center analysis of a wide array of government data.”); see also Neil Howe, *The Graying of Wealth*, FORBES (Mar. 16, 2018, 9:19 AM), <https://www.forbes.com/sites/neilhowe/2018/03/16/the-graying-of-wealth/?sh=3756a377302d> [<https://perma.cc/G736-2JVR>] (“According to the Federal Reserve’s latest Survey of Consumer Finances, wealth continues to shift to the nation’s seniors.”).

<sup>105</sup> See, e.g., Christine Sneed, *The Grandparent Scam*, N.Y. TIMES (Apr. 9, 2015, 7:00 AM), <https://opinionator.blogs.nytimes.com/2015/04/09/the-grandparent-scam/> [<https://perma.cc/APE2-QMJX>].

<sup>106</sup> See, e.g., April Maguire, *6 Common Scholarship Scams to Avoid*, COLLEGEVINE (Oct. 2, 2020), <https://blog.collegevine.com/scholarship-scams-to-avoid/> [<https://perma.cc/PV68-PQ2R>].

<sup>107</sup> See, e.g., Genevieve Waterman, *Top 5 Financial Scams Targeting Seniors*, NAT’L COUNCIL ON AGING (July 27, 2022), <https://www.ncoa.org/article/top-5-financial-scams-targeting-seniors> [<https://perma.cc/2YLD-QQSV>] (“[I]t’s not just wealthy older Americans who are targeted. Older adults with low income are also at risk for fraud.”); Jenny Manrique, *Ethnic and Low-Income Communities Easy Target for Scammers*, TRUTHOUT (Mar. 4, 2016), <https://truthout.org/articles/ethnic-and-low-income-communities-easy-target-for-scammers/> [<https://perma.cc/K2M5-SG2Q>].

<sup>108</sup> See Morton & Rosenbaum, *supra* note 6, at 292–95.

### III. LITERATURE REVIEW AND STUDY DESIGN

#### A. Literature Review

The incidence of fraud and scams is notoriously hard to measure.<sup>109</sup> Cases are rarely reported to government authorities,<sup>110</sup> and there are good reasons to believe that individuals underreport personal experiences with scams on surveys.<sup>111</sup> The most comprehensive effort to measure the incidence of elder financial fraud and scams in the United States thus far is a 2017 meta-analysis by Professor David Burnes and colleagues.<sup>112</sup> Burnes et al. compiled twelve studies that included data on elder scam victimization prevalence from 1995 to 2016.<sup>113</sup> The studies varied in geographic reach,

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<sup>109</sup> See, e.g., Lee-Ann Fenge & Sally Lee, *Understanding the Risks of Financial Scams as Part of Elder Abuse Prevention*, 48 BRITISH J. SOC. WORK 906, 906–07 (2018) (“Those perpetrating mail, telephone and cyber scams may be more elusive, as they normally have no physical contact with the victim. They are therefore difficult to identify, particularly as scams are often perpetrated across international borders . . . . The scale of the issue is difficult to measure, as many victims never report their involvement, or hide their financial loss from family and friends for fear of being blamed for their involvement.”); Cassandra Cross, *‘They’re Very Lonely’: Understanding the Fraud Victimization of Seniors*, 5 INT’L J. CRIME, JUST., & SOC. DEMOCRACY 60, 61 (2016) (explaining why scams can be difficult to measure because victims hide the fact that they were defrauded); H.B. 583, 2009 Gen. Assemb., Reg. Sess. (Md. 2009) (“[T]he incidence and impact of exploitation are difficult to measure because there is no national reporting mechanism, cases are too frequently unreported, definitions vary and crimes are difficult to detect.”).

<sup>110</sup> See, e.g., LIFESPAN OF GREATER ROCHESTER, INC., UNDER THE RADAR: NEW YORK STATE ELDER ABUSE PREVALENCE STUDY 50 (2011), <https://ocfs.ny.gov/reports/aps/Under-the-Radar-2011May12.pdf> [<https://perma.cc/Z3HE-XY6G>] (finding that only one in forty-four cases of senior financial exploitation are officially reported); 5 *Senior Citizen Scam Statistics You Need to Know in 2021 [Infographic]*, CAL. MOBILITY, <https://web.archive.org/web/20210728211853/californiamobility.com/senior-citizen-scams-statistics/> (“Seniors are 93% more likely than younger consumers to file fraud reports when they have been scammed but not lost any money.”).

<sup>111</sup> See, e.g., Burnes et al., *supra* note 15, at e19 (noting that victims of financial fraud “tend to underreport their victimization” (citing MARTHA DEEVE & MICHAELA BEALS, *THE SCOPE OF THE PROBLEM: AN OVERVIEW OF FRAUD PREVALENCE MEASUREMENT* (2013), [https://longevity.stanford.edu/wp-content/uploads/2016/07/Scope-of-the-Problem-FINAL\\_corrected2.pdf](https://longevity.stanford.edu/wp-content/uploads/2016/07/Scope-of-the-Problem-FINAL_corrected2.pdf) [<https://perma.cc/V75V-XHKK>])).

<sup>112</sup> Burnes et al., *supra* note 15.

<sup>113</sup> *Id.* at 15. The studies were: Peter Alexander Lichtenberg, Michael A. Sugarman, Daniel Paulson, Lisa J. Ficker & Annalise Rahman-Filipiak, *Psychological and Functional Vulnerability Predicts Fraud Cases in Older Adults: Results of a Longitudinal Study*, 39 CLINICAL GERONTOLOGY 48 (2016) (national sample of adults older than 50, n = 7,252, a telephone interview with a single general self-report question, finding a 5-year prevalence of 6.1%); ERIKA HARRELL, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *VICTIMS OF IDENTITY THEFT*, 2014 (2015), <https://bjs.ojp.gov/content/pub/pdf/vit14.pdf> [<https://perma.cc/9PGF-AYMW>] (national sample of adults older than 65, n = 11,464, computer-assisted interviews in person or by telephone with closed-ended questions describing 3 different identity fraud types, finding a 1-year prevalence of 5.8%); KRISTY HOLTFRETER, MICHAEL D. REISIG, DANIEL P. MEARS & SCOTT E. WOLFE, *FINANCIAL EXPLOITATION OF THE ELDERLY IN A CONSUMER CONTEXT* (2014), <https://www.ojp.gov/pdffiles1/nij/grants/245388.pdf> [<https://perma.cc/6VWR-4R4K>] (sample of adults older than 60 in Florida and Arizona, n = 2,000, computer-assisted telephone interviews with closed-ended questions describing 10 elder scam types, finding a 1-year prevalence of 13.6%); Peter A. Lichtenberg,

from single states to the United States; in sample size, from 210 to 12,024; in medium, from telephone interviews to online surveys; and format, from a single question prompting participants to explain whether they had been a victim of a scam to lengthier questionnaires describing up to 17 specific scam types.<sup>114</sup> Burnes et al. used generalized mixed models with a “binomial error assumption, logistic link function, unstructured variance and covariance, and studies included as levels of a random classification factor.”<sup>115</sup> They found a 1-year prevalence of elder financial frauds and scams of 5.4%: “[A]pproximately 1 in every 18 cognitively intact older adults living in the community experiences financial fraud or scam each year.”<sup>116</sup>

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Laurie Stickney & Daniel Paulson, *Is Psychological Vulnerability Related to the Experience of Fraud in Older Adults*, 36 CLINICAL GERONTOLOGIST 132 (2013) (national sample of adults older than 50, n = 4,440, self-administered questionnaire with a single general self-report question, finding a 5-year incidence of 4.5%); KEITH B. ANDERSON, FED. TRADE COMM'N, CONSUMER FRAUD IN THE UNITED STATES, 2011: THE THIRD FTC SURVEY (2013), [https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey\\_0.pdf](https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf) [<https://perma.cc/9HXG-GAX8>] (national sample of adults older than 65, n = 992, computer-assisted telephone interviews with closed-ended questions describing 17 specific and general fraud-scam types, finding a 1-year prevalence of 7.0%); ERIKA HARRELL & LYNN LANGTON, U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, VICTIMS OF IDENTITY THEFT, 2012 (2013), <https://bjs.ojp.gov/content/pub/pdf/vit12.pdf> [<https://perma.cc/V9LU-2WUJ>] (national sample of adults older than 65, n = 12,024, computer-assisted interviews in person or telephone with closed-ended questions describing 3 identity fraud types, finding a 1-year incidence of 5.0%); KEITH B. ANDERSON, FED. TRADE COMM'N, CONSUMER FRAUD IN THE UNITED STATES: THE SECOND FTC SURVEY (2007), <https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-second-federal-trade-commission-survey-staff-report-federal-trade/fraud.pdf> [<https://perma.cc/TJ29-WZWT>] (national sample of adults older than 65, n = 677, computer-assisted telephone interviews with closed-ended questions describing 16 specific or general scam-fraud types, finding a 1-year incidence of 8.3%); Kristy Holtfreter, Michael D. Reisig & Thomas G. Blomberg, *Consumer Fraud Victimization in Florida: An Empirical Study*, 18 ST. THOMAS L. REV. 761 (2006) (sample of adults older than 65 in Florida, n = 430, telephone interviews with a single general self-report question, finding a 1-year incidence of 1.8%); KEITH B. ANDERSON, FED. TRADE COMM'N, CONSUMER FRAUD IN THE UNITED STATES: AN FTC SURVEY (2004) (national sample of adults older than 65, n = 505, telephone interviews including closed-ended questions about 12 specific and general fraud types, finding a 1-year prevalence of 4.7%); FED. TRADE COMM'N, IDENTITY THEFT SURVEY REPORT (2003) (national sample of adults older than 55, n = 1,258, computer-assisted telephone interviews with closed-ended questions asking about 3 identity fraud types, finding a 5-year prevalence of 9.0%); AARP, CONSUMER BEHAVIOR, EXPERIENCES AND ATTITUDES: A COMPARISON BY AGE GROUPS (1999), [https://assets.aarp.org/rgcenter/consume/d16907\\_behavior.pdf](https://assets.aarp.org/rgcenter/consume/d16907_behavior.pdf) [<https://perma.cc/QPK5-XQ8N>] (national sample of adults over 65, n = 459, computer-assisted telephone interviews including a single general self-report question, finding a 1-year prevalence of 5.7%); Richard M. Titus, Fred Heinzelmann & John M. Boyle, *Victimization of Persons by Fraud*, 41 CRIME & DELINQUENCY 54 (1995) (national sample of adults over 65, n = 210, computer-assisted telephone interviews involving closed-ended questions about 21 specific scams and 1 general question, finding a 1-year prevalence of 5.7%).

<sup>114</sup> Burnes et al., *supra* note 15, at e17.

<sup>115</sup> *Id.* at e15.

<sup>116</sup> *Id.* at e19. In the literature, “cognitively intact” refers to older adults without dementia. See, e.g., Maciej J. Lazarczyk, Patrick R. Hof, Constantin Bouras & Panteleimon Giannakopoulos, *Preclinical Alzheimer disease: identification of cases at risk among cognitively intact older adults*, 10 BMC MED. (2012) (distinguishing “cognitively intact” individuals from those with cognitive symptoms of dementia).

The study did not endeavor to compare this figure to the prevalence rate in other age groups, conceding that “it is unclear whether older adults experience higher rates of fraud-scam victimization than other age groups.”<sup>117</sup> It also did not investigate how often seniors (or other groups) are solicited for scams or how much money seniors typically lose when they are scammed.<sup>118</sup> Moreover, the small sample size of the meta-analysis limits the “scope of analytical techniques and detection of significant effects.”<sup>119</sup> Nevertheless, the striking incidence found in this study has been widely cited.<sup>120</sup> And the authors note that because of methodological limitations in the underlying studies and the underreporting of victimization, their conclusion likely underestimates the true incidence of elder financial frauds and scams.<sup>121</sup>

In addition to its substantive conclusions, Burnes et al.’s analysis of prior studies offers several valuable methodological recommendations for future research in the field.<sup>122</sup> Specifically, Burnes et al. found that studies “characterized by greater overall methodological quality detected higher rates” of victimization, specifically finding higher self-reporting of victimization on surveys that primed participants with specific examples of scams.<sup>123</sup> However, the authors also encouraged including open-ended questions as well “to capture fluctuations in specific fraud-scam popularity over time and the emergence of new fraud-scam types.”<sup>124</sup> Additionally, they suggest using forgiving language in questions and priming for honesty early in the survey instrument.<sup>125</sup>

As observed above, there have been fewer comprehensive efforts to compare the incidence of scam victimization between older adults and other age groups. Data from reports made to the Federal Trade Commission are variable, inconsistent, and plagued by methodological inadequacies—but they typically show that older adults are less likely to report losing money to scams than other age groups, although they file more reports as a percentage of those who are victimized.<sup>126</sup> Similarly, a 2016 report from the British

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<sup>117</sup> Burnes et al., *supra* note 15, at e14.

<sup>118</sup> *Id.* at e19.

<sup>119</sup> *Id.* at e20.

<sup>120</sup> According to Google Scholar, the paper has been cited over 65 times since 2017. Moreover, its “1 in 18 older adults” figure has been widely cited in media reports. *See, e.g.*, Cohen, *supra* note 83 (“One in 18 older Americans falls victim to financial fraud or scams annually, and that figure excludes seniors who’ve been financially abused by friends and relatives, a new study finds.”).

<sup>121</sup> *See* Burnes et al., *supra* note 15, at e19.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at e20.

<sup>125</sup> *Id.*

<sup>126</sup> *See, e.g.*, FED. TRADE COMM’N, PROTECTING OLDER CONSUMERS 2018-2019 (2019), [https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2018-2019-report-federal-trade-commission/p144401\\_protecting\\_older\\_consumers\\_2019\\_1.pdf](https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2018-2019-report-federal-trade-commission/p144401_protecting_older_consumers_2019_1.pdf) [https://perma.cc/CR9T-EFJY] (summarizing reports of scams to the FTC and finding that older adults were the least likely to report losing money to fraud, the most likely to report scams to which they have not lost money, but likely to lose the most if they were scammed); MARTHA

Office of National Statistics found that adults ages forty-five to fifty-four were more likely to be victimized by scams than older adults.<sup>127</sup> Perhaps surprisingly, several academic studies have found that younger older adults (approximately 65–75) are more likely to be victimized by scams than adults 75 and older.<sup>128</sup>

One industry study found that adults over sixty-five reported being solicited and falling for certain kinds of investment frauds more frequently than did other age groups.<sup>129</sup> But this particular study—widely cited in the media<sup>130</sup>—asked participants whether they had ever been solicited for particular fraudulent investment schemes, which is not particularly helpful for determining whether older people are solicited more frequently (as opposed to simply having been alive for longer).<sup>131</sup> Moreover, the study focused on an extraordinarily successful subset of investment frauds, finding that half of seniors—and forty percent of respondents in their forties—had invested

DEEVY, SHOSHANA LUCICH & MICHAELA BEALS, SCAMS, SCHEMES & SWINDLES: A REVIEW OF CONSUMER FINANCIAL FRAUD RESEARCH 13–14 (2012), <https://longevity.stanford.edu/wp-content/uploads/2017/01/Scams-Schemes-Swindles-FINAL-On-Website.pdf> [<https://perma.cc/H7AR-B8AN>] (“People frequently fail to report incidents of fraud. . . . Since many reports of fraud are now collected online, there is some doubt as to whether rising reports of fraud reflect an actual trend, or simply the increasing ease with which individuals can report incidents as they occur.”); Singletary, *supra* note 88 (“[A]ccording to a new report from the Federal Trade Commission, in 2018, people 60 and older were 20 percent less likely than younger adults to report losing money to fraud.”).

<sup>127</sup> John Flatley, *Overview of Fraud Statistics: Year Ending Mar 2016*, OFFICE FOR NAT’L STATISTICS (July 21, 2016), <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/overviewoffraudstatistics/yearendingmarch2016> [<https://perma.cc/UD6L-WCBK>] (“Fraud victimisation was identified as being higher in the middle of the age distribution, where adults aged 45–54 were more likely to be a victim of fraud (7.9%) than 16–24 year olds (5.0%) or those aged 75+ (4.0%).”).

<sup>128</sup> See, e.g., Lichtenberg et al., *supra* note 15, at 2 (citing Ron Acierno, Melba A. Hernandez, Ananda B. Amstadter, Heidi S. Resnick, Kenneth Steve, Wendy Muzzy, Dean G. Kilpatrick *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100 AM. J. PUB. HEALTH 292 (2010); Boyle et al., *supra* note 94; Josep Garre-Olmo, *Prevalence and Risk Factors of Suspected Elder Abuse Subtypes in People Aged 75 and Older*, 57 J. AM. GERIATRICS SOC. 815 (2009)).

<sup>129</sup> See APPLIED RESEARCH & CONSULTING LLC, FINANCIAL FRAUD AND FRAUD SUSCEPTIBILITY IN THE UNITED STATES (2013), <https://www.finrafoundation.org/sites/finrafoundation/files/financial-fraud-and-fraud-susceptibility.pdf> [<https://perma.cc/UKY6-KU4B>] (report prepared for FINRA Financial Investor Education Foundation discussing that “upon being solicited for fraud, older respondents were 34% more likely to lose money than respondents in their forties”).

<sup>130</sup> See, e.g., Blake Ellis, *5 Most Common Financial Scams*, CNN MONEY (Sept. 12, 2013), <https://money.cnn.com/2013/09/12/pf/financial-scams/index.html> [<https://perma.cc/4EAD-6JFV>] (citing the FINRA study); Foster Friedman, *Defrauding the Elderly: Watch for These Danger Signs*, KIPLINGER (Oct. 24, 2019), <https://www.kiplinger.com/article/retirement/t048-c032-s014-defrauding-the-elderly-beware-these-danger-signs.html> [<https://perma.cc/7UEE-N8TE>].

<sup>131</sup> APPLIED RESEARCH & CONSULTING, *supra* note 129, at 40. After all, older adults would report having been solicited with higher incidence than younger adults even if the frequency with which people across age ranges are solicited is constant—they’ve simply had more time to be contacted.



money in the scheme after having been solicited.<sup>132</sup> Finally, more recent industry research has apparently contradicted this finding, observing that U.K. adults under thirty-five may have been scammed more in the past few years than have any other age group.<sup>133</sup>

Emily Mueller and colleagues recently conducted an experimental study designed to compare scam susceptibility across age groups.<sup>134</sup> Mueller et al. recruited a population on Amazon Mechanical Turk (n = 281) and divided it into older and younger groups.<sup>135</sup> Both groups were presented with investment fraud pitches developed by FINRA, along with a measure of emotional intelligence.<sup>136</sup> Mueller et al. found that their older adult group was less susceptible to scams than were the younger adult group, though both groups scored similarly on other measures of decision-making and cognitive ability.<sup>137</sup> In contrast, the older group scored higher on emotional intelligence, which was also correlated with lower susceptibility to fraud.<sup>138</sup> Thus, the authors concluded that “adults over 64 may in fact be less vulnerable to some types of investment financial fraud than their younger counterparts” and that “emotional intelligence plays a more crucial role than cognitive (or decision) ability.”<sup>139</sup> But they counseled that this experimental data does not necessarily mean that older adults are defrauded less in the real world—they might be solicited more often for scams.<sup>140</sup>

Thus, whether older adults are in fact victimized by scams more often relative to other age groups is an important, largely unanswered question in the literature. The suggestive evidence goes both ways, and scholars have too often failed to address the question on its own terms. In contrast, this study sought specifically to analyze whether older adults are in fact more often the victim of scams than other age groups.

### B. Study Design

This study used a survey about common scams during the COVID-19 pandemic to measure whether older adults are more frequently victimized by scams during a bounded time period. It was approved by the Harvard University Area Committee on the Use of Human Subjects, Protocol Number IRB21-0479. The survey was developed in Qualtrics, and, following Burnes

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<sup>132</sup> See *id.* at 18.

<sup>133</sup> See *Under 35s Now Most Likely to Fall Victim to Financial Scams*, MYWALLETHERO (June 10, 2021), <https://www.fool.co.uk/mywallethero/your-money/learn/under-35s-now-most-likely-to-fall-victim-to-financial-scams/> [https://perma.cc/86TL-J4NT].

<sup>134</sup> See Mueller et al., *supra* note 84, at 3.

<sup>135</sup> *Id.* at 6.

<sup>136</sup> *Id.* at 6–7.

<sup>137</sup> *Id.* at 16.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 18 (“Scammers might believe that older adults are easier targets due to their age and cognitive changes. Second, and possibly more important, older adults tend to have more assets.”).

et al., asked participants to report their experiences with four specific, common scams during the pandemic. The survey also included one general, open-ended question about experiences with frauds and scams during the relevant time period.<sup>141</sup> For each scam, participants were asked to report whether they had been contacted by phone, text, or email by scammers making the described promises during the COVID-19 pandemic. If they answered yes, the participants were asked whether they engaged with the scam by clicking a link, providing personal information, or paying money, and whether they were aware of any financial loss, identity theft, account freezes, or credit score impact arising from their engagement with the scam. Further, participants were asked whether and how they knew the solicitation was a scam at the time and given the opportunity to report more about their experience with an open-ended question. The survey also included demographic questions and an attention filter.<sup>142</sup> The full text of the survey is reproduced in Appendix A.

The four specific scam examples were drawn from federal fraud alerts issued by the Federal Trade Commission, the Federal Communications Commission, and media reports.<sup>143</sup> Scams were selected to be facially age-agnostic—that is, nothing about them suggested that they would be exclusively or primarily targeted towards particular age groups. In general, there are some scams that particularly target older adults,<sup>144</sup> including some scams arising

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<sup>141</sup> See Burnes et al., *supra* note 15, at e19–e20 (encouraging research on fraud incidence to ask about specific instances of fraud as well as open-ended questions to learn about unanticipated scams).

<sup>142</sup> This was a screening question built into the middle of the survey designed to make sure that participants were reading the questions, modeled on the attention filter used by Francis Shen and colleagues. See Francis X. Shen, Emily Twedell, Caitlin Opperman, Jordan Dean Scott Krieg, Mikaela Brandt-Fontaine, Joshua Preston, Jaleh McTeigue, Alina Yasis & Morgan Carlson, *The limited effect of electroencephalography memory recognition evidence on assessments of defendant credibility*, 4 J.L. & BIOSCIENCES 330 (2017). The question instructed participants who carefully read the paragraph-long prompt to disregard the bold-faced question above and below the paragraph. See Appendix A for the complete text of the attention filter. Attention filters were widely used in online survey research to compensate for the fact that participants cannot be monitored while completing tasks. *Id.*; see also Daniel M. Oppenheimer, Tom Meyvis & Nicholas Davidenko, *Instructional Manipulation Checks: Detecting Satisficing to Increase Statistical Power*, 45 J. EXPERIMENTAL SOC. PSYCH. 867 (2009). Otherwise, complete responses that failed the attention filter were excluded from analysis.

<sup>143</sup> See, e.g., *Coronavirus Advice for Consumers*, FED. TRADE COMM'N, <https://www.ftc.gov/coronavirus/scams-consumer-advice> [<https://perma.cc/975D-74GW>]; *Coronavirus Scams – Consumer Resources*, FED. COMM'NS COMM'N, <https://www.fcc.gov/covid-scams> [<https://perma.cc/X9FX-XK7L>] (last updated Mar. 7, 2022); *A Complete List of Coronavirus (COVID-19) Scams*, SELF., <https://www.self.inc/info/coronavirus-scams/> [<https://perma.cc/GL5N-JUXM>].

<sup>144</sup> See, e.g., Galie Weissberger, Laura Mosqueda, Annie L. Nguyen, Anya Samek, Patricia A. Boyle, Caroline P. Nguyen & S. Duke Han, *Physical and Mental Health Correlates of Perceived Financial Exploitation in Older Adults: Preliminary Findings from the Finance, Cognition, and Health in Elders Study (FINCHES)*, 24 *Aging Mental Health* 740, 741 (2020) (“According to the Federal Trade Commission (FTC), certain types of financial scams are specifically targeted towards older adults . . .”).

from the COVID-19 pandemic,<sup>145</sup> as well as scams that target younger adults specifically, both in the pandemic and generally.<sup>146</sup> Therefore, to meaningfully measure whether seniors fall victim to scams more frequently than other age groups, the study had to ask about scams that all adults, regardless of age, could fall for. The four specific scams selected were: (1) an offer to pay to be moved up in the COVID-19 vaccine line in exchange for money (the “Vaccine Scam”);<sup>147</sup> (2) a claim that additional personal information was required to receive a federal stimulus check (the “Stimulus Scam”);<sup>148</sup> (3) an offer for an unapproved treatment, test, or vaccine for COVID-19 in exchange for money or personal information (the “Fake Treatment Scam”);<sup>149</sup> and (4) the claim that a bank or other financial account had been

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<sup>145</sup> See, e.g., Press Release, Office of the Inspector General, Social Security Administration (Mar. 20, 2020), <https://oig.ssa.gov/news-releases/2020-03-20-newsroom-news-releases-march20-advisory/> [<https://perma.cc/G6VD-728E>] (“The Inspector General of Social Security . . . is warning the public about fraudulent letters threatening suspension of Social Security benefits due to COVID-19 or coronavirus-related office closures.”).

<sup>146</sup> See, e.g., Maguire, *supra* note 106. For instance, the common scam claiming that Netflix was granting a free subscription for a year due to the pandemic seems particularly designed to take advantage of younger adults. See Dawson White, *No, Netflix isn’t offering Free Subscriptions Due to COVID—Don’t Fall for the Scam*, THE KANSAS CITY STAR (Jan. 18, 2021, 3:38 PM), <https://www.kansascity.com/news/nation-world/national/article248589415.html>.

<sup>147</sup> See, e.g., Colleen Tressler, *Help Fight COVID Vaccine Scams: Share These Tips with Those You Know*, FED. TRADE COMM’N, CONSUMER ADVICE (Mar. 2, 2021), <https://www.consumer.ftc.gov/blog/2021/03/help-fight-covid-vaccine-scams-share-these-tips-those-you-know> [<https://perma.cc/AWR7-SKB9>] (“You can’t pay to get early access to the vaccine. That’s a scam.”). Of the specific scams asked about, the Vaccine Scam was the most likely to show some age-modulated effects. In the United States, priority in the line to access COVID-19 vaccines was largely (but not entirely) dependent on age, with the oldest adults the first in line. See, e.g., Abby Goodnough & Jan Hoffman, *Frontline Workers and People Over 74 Should Get Shots Next, C.D.C. Panel Says*, N.Y. TIMES (Dec. 20, 2020), <https://www.nytimes.com/2020/12/20/health/covid-vaccine-first-elderly-workers.html> [<https://perma.cc/2M5R-8CM6>]. Because younger adults, on average, had to wait longer for access to vaccines than older adults, we might expect them to have been more vulnerable to pitches for early vaccine access. On the other hand, because older adults were at the highest risk from serious complications of COVID-19, *COVID-19 Risks and Vaccine Information for Older Adults*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> [<https://perma.cc/7254-MZMG>], and vaccine appointments were difficult to get even for older adults for several months, Noah Higgins-Dunn & Will Feuer, *‘All I Did Was Cry:’ Elderly Americans Struggle to Set Up Covid Vaccine Appointments*, CNBC (Feb. 3, 2021, 11:50 AM), <https://www.cnbc.com/2021/02/03/covid-vaccines-all-i-did-was-cry-elderly-americans-struggle-to-set-up-covid-vaccine-shots-.html> [<https://perma.cc/DWR3-SSTU>], seniors were vulnerable to the Vaccine Scam. In any event, because of the possibility of age-modulated effects, statistical analysis including all scams except the Vaccine Scam was performed as a check for robustness, and the results are presented *infra* Table 2.

<sup>148</sup> See, e.g., Alvaro Puig, *Coronavirus Stimulus Payment Scams: What You Need to Know*, FED. TRADE COMM’N, CONSUMER ADVICE (Apr. 20, 2020), <https://www.consumer.ftc.gov/blog/2020/04/coronavirus-stimulus-payment-scams-what-you-need-know> [<https://perma.cc/U72P-BYSE>] (“Scammers are using these stimulus payments to try to rip people off.”).

<sup>149</sup> See, e.g., *Beware of Fraudulent Coronavirus Tests, Vaccines and Treatments*, U.S. FOOD & DRUG ADMIN. (Feb. 3, 2022), <https://www.fda.gov/consumers/consumer-updates/beware-fraudulent-coronavirus-tests-vaccines-and-treatments> [<https://perma.cc/2UWD-KDJ3>]

locked until payment of money or disclosure of personal information (the “Generic Financial Scam”).<sup>150</sup>

Participants were recruited through Amazon Mechanical Turk and Prolific,<sup>151</sup> and compensated \$0.50–\$1.00 for completing the survey.<sup>152</sup> Conducting studies by combining Qualtrics and crowdsourcing recruitment platforms such as Mechanical Turk and Prolific has become common in empirical legal research and the social sciences.<sup>153</sup> Many studies have validated the populations on these platforms against convenience samples.<sup>154</sup> However, researchers have recognized limitations with crowdsourced survey populations, particularly at reaching the “oldest-old”—those over 80—and less technologically-savvy older adults.<sup>155</sup>

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(“[S]ome people and companies are trying to profit from this pandemic by selling unproven and illegally marketed products that make false claims, such as being effective against the coronavirus.”).

<sup>150</sup> See, e.g., John Matarese, *Frightening Text Claims Your Bank Account has Been Locked for Fraud*, ABC CINCINNATI (May 18, 2021, 10:40 AM), <https://www.wcpo.com/money/consumer/dont-waste-your-money/frightening-text-claims-your-bank-account-locked-for-fraud> [<https://perma.cc/G74U-BF3A>] (“Some call it the most dangerous bank scam ever: A text or phone call from your bank stating your account has been locked for fraud.”).

<sup>151</sup> Recruitment was initially conducted with Mechanical Turk, from April 26 to June 2, 2021. However, Mechanical Turk recruitment moved extremely slowly, particularly in the older population. On June 2, 2021, recruitment was moved to Prolific. To ensure that no participant had completed the survey through both platforms, I checked for duplicate IP addresses, which are automatically collected by Qualtrics, and eliminated duplicates. Research combining recruitment on Mechanical Turk and Prolific has become common over the past few years, see, e.g., Nichole Sams, Dylan M. Fisher, Felicia Mata-Greve, Morgan Johnson, Michael D. Pullmann, Patrick J. Raue, Brenna N. Renn, Jaden Duffy, Doyanne Darnell, Isabell Griffith Fillipo, Ryan Allred, Kathy Huynh, Emily Friedman & Patricia A. Areán, *Understanding Psychological Distress and Protective Factors Amongst Older Adults During the COVID-19 Pandemic*, 29 AM. J. GERIATRIC PSYCH. 881, 884 (2021) (“We conducted a national, cross-sectional study of 501 older adults (60+ years old) in the United States using two online crowdsourcing survey platforms: Prolific and Amazon.com, Inc. Mechanical Turk (MTurk).”); Eric Kaufmann, *Ethno-traditional nationalism and the challenge of immigration*, 25 NATIONS & NATIONALISM 435, 443 (2019); see also Joris Lammers & Janka I. Stoker, *Power Affects Sexual Assertiveness and Sexual Esteem Equally in Women and Men*, 48 ARCHIVES OF SEXUAL BEHAVIOR 645, 648 (2019) (reporting using both Mechanical Turk and Prolific “to maximize sample size, given difficulties in recruitment”), and studies have shown that the older adult population reached through both platforms is comparable, see Anne M. Turner, Thomas Engelsma, Jean O. Taylor, Rashmi K. Sharma & George Demiris, *Recruiting Older Adult Participants Through Crowdsourcing Platforms: Mechanical Turk versus Prolific Academic*, AMIA ANNUAL SYMPOSIUM PROCEEDINGS ARCHIVE 1230, 1230 (2020) (“Participants were similar in terms of demographics, technology usage, and motivations for participation (topic interest and payment).”).

<sup>152</sup> Initially, participants were compensated \$0.50. However, due to lagging recruitment, this was ultimately raised up to \$1.00.

<sup>153</sup> See, e.g., Shen et al., *supra* note 142, at 330 (2017); Mueller et al., *supra* note 84, at 6 (the study used both Mechanical Turk and Qualtrics).

<sup>154</sup> See, e.g., Turner et al., *supra* note 151, at 1230 (“Both crowdsourcing platforms are useful for rapid and low-cost recruitment of [older adults].”); Joseph K. Goodman & Cynthia E. Cryder, *Data Collection in a Flat World: The Strengths and Weaknesses of Mechanical Turk Samples*, 26 J. BEHAV. DECISION MAKING 213 (2013); Tara S. Behrend, David J. Sharek, Adam W. Meade & Eric N. Wiebe, *The Viability of Crowdsourcing for Survey Research*, 43 BEHAV. RSCH. METHODS 800 (2011).

<sup>155</sup> See, e.g., Turner et al., *supra* note 151, at 1230 (“Crowdsourcing platforms are potential sources of [older adult] research participants; however, the pool is limited to

Participants were recruited in two groups—one of adults ages 65 years old or older (“Older Group”), and another of adults ages 25–35 (“Younger Group”). In both groups, participation was limited to individuals residing in the United States. The study was visible only to individuals meeting these criteria using the Mechanical Turk and Prolific interfaces,<sup>156</sup> and was available to participants from May to June 2021. The survey collected IP addresses to flag and remove duplicate responses, but this identifying information was deleted before the data were analyzed.

Data were analyzed in Microsoft Excel and using freely available on-line statistical analysis software. Responses were manually analyzed to exclude bad actors,<sup>157</sup> and where open-ended responses were inconsistent with closed-ended responses, the closed-ended responses were modified to be consistent with the narrative the respondent related.<sup>158</sup>

Responses were counted separately in the Older Group and Younger Group for whether the respondent (1) had been solicited for each individual scam; (2) engaged with each individual scam; (3) was aware of the financial impact of each scam; (4) was solicited for any specific scam; (5) engaged with any specific scam; (6) was aware of financial impact from any specific

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generally healthy, technologically active, and well-educated older adults.”); Mueller, *supra* note 84, at 21–22 (“The oldest old, over age 80, are underrepresented on MTurk and may have unique vulnerabilities not captured by this methodology.”); Adam J. Berinsky, Gregory A. Huber & Gabriel S. Lenz, *Evaluating Online Labor Markets for Experimental Research: Amazon.com’s Mechanical Turk*, 20 *POL. ANALYSIS* 351, 357 (2012).

<sup>156</sup> On Mechanical Turk, the oldest age category to which participation can be limited is older than 55. For the Older Group on Mechanical Turk, participation was further limited with an initial screening question requiring participants to state their age. Those under 65 were removed from the survey and their responses were excluded.

Somehow, one participant who completed the survey in the Younger Group reported being 41 years old. Because this response was complete and passed the attention filter, it was included in the analysis in the Younger Group.

<sup>157</sup> Bad actors include responses that, although they passed the attention filter, were obviously disingenuous, such as answering every question in the same, implausible way, or filling the qualitative response boxes with incoherencies. *See, e.g.*, Sams et al., *supra* note 151 (“In addition to platform specific quality checks, we employed our own systems, such as attention checks and review of open-ended answers to questions. These methods confirmed that our final sample in this study could be qualified as ‘good actors.’”).

<sup>158</sup> For example, some responses answered “Yes” to having been solicited for (and falling for) specific schemes such as the Vaccine Scam, but their open-ended narratives about the scams indicated that they had in fact been scammed by an “Other” the survey didn’t ask about specifically. For instance, Survey Response Younger Group 124 reported “Yes” to whether she had engaged with a vaccine scam but elaborated that she was “cheated by [a] tele caller and [l]ost my money” to “credit card fraud.” Younger Group Survey Response 124, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author). In these cases, I changed the response to the vaccine scam to “No,” but changed the open-ended response to “Yes.” In particular, several responses to the final open-ended question indicated “Yes” to whether they had suffered financial impacts from other frauds, but indicated in the open-ended question that they had merely been solicited for such frauds. For instance, Survey Respondent Older Group 154 answered “Yes” to engaging with other frauds but explained in the comment box “only attempts. I am very skeptical of scam ‘warnings.’” *See* Older Group Survey Response 154, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author). The closed-ended responses were altered to reflect this.

scam; (7) was solicited for any scam; (8) engaged with any scam; and (9) was aware of financial impact from any scam. In addition, because it is possible that the Vaccine Scam in particular would have age-modulated results (because the vaccine was generally offered to different age groups at different times), results for all scams except the Vaccine Scam were also calculated. For each categorical variable in the two groups, Chi-squared tests were performed to assess the statistical significance of differences in observed frequencies at  $p < .05$ . For tests where any variable recorded fewer than ten responses, Fisher's exact tests (FETs) were performed instead. Similarly, Chi-squared tests were performed to compare scam susceptibility by comparing the proportion of Older Group participants who had been victimized by scams to those who had been solicited to the corresponding proportion in the Younger Group.

Next, two tests were performed to assess whether scam victims in the Older Group were more financially vulnerable than were scam victims in the Younger Group, which might suggest that, at least under consequentialist moral frameworks, scamming older adults is morally worse than scamming younger adults. First, a twelve-point Financial Stability Score was created for each participant as the scaled average of four variables suggestive of an individual's available funds and ability to absorb a financial loss: (1) self-reported fear of meeting financial needs during the pandemic; (2) amount of emergency expense the individual would be able to handle without taking on additional debt; (3) income; and (4) approximate net worth. Higher scores on the twelve-point scale indicated greater financial stability and lower scores greater financial vulnerability. The mean of this score was taken for the scam victims in the Older Group and Younger Group, and these averages were compared with a t-test. Second, an FET was performed to compare the number of Older Group scam victims who were employed to the number of Younger Group scam victims employed.<sup>159</sup>

Finally, to ascertain the influence of other variables on the likelihood of scam victimization and as a robustness check on the age-related findings, a multivariate logistic regression was performed on the combined results from the Older and Younger Groups together with a binary variable representing engagement with any scam as the dependent variable and the following explanatory variables: (1) age; (2) self-reported fear of catching COVID-19; (3) self-reported fear of losing money to fraud in general; (4) Financial Stability Score; (5) social trust;<sup>160</sup> (6) educational attainment; and (7) a binary variable reflecting whether the individual had been diagnosed with any mental illness.

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<sup>159</sup> Employment status was measured by a demographic question in the survey asking participants to select the response that "best describes their employment status during the 2020 coronavirus pandemic." Appendix A, Q27. This information was collected in a routine effort to gather demographic information about the survey population.

<sup>160</sup> Social trust was measured on a five-point scale in response to the question, "Generally speaking, do you agree that most people can be trusted?" Appendix A, Q39.

## IV. RESULTS

Between April 26 and June 8, 2021, 364 adults in the Older Group and 388 adults in the Younger Group completed the survey, passed the attention filter, and passed manual screening. Basic descriptive statistics for the final population that passed the attention filter are reproduced in Table 1, while complete demographic information for the population appears in Appendix B. In general, the survey population was drawn from a broad geographic area that roughly reflects the distribution of the American population.<sup>161</sup> However, the study population differed from the general population in several ways—notably in that it was more atheistic, more Democratic, more highly educated, and less Hispanic than the American population.<sup>162</sup> Because the focus of this study is comparative (rather than seeking absolute prevalence figures), the fact that the survey population is not truly nationally representative is less acute a concern.<sup>163</sup>

Further, there were significant demographic differences between the Older Group and the Younger Group. For instance, although the Younger Group's racial composition relatively closely reflected that of the American population (the Younger Group was 74% white, 14% Black, 1% American Indian, 11% Asian, and 3% other, compared to 76%, 13%, 1%, 6% and 3%, respectively, in the general American population), the Older Group was 93% white, 5% Black, 2% Asian, and included no American Indians. Additionally, while the Older Group was more female than male (56% to 44%), the Younger Group was more male than female (56% to 43%).

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<sup>161</sup> See Appendix B (comparing the percentage of survey respondents in each state to the percentage of the U.S. population living in that state).

<sup>162</sup> See *id.* (comparing the percentage of respondents having advanced degrees and identifying as atheists, Democrats, and not Hispanic to corresponding percentages in the general U.S. population).

<sup>163</sup> See, e.g., Mueller et al., *supra* note 84 (using a non-nationally representative sample in a study designed to compare age cohorts to one another).

TABLE 1: DESCRIPTIVE STATISTICS

<b><u>Older Group</u></b>	
Total Participants	364
Age Range	64–92
Mean Age	69.8
Standard Deviation Age	4.19
Median Age	69
<b><u>Younger Group</u></b>	
Total Participants	388
Age Range	25–41
Mean Age	30.8
Standard Deviation Age	2.93
Median Age	31

Three categories of results are presented here. First, statistical analysis was conducted to determine whether older adults engaged with and were victimized by scams more frequently than were other age groups during the COVID-19 pandemic. Taken together, the results reveal that in fact younger adults engaged with scams more frequently. Next, the populations of older and younger scam victims were compared to one another to determine which population is more negatively impacted by scams. The data offer limited support to the claim that it is qualitatively worse to scam seniors than other age groups. Finally, multivariate logistic regression was conducted across the whole population on a range of potentially explanatory variables collected in the survey. Age remained inversely correlated with scam engagement when controlling for these other variables. Moreover, fear of fraud in general, social trust, and having been diagnosed with mental illness were found to be significantly correlated with scam engagement.

#### *A. Scam Prevalence by Age*

Table 2 shows results of the overall scam engagement rate by age, analyzed with Chi-squared tests (or FET where any of the outcome variables were under ten). The results indicate that the Younger Group, in total, clicked on scam links, paid money, or disclosed personal information to scammers at roughly three times the rate of the Older Group during the pandemic (12% to 4%), and were victimized by the specific scams asked about on the survey nearly 10 times as often (10% to 1%). These distinctions are statistically significant at  $p < .05$ . Scam-engagement frequency was calculated for all scams except the Vaccine Scam because the Vaccine Scam could have age-modulated results. The Younger Group still engaged with the re-



maintaining scams substantially more than the older group (8% to 3%;  $p = .0045$ ).

Notably, these distinctions do not seem to be driven by the fact that one group was solicited for scams substantially more frequently than the other. Indeed, the Older Group was actually solicited for any scam more frequently than the Younger Group, albeit not by a statistically significant amount (54% to 53%,  $p = .90$ ). And although the Younger Group was solicited more frequently for the specific scams asked about on the survey (39% to 34%,  $p = .17$ ), this difference was not statistically significant either.

TABLE 2: RESPONDENTS SELF-REPORTING ENGAGEMENT WITH SCAMS BY AGE.  $df = 1$ .  $p^* < .05$ ,  $p^{**} < .01$ .

	<b>Older Group</b>	<b>Younger Group</b>	<b><math>\chi^2</math>/FET value</b>
Engaged with any scam	14 (4%)	46 (12%)	$\chi^2 = 16.41^{**}$ $p = .000051$
Engaged with any specific scam	3 (1%)	33 (9%)	$p(\text{FET}) < .00001^{**}$
Engaged with any scam other than a vaccine scam	11 (3%)	30 (8%)	$\chi^2 = 8.08^{**}$ $p = .0045$
Solicited by any scam	195 (54%)	206 (53%)	$\chi^2 = 0.02$ $p = .90$
Solicited by any specific scam	125 (34%)	152 (39%)	$\chi^2 = 1.89$ $p = .17$
Total (n)	364	388	

Table 3 presents a closer look at the survey data for each scam. The overall pattern generally holds—the Younger Group reported engaging with scams at rates higher than the Older Group and more often reported awareness of financial or other consequences arising from the scam at statistically significant higher frequencies. For instance, and of particular note, while twenty-nine percent of the Older Group was solicited for the Generic Financial Scam, no member of the Older Group engaged with the scam. In contrast, only 18% of the Younger Group reported being contacted about the Generic Financial Scam, but 6 individuals engaged with the scam, and 2 experienced known consequences.

Moreover, the data reveal substantial variation by scam type. For example, the hypothesis that the Vaccine Scam was partially age-modulated seems borne out by the fact that fifteen percent of the Younger Group reported being contacted to be moved up in the vaccine line in exchange for money, information, or clicking a link, while only four percent of the Older Group

did. Other scams showed less of an age effect on solicitation, for example with the Treatment Scam, where five percent of the Older Group and nine percent of the Younger Group reported being contacted. The data further suggest that scams facially unrelated to COVID-19 or its most newsworthy effects—the Generic Financial Scam and Other Scams—were in fact the most common scams of the pandemic.

TABLE 3: RESPONDENTS REPORTING ENGAGEMENT WITH AND VICTIMIZATION BY SPECIFIC SCAMS. *df* = 1. *p*\* < .05, *p*\*\* < .01.

	<b>Older Group</b>	<b>Younger Group</b>	<b><math>\chi^2</math>/FET value</b>
Solicited for a vaccine scam	16 (4%)	60 (15%)	$\chi^2 = 25.33^{**}$ <i>p</i> < .00001
Engaged with a vaccine scam	3 (1%)	23 (6%)	<i>p</i> = .00001**
Aware of consequences of engagement with a vaccine scam	0 (0%)	7 (2%)	<i>p</i> = 0.02*
Solicited for a stimulus scam	15 (4%)	60 (15%)	$\chi^2 = 26.91^{**}$ <i>p</i> < .00001
Engaged with a stimulus scam	0 (0%)	8 (2%)	<i>p</i> = .008**
Aware of consequences of engagement with a stimulus scam	0 (0%)	2 (1%)	<i>p</i> = .50
Solicited for a treatment scam	17 (5%)	36 (9%)	$\chi^2 = 6.09$ <i>p</i> = .014*
Engaged with a treatment scam	0 (0%)	6 (2%)	<i>p</i> = .031*
Aware of consequences of engagement with treatment scam	0 (0%)	1 (0%)	<i>p</i> = 1
Solicited for a generic financial scam	107 (29%)	71 (18%)	$\chi^2 = 12.80^{**}$ <i>p</i> = .0034
Engaged with a generic financial scam	0 (0%)	6 (2%)	<i>p</i> = .031*
Aware of consequences of engagement with a generic financial scam	0 (0%)	2 (1%)	<i>p</i> = .50
Solicited for any other scam	118 (32%)	88 (23%)	$\chi^2 = 8.95^{**}$ <i>p</i> = .003
Engaged with any other scam	11 (3%)	15 (4%)	$\chi^2 = .40$ <i>p</i> = .53
Total (n)	364	388	

Finally, Table 4 presents the data on overall scam susceptibility by age group. That is, it compares the number of each group that engaged with any scam after being solicited, to the number who were solicited but did not engage. The data show that fewer older adults engaged with scams as a percentage of those solicited for them than did younger adults, and these results were statistically significant at  $p < .05$ .

TABLE 4: SCAM SUSCEPTIBILITY BY AGE.  $df = 1$ .  $p^* < .05$ ,  $p^{**} < .01$ .

	<b>Older Group</b>	<b>Younger Group</b>	<b><math>\chi^2</math>/FET value</b>
Engaged with any scam	14 (7%)	46 (19%)	$\chi^2 = 13.51^{**}$ $p = .00024$
Solicited but not scammed for any scam	181 (93%)	190 (81%)	
Total	195 (100%)	236 (100%)	

#### *B. Are Seniors Who Are Scammed More Financially Vulnerable?*

As discussed above, although it is ultimately a normative question whether it is ethically worse to scam an older adult than a younger adult, the claim that it is ethically worse commonly relies upon one of two descriptive predicates. The first is that older adults who are victims of scams are more financially vulnerable and less able to recover.<sup>164</sup> The second is that older adults are less likely to be employed and less likely to compensate for scam losses with employment income over time.<sup>165</sup>

To test the first claim, a measure of average financial stability was calculated. The measure, referred to as the Financial Stability Score, is the standardized average of respondent's assessments of personal financial stability in the following categories, on a 12-point scale: (1) self-reported financial fear during the pandemic; (2) emergency fund availability; (3) income; and (4) net worth (where 1 is the least financially stable, and 12 the most). The average Financial Stability Score was, as expected, lower for members of the Older Group who engaged with any scam during the pandemic than that of the Younger Group who did. However, as reflected in Table 4, this difference was not statistically significant at  $p > .05$ . Given the small sample size of participants who engaged with scams, however, it is possible that further research will show that indeed seniors who are scammed are more financially vulnerable than the scam victims of younger age groups.

<sup>164</sup> See Singletary, *supra* note 80.

<sup>165</sup> See Skinner and Springer, *supra* note 83.

TABLE 5: FINANCIAL VULNERABILITY OF SCAM VICTIMS

	<b>Mean Financial Stability</b>	<b>t-value</b>	<b>p-value</b>
Older Scam Victims (n = 14)	5.57 (SD = 2.03)	1.789	.078
Younger Scam Victims (n = 46)	6.53 (SD = 1.69)		

Second, the data indicate that participants in the Older Group who engaged with any scam were less likely to be employed. As demonstrated in Table 6, seniors who engaged with scams were much less likely to be employed, either full or part time, and this difference was statistically significant at  $p < .05$ .

TABLE 6: EMPLOYMENT STATUS OF SCAM VICTIMS

	<b>Older Scam Victims</b>	<b>Younger Scam Victims</b>	<b>p-value</b>
Employed	3 (21%)	40 (87%)	$p < .00001$
Not Employed	11 (79%)	6 (13%)	
Total	14	46	

*C. Other Correlates of Scam Engagement*

In addition to comparative analysis of scam engagement between the older group and the younger group, logistic regression analysis, with age as an explanatory variable and including a variety of other potential predictors, was conducted to determine whether any other variables were closely correlated with scam engagement, while controlling for the negative effect of age. The additional potential predictors included in the model were (1) fear of the virus during the pandemic (3-point scale); (2) fear of fraud generally (3-point scale); (3) Financial Stability Score (12-point scale); (4) social trust (5-point scale); (5) education (7-point scale); and (6) mental health diagnosis (binary variable). The results are displayed in Table 7, and they show fear of fraud, social trust, and mental health diagnosis are each positively correlated with scam engagement at a statistically significant level. Moreover, age retains a statistically significant, negative correlation with likelihood of engagement with scams even with these other variables included in the model.

TABLE 7: CORRELATES OF SCAM ENGAGEMENT (LOGISTIC REGRESSION);  
df = 7.  $p^* < .05$ ,  $p^{**} < .01$ .

Variable	Coefficient	Standard Error	Odds Ratio	95% Confidence Interval	<i>p</i> -value
Fear of Virus	0.2435	0.2381	1.2757	(0.8001, 2.0341)	0.3064
Fear of Fraud	1.1817**	0.2342	3.2598	(2.0599, 5.1588)	0.0000
Financial Stability	-0.0350	0.0819	0.9656	(0.8223, 1.1337)	0.9656
Social Trust	0.3390*	0.1399	1.4036	(1.0370, 1.8463)	0.0154
Education	0.1447	0.1279	1.1557	(0.8994, 1.4851)	0.2579
Mental Health Status	0.7535*	0.3067	2.1243	(1.1645, 3.8752)	0.014
Age	-0.242**	0.0084	0.9761	(0.9600, 0.9923)	0.0041
Constant	-6.1994**	1.0903			0.0000

## V. DISCUSSION

This study suggests that, contrary to the conventional wisdom in law and the public discussion, younger adults were more likely than older adults to have been victimized by frauds and scams during the first year of the COVID-19 pandemic. In other words, the challenge of preventing scams may have a different shape—and at a minimum appears to be much more broadly distributed—than policymakers have thus far understood. While further, nationally representative research will be required to ascertain the precise contours of American fraud, this study has several implications for law reform efforts designed to mitigate the harm caused by scams.

This Part discusses three preliminary implications of the study’s findings. First, I try to square this study’s findings with the widespread public concern for scams targeting seniors, and with psychological literature suggesting that seniors are more vulnerable. I suggest—optimistically—that the public concern for senior financial exploitation may be working by educating seniors to be more vigilant. Alternatively, it might be that the cognitive changes seen in lab conditions have limited salience in causing real-world victimization. Finally, it could be that public concern for senior financial scam vulnerability is ultimately grounded in unfortunate ageist stereotypes.

Second, I sketch the possibility that scamming older adults may generally be qualitatively more morally blameworthy than scamming other groups. I conclude that this claim is not obviously right, although the study offers some limited support for it.

Third, I outline some paths forward. We might want to continue treating the scam victimization of seniors differently, or we might want to offer the

same heightened protections to all adults. Or we might choose in the end to treat older adults just as we do younger adults today. Finally, I discuss the study's limitations and the need for further research.

### A. *Making Sense of the Results*

The results of this study call into question the popular wisdom and scholarly assumption that older adults are more vulnerable to scams than other age groups. This incongruity demands some explanation. While further research will be required, I offer three preliminary possibilities—taking the results at face value—that could account for why seniors may have been less likely to be victimized by scams during the COVID-19 pandemic than younger adults. First, it might simply be that efforts to raise awareness of senior scams as a problem are working, that is, ensuring that seniors are no longer a group uniquely victimized by scams. And indeed, the data offer suggestions that the senior population may be on guard against scams in a way that the younger population is not, possibly as a result of awareness-raising in the public sphere. Second, it might be that the cognitive changes that occur with aging, found by lab studies to impact scam susceptibility, are of limited salience in real-world contexts. This could be, for example, because real-world contexts rely more on crystallized intelligence—which is retained into older age—than lab studies suggest, or because seniors implement heuristic safeguards for themselves that rely less on executive judgment. Finally, I point out the troubling possibility that our widespread concern with senior financial frauds may be rooted in invidious ageist stereotypes.

#### 1. *Awareness-Raising May Be Working*

Senior financial exploitation is a popular topic in the media.<sup>166</sup> As discussed above, a tremendous amount of messaging on the issue is directly tailored for seniors, including websites directed to seniors,<sup>167</sup> local news articles,<sup>168</sup> nursing home websites,<sup>169</sup> government websites,<sup>170</sup> AARP materi-

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<sup>166</sup> See, e.g., Vern Buchanan, *Passing the Seniors Fraud Prevention Act Will Help Protect Elderly from Criminals*, THE HILL (Dec. 2, 2020), <https://thehill.com/blogs/congress-blog/technology/528261-passing-the-seniors-fraud-prevention-act-will-help-protect> [https://perma.cc/E69Z-FMTE].

<sup>167</sup> See, e.g., *Common Scams that Target the Elderly*, SENIORLIVING.ORG (Sept. 13, 2021), <https://www.seniorliving.org/research/common-elderly-scams/> [https://perma.cc/QHM3-BRTR].

<sup>168</sup> See, e.g., Lisa Riley, *6 Scams Against Senior Citizens and How to Avoid Them*, AZ BIG MEDIA (May 13, 2021), <https://azbigmedia.com/business/6-scams-against-senior-citizens-and-how-to-avoid-them/> [https://perma.cc/V22K-5Y2C].

<sup>169</sup> See, e.g., SALMON Health, *Senior Fraud: Tips to Avoid Scams & Report Crimes*, SALMON HEALTH & RETIREMENT (Sept. 25, 2020), <https://www.salmonhealth.com/blog/senior-fraud-tips-to-avoid-scams-and-report-crimes/> [https://perma.cc/8DYV-ZSR8].

als,<sup>171</sup> and consumer education by financial institutions.<sup>172</sup> In short, everyone—presumably the elderly included—knows that scams targeting seniors are a problem and that older adults may be actively on guard against them, as so many of these media sources urge them to be. It may, then, simply be that the public’s focus on senior scams is working precisely as it is intended to, and that seniors are no longer the most scammed group—regardless of whether they are more vulnerable in the abstract—because they are taking precautions against fraud.

Some responses to open-ended survey questions offer tantalizing suggestions that this is happening. Several Older Group participants expressed awareness of the problem of elder scams and suggested that their knowledge of the problem helped them avoid being scammed. For instance, one participant wrote, “My concern is for other seniors who may not be as aware of scams or be tech-savvy to help themselves. They are the ones most at risk.”<sup>173</sup> Another wrote that “[s]ome people tend to think if you are elderly, then you must also be stupid,”<sup>174</sup> and a seventy-seven-year-old woman reported that she “went along with” a phone scammer “for a while, then . . . let him have it for trying to take advantage of seniors.”<sup>175</sup> Moreover, some older adults noted that they take active measures to prevent fraud, such as “Norton/LifeLock as well as other spam blockers on my phone and computers,”<sup>176</sup> and “SpamCop,”<sup>177</sup> and that they learned about particular scams “on the news”<sup>178</sup> and were prepared for them.

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<sup>170</sup> See, e.g., *Tag: Scams Against Older Adults*, FED. TRADE COMM’N, CONSUMER ADVICE, <https://www.consumer.ftc.gov/scams/scams-against-older-adults> [<https://perma.cc/F7UG-JUUF>]; DAVID LEACH & JESSIE GUEST, BUREAU OF CONSUMER CREDIT PROTECTION, STATE OF MAINE, *DOWNEASTER COMMON SENSE GUIDE TO ELDER FINANCIAL PROTECTION* (2008), [https://www.maine.gov/pfr/consumercredit/pub/Elder\\_Guide\\_%202019-01.pdf](https://www.maine.gov/pfr/consumercredit/pub/Elder_Guide_%202019-01.pdf) [<https://perma.cc/M39G-SEW2>].

<sup>171</sup> See, e.g., Katherine Skiba, *10 Red-Hot COVID Scams Vexing Older Americans*, AARP (Feb. 24, 2021), <https://www.aarp.org/money/scams-fraud/info-2021/covid-19-scams-vexing-older-americans.html> [<https://perma.cc/YE8E-W5KW>].

<sup>172</sup> See, e.g., *Protecting the Elderly from Fraud & Scams*, WELLS FARGO, <https://www.wellsfargo.com/financial-education/basic-finances/build-the-future/protect-money/protecting-elderly/> [<https://perma.cc/7M8P-L4PB>].

<sup>173</sup> Older Group Survey Response 59, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>174</sup> Older Group Survey Response 247, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>175</sup> Older Group Survey Response 22, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>176</sup> Older Group Survey Response 59, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>177</sup> Older Group Survey Response 290, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>178</sup> Older Group Survey Response 65, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author); see also Older Group Survey Response 290, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (“Also, I read national newspapers (WA Post, NY Times) daily, and was well aware that such emails were circulating.”).

In contrast, no such focused awareness of the problem of scams and the need to guard oneself was evident in the Younger Group's responses. Indeed, younger adults in the study more often referenced the role of their friends deterring them from falling for scams, suggesting an ad hoc and less systematic approach to scam awareness and prevention among younger adults. For instance, one participant was "excited about the opportunity" to get a vaccine early but "decided to consult with [his] friends first who confirmed to [him] that it was a scam."<sup>179</sup> And two participants reported not engaging with scams because their friends had recently been victimized and had warned them.<sup>180</sup>

In short, it may well be that the reason younger adults were scammed more frequently during the pandemic than older adults was that older adults were prepared. If further research establishes that this is correct, it would indicate that public awareness-raising campaigns are an effective way to prevent scam victimization across large populations. On the other hand, further research could reveal a dark side to our contemporary awareness-raising campaigns regarding senior scams: perhaps the more the media reinforces the proposition that scams are primarily a problem for older adults, the more vulnerable younger adults are made, who become less systematically prepared to respond to a problem they are largely told does not affect them.

## 2. *Changes in Cognition May Not Be Germane to Real-World Scam Susceptibility*

As discussed above, most prior academic research on senior scam victimization has largely assumed that it is a discrete phenomenon worth describing separately, seeking instead to explain why seniors are more vulnerable to scams.<sup>181</sup> Much of this research has identified individual-level risk factors for victimization that are consistent with the subsidiary findings of this study—for instance, there is a robust literature linking mental health diagnoses and scam victimization.<sup>182</sup> But this study's finding that older adults

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<sup>179</sup> Younger Group Survey Response 103, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>180</sup> Younger Group Survey Response 477, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author) ("I blocked [a scammer] immediately as a friend had been scammed in this same way previously."); Younger Group Survey Response 488, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author) ("A friend who f[e]ll victim of the act informed me days before and warned me.").

<sup>181</sup> See, e.g., Shao et al., *supra* note 15, at 228–33 (reviewing literature and theories for why seniors are more vulnerable to scams than other groups).

<sup>182</sup> See, e.g., Peter A. Lichtenberg, Latoya Hal, Evan Gross, Rebecca Campbell, *Providing Assistance for Older Adult Financial Exploitation Victims: Implications for Clinical Gerontologists*, 42 CLINICAL GERONTOLOGIST 435, 441 (2019) (finding that victims of senior financial exploitation reported statistically significant higher levels of depression and anxiety than control groups); see also MERLYN HOLKAR & CHRIS LEES, CAUGHT IN THE WEB: ONLINE SCAMS AND MENTAL HEALTH 4 (2020), <https://www.moneyandmentalhealth.org/wp-content/uploads/2020/12/Caught-in-the-web-full-report.pdf> [<https://perma.cc/Q2EP-3S5Q>] ("National



fell victim to scams less often during the COVID-19 pandemic than younger adults is apparently inconsistent with the broader finding of the literature on senior financial exploitation that cognitive changes resulting from normal aging render older adults more vulnerable to scams.<sup>183</sup> It is certainly possible that this literature is flawed, albeit well-meaning, by the simple fact that it is seeking to explain a phenomenon that does not need explaining.<sup>184</sup> It would hardly be the first time something like this has happened in psychology.<sup>185</sup>

On the other hand, it might be that this literature is documenting real changes in cognition, but that these changes do not have the hypothesized effects in the real world. This could happen in several ways. First, it might be that the suite of cognitive changes found in studies of older adults is simply not the most saliently relied-upon in responding to third-party scams. The literature on cognitive change in aging has shown that, for example, aging is associated with declines in fluid intelligence—working memory, processing speed, abstract reasoning, etc.—and that older adults instead often rely on simpler heuristics in decision-making as compared to other age

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polling conducted for this report finds that people who have experienced mental health problems are three times more likely than the rest of the population (23% versus 8%) to have been a victim of an online scam.”).

<sup>183</sup> See, e.g., Shao et al., *supra* note 15, at 230 (“Though old age in and of itself does not necessarily predispose an individual to exploitation, certain factors that arise from age-related physical, cognitive, and social circumstances can contribute to greater vulnerability.”); Boyle et al., *supra* note 94 (internal citation issue) (“These results suggest that poor decision making and increased susceptibility to scams in old age are consequences of cognitive decline among persons without dementia.”); Mariann R. Weirich, Elizabeth A. Kensinger, Alicia H. Munnell, Steven A. Sass, Brad C. Dickerson, Christopher I. Writ & Lisa Feldman Barrett, *Older and Wiser? An Affective Science Perspective on Age-Related Challenges in Financial Decision Making*, 6 SCAN 195, 202 (2011) (“Uncertainty [in retirement] is increased by diminished ‘time travel’ as people age; they not only are less able to remember the past but also are less able to project themselves into a future that is different from the present.”); Keith Jacks Gamble, Patricia Boyle, Lei Yu & David Bennett, *Aging and Financial Decision Making*, 61 MGMT. SCI. 2603, 2603 (2015) (“Although participants experiencing decreased cognition also show declines in their financial literacy, these participants may not recognize—or may be reluctant to admit to—this decline in their financial capability.”).

<sup>184</sup> It is worth noting that the effects of age on financial decision making remain controversial in psychology. See, e.g., Dorien F. Bangma, Anselm B. M. Fuermaier, Lara Tucha, Oliver Tucha & Janneke Koerts, *The Effects of Normal Aging on Multiple Aspects of Financial Decision-Making*, 12 PLOS ONE 1, 12 (2017) (noting that “normal aging appears to have a differential effect on various aspects of [financial decision making],” finding no effect of age on “relatively basic aspects” and that “impulsive buying tendency” seems to decrease with advancing age, concluding that “[w]hether or not normal aging has an effect on [financial decision making] with implications for the future and emotional decision-making remains inconclusive”); Wiebke Eberhardt, Wandí Bruine de Bruin & JoNell Strough, *Aging and Financial Decision Making: Older and Wiser?*, 1 INNOVATION IN AGING 936, 936 (2017) (“We found that performance on each of our financial decision tasks improved with age.”).

<sup>185</sup> An example might be the well-documented trend in social psychology to pathologize politically conservative viewpoints as the result of various mental biases. See generally, e.g., José L. Duarte, Jarret T. Crawford, Charlotta Stern, Jonathan Haidt, Lee Jussim & Philip E. Tetlock, *Political Diversity Will Improve Social Psychological Science*, 38 BEHAVIORAL & BRAIN SCI. e130 (2015) (documenting instances where social psychologists sought to explain conservative views as “denial,” “unethical behavior,” “rationalization of inequality,” etc.).

groups.<sup>186</sup> But it might be that simple heuristics—categorically refusing to give out personal information to strangers, for instance—are all that is required to avoid scams most of the time in real life. There is suggestive evidence in the qualitative survey data that many seniors relied on such heuristics to avoid engaging with scams—for example, one participant noted that she “never click[s] on links from unknown (to me) sources”<sup>187</sup> and another that she “always assume[s] everything is a scam.”<sup>188</sup> And indeed, as research by Mueller et al., and others has shown, it is not necessarily the case that declines in specific aspects of cognition necessitate actually engaging with scams at a higher rate.<sup>189</sup> Mueller et al.’s study found that cognitive functioning did not predict scam susceptibility, but that emotional intelligence—which increased with age—did.<sup>190</sup> In short, it might be that the sorts of cognitive changes that occur as we age are simply not what matters to scam susceptibility in the real world.

Second, it might be that older adults are, as a matter of cognition, more susceptible to scam victimization, but that they are aware of this and compensate by taking active steps to avoid scams. As discussed, several participants ascribed their success in avoiding scams partially to their use of scam-detecting software.<sup>191</sup> Indeed, some prior research has found that conscious scam-avoidance measures such as using only one computer, filtering spam email, and installing antivirus software are correlated with lower rates of scam victimization.<sup>192</sup> Thus, it could be that, cognizant of their cognitive limitations, older adults take active measures to avoid frauds such as relying on heuristics and software that are in fact effective at preventing their engagement with scams. Further research will be required to determine whether the psychological literature on cognitive decline in ordinary aging is compatible with the apparent fact that seniors may fall victim to scams less often than other age groups, and if so, how.

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<sup>186</sup> See, e.g., Rui Mata, Bettina von Helverson & Jörg Rieskamp, *Learning to Choose: Cognitive Aging and Strategy Selection Learning in Decision Making*, 25 *PSYCH. & AGING* 299, 300 (2010) (showing that older adults rely on simpler heuristics in decision making than younger adults); Carolyn Yoon, Catherine A. Cole & Michelle P. Lee, *Consumer Decision Making and Aging: Current Knowledge and Future Directions*, 19 *J. CONSUMER PSYCH.* 2 (2009) (showing declines in fluid intelligence in healthy aging).

<sup>187</sup> Older Group Survey Response 169, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>188</sup> Older Group Survey Response 145, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>189</sup> See, e.g., Mueller et al., *supra* note 84, at 14 (“[D]ecision-making abilities were not a significant mediator for age-related differences in scam susceptibility.”).

<sup>190</sup> *Id.*

<sup>191</sup> See *supra* notes 176–77 and accompanying text.

<sup>192</sup> See, e.g., Matthew L. Williams, *Guardians Upon High: An Application of Routine Activities Theory to Online Identity Theft in Europe at the Country and Individual Level*, 56 *BRIT. J. CRIMINOLOGY* 21 (2016). But see Bradford W. Reynolds & Billy Henson, *The Thief With a Thousand Faces and the Victim With None: Identifying Determinates for Online Identity Theft Victimization With Routine Activity Theory*, 60 *INT’L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY* 1119 (2016) (finding that protective online activities were not correlated with identity-theft victimization).

### 3. Ageism

Finally, it is important to note the possibility that the popular view that older adults are more vulnerable to fraud could arise from invidious ageist stereotypes that caricature older adults as less intelligent or more trusting.<sup>193</sup> A broad literature in social psychology has documented the ubiquity of ageist attitudes and stereotypes in popular discourse.<sup>194</sup> Indeed, one 2019 meta-analysis concluded that “ageism is experienced almost universally by older people” and that, unlike many other biases, “younger adults commonly acknowledge holding ageist views and/or having done ageist actions.”<sup>195</sup> Moreover, research has found ageism to be broadly culturally universal and even internalized by many seniors,<sup>196</sup> and that in some cases such internalization can lead to depression and exacerbate cognitive decline.<sup>197</sup>

The most common forms of the claim that older adults are more vulnerable to scams share obvious features with common stereotypes about older adults. Indeed, this claim in the popular discourse (and psychological literature) is largely premised on the notion that seniors generally are cognitively weak or quasi-senile, falling prey to any obvious con man willing to give them the time of day.<sup>198</sup> This is essentially the suite of the most common

<sup>193</sup> See, e.g., Amy J.C. Cuddy, Michael I. Norton & Susan T. Fiske, *This Old Stereotype: The Pervasiveness and Persistence of the Elderly Stereotype*, 61 J. SOC. ISSUES 267, 267 (2005) (“Americans stereotype elderly people as warm and incompetent, following from perceptions of them as noncompetitive and low status, respectively.”).

<sup>194</sup> See generally TODD D. NELSON, *AGEISM: STEREOTYPING AND PREJUDICE AGAINST OLDER PERSONS* (2d ed., 2017); Erdman Palmore, *Ageism Comes of Age*, 70 J. GERONTOLOGY: SOC. SCI. 873, 873 (2015) (“We now know that the virus of ageism infects most people in most countries around the world. Even older people continue to believe the negative stereotype that most old people are weak, sick, or senile. . . . We know that these stereotypes contribute to widespread discrimination against older people in employment, medical care, institutionalization, and even in families.” (citing E. PALMORE, F. WHITTINGTON & S. KUNKEL, EDS., *INTERNATIONAL HANDBOOK ON AGING* (2d ed., 2009))).

<sup>195</sup> Donna M. Wilson, Begoña Errasti-Ibarrondo & Gail Low, *Where Are We Now in Relation to Determining the Prevalence of Ageism in This Era of Escalating Population Ageing?*, 51 AGEING RSCH. REVS. 78, 82 (2019); see also Liat Ayalon & Clemens Tesch-Römer, *Taking a Closer Look at Ageism: Self- and Other-Directed Ageist Attitudes and Discrimination*, 14 EUR. J. AGEING 1, 1 (2017) (“[E]veryone is susceptible to experience ageism if they live long enough.”) (citing PALMORE, *supra* note 194, at 873).

<sup>196</sup> See, e.g., Raudah M. Yunus & Noran N. Hairi, *Ageism*, 32 ASIA PAC. J. PUB. HEALTH 57, 57 (2020) (“Research has shown that this phenomenon, known as ageism, exists across regions and cultures.”).

<sup>197</sup> See, e.g., Deirdre A. Robertson, Bellinda L. King-Kallimanis & Rose Anne Kenny, *Negative Perceptions of Aging Predict Longitudinal Decline in Cognitive Function*, 31 PSYCH. & AGING 71, 71 (2016) (“A number of longitudinal studies have found that older adults with negative self-perceptions of aging also have greater levels of disability, ill health, worse physical function and a higher risk of mortality over time.”).

<sup>198</sup> See, e.g., Lorie Konish, *House Passes Bill Aimed at Curbing the \$2.9 Billion Seniors Lose Each Year to Financial Scams*, CNBC (May 12, 2022), <https://www.cnbc.com/2022/05/12/house-passes-bill-to-combat-financial-scams-targeting-seniors.html> [https://perma.cc/KFT9-BC6R] (“Older Americans lose an estimated \$2.9 billion per year to financial scams”); Annie Nova, *As You Age, Your Brain Becomes Less Able to Detect Fraud*, CNBC (Apr. 30,

stereotypes about the elderly in general—sick, weak, and senile.<sup>199</sup> And, of course, although like many stereotypes there is some truth to these ones—older adults often do experience cognitive decline and age is the most significant risk factor for dementia<sup>200</sup>—the reality is far more complicated and ageist stereotypes often do not correspond to reality, certainly at an individual level.<sup>201</sup>

One need not look particularly deeply for evidence suggesting that ageism might be doing some work in the public concern for seniors' scam susceptibility. For instance, on the FBI website's section on Elder Fraud, the federal government cavalierly explains that "[s]eniors are often targeted because they tend to be trusting and polite."<sup>202</sup> Other publications ascribe the prevalence of senior scams to seniors' "polite and trusting nature."<sup>203</sup> This is obviously a stereotype—perhaps a positive stereotype, but a potentially demeaning one nonetheless. And of course, the actual research on age-related differences in trust is far more complex, with a 2019 meta-analysis finding that older adults were generally more trusting than younger adults "when that trust was expressed non-financially."<sup>204</sup> Moreover, the study presented in this Article found that higher social trust was correlated with scam susceptibility even when controlling for age, and vice versa—younger age was correlated with scam susceptibility even when controlling for social trust.<sup>205</sup> In short, it might be that much of the public concern for seniors as a specific group at risk of scams in fact plays on ageist stereotypes that may be counterproductive for mitigating the problem of fraud more broadly in society.

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2018), <https://www.cnn.com/2018/04/30/aging-brains-become-less-able-to-detect-fraud.html> [<https://perma.cc/6XFL-858R>] ("As people grow old, they tend to concentrate more on the positive. As a result, they may be more likely to get ripped off."); Keith Brown, Lee-Ann Fenge & Sally Lee, *How Loneliness in Older People Makes Them More Vulnerable to Financial Scammers*, THE CONVERSATION (July 12, 2017), <https://theconversation.com/how-loneliness-in-older-people-makes-them-more-vulnerable-to-financial-scammers-73483> [<https://perma.cc/EQ3N-ECZF>]

<sup>199</sup> See, e.g., PALMORE, *supra* note 194, at 873 (describing ageism as, at a high level of abstraction, "the negative stereotype that most old people are weak, sick, or senile").

<sup>200</sup> See, e.g., Alison Abbott, *Dementia: A Problem for our Age*, 475 NATURE S2, S3 (2011) ("Given that the biggest risk factor for dementia is age, a longer-living global population means there will be more people with dementia.").

<sup>201</sup> See, e.g., Becca R. Levy, Martin D. Slade, E-Shien Change, Sneha Kannoht & Shi-Yi Want, *Ageism Amplifies Cost and Prevalence of Health Conditions*, 60 THE GERONTOLOGIST 174, 178 (2020) (showing that ageism often produces rather than explains generalizations about older adults).

<sup>202</sup> See *Elder Fraud*, FBI, <https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/elder-fraud> [<https://perma.cc/MPV3-QGYX>].

<sup>203</sup> See, e.g., Emma McGowan, *The Most Common Tech Scams Targeting Seniors*, AVAST BLOG (June 1, 2021, 2:00 PM), <https://blog.avast.com/most-common-tech-scams-targeting-seniors-avast> [<https://perma.cc/NP3A-FB9F>] ("Scammers target the elderly to take advantage of their polite and trusting nature, as well as their typically stable financial situation.").

<sup>204</sup> See Bailey & Leon, *supra* note 102, at 674 (2019).

<sup>205</sup> See *supra* Table 7.

*B. Is Scamming Seniors More Morally Blameworthy?*

If the findings of this study are not the result of the efficacy of efforts to combat senior scams<sup>206</sup> and are generalizable—in other words, if it truly is the case that in general, younger adults more often than older adults fall victim to scams—the primary justification for crafting age-specific laws designed to protect seniors from scams would be untenable. But it would not necessarily mean that the project of law reform designed to protect seniors specifically from scams must be abandoned. It might be that taking advantage of older adults is more morally culpable than taking advantage of younger adults. Consider, for example, racially-motivated murder, which is much less common than other murders, but we might think of as more morally blameworthy. Similarly, we may consider senior financial exploitation to be qualitatively different than other scams and worthy of more public resources and more retribution for committing the crime.

This claim is normative and cannot itself be proven or disproven with empirical facts.<sup>207</sup> But it is typically based on the descriptive claim that seniors who are scammed are more financially vulnerable than other groups and less able to recover from scams because they are not working.<sup>208</sup> Thus, the normative claim may depend on whether, empirically, scamming seniors causes more harm than scamming other people.

As discussed above, the study presented here offered some weak evidence that seniors who are scammed may face greater harms because they are less likely to be able to make the money back from employment. Indeed, it found that seniors who are scammed are much less likely to be employed than younger adults who are scammed, and found that senior scam victims were somewhat less financially secure than younger scam victims, although this finding was not statistically significant. Further research comparing groups of scam victims across the age range will be required to determine whether older adults who are scammed suffer more harm, on average, than others.

On a qualitative level, this study certainly revealed that seniors can suffer devastating consequences from scams. Indeed, consider one sixty-five-year-old woman from Florida who indicated that she had engaged with a scam other than the specific ones asked about in the survey: “I saw a bill that said Amazon so I called the number and they told me they needed to do a screen where they open up your computer and then ask me to go to my

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<sup>206</sup> See *supra* Part V.A.1.

<sup>207</sup> See STEVEN PINKER, *THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE* 150 (2002) (describing the “naturalistic fallacy” that would infer normative claims from descriptive ones).

<sup>208</sup> See Singletary, *supra* note 80 (“No one deserves to be a victim of a scam, but it’s particular[ly] heinous when perpetrated on people who are living on fixed incomes or surviving on savings they can’t replenish.”).

bank account and I did and I lost \$999.00.”<sup>209</sup> This woman indicated that she is retired, would be able to cover an emergency expense of only \$500–\$5,000, that her debts exceed the value of her assets, and that she does not have a plan for paying them off. No doubt the loss of \$1,000 was profoundly challenging for her.

But the survey responses also indicate that the tragic consequences of scams are not limited to older adults. Recall the thirty-two-year-old woman from the Introduction who reported being “very worried” about contracting COVID-19 who was approached by scammers purporting to offer early access to a vaccine.<sup>210</sup> She took out a personal loan from a bank to cover the ostensible upfront cost of getting vaccine access.<sup>211</sup> This has had negative, lasting effects on her life, from impacting her credit score to leading to a diagnosis of depression.<sup>212</sup> Scams, in other words, can cause deeply tragic consequences no matter the age of the victim.

In short, although the fact that seniors may be scammed less frequently than other groups does not entail the conclusion that we ought not continue the project of treating senior scams exceptionally in the public sphere, further empirical research, and normative theorizing, will be required before we do. This study offered weak support for the empirical generalization that seniors who are scammed may suffer more than other age groups. However, the qualitative responses to the survey complicate the simple view that younger adults as a class may easily bounce back from the loss of money.

### C. *The Path Forward*

This study suggests that an empirical premise of an important recent and ongoing movement in law reform may be misguided—seniors may not in fact be more frequently scammed than other groups. This has implications for the path forward in research, law reform, and how we think about the problem of fraud in general. This Section discusses each implication in turn.

#### 1. *Future Directions in Research*

Although this study found that a population of younger adults more frequently fell victim to scams than older adults, it did so under bounded circumstances that may not be applicable more generally. Indeed, the study asked only about age-agnostic scams during the COVID-19 pandemic. The finding that younger adults may have fallen victim to these scams more commonly than older adults, then, could still be consistent with seniors’ be-

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<sup>209</sup> Older Group Survey Response 10, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>210</sup> Younger Group Survey Response 74, James Toomey, Climenko Fellow & Lecturer on Law, Harvard Law School (2022) (on file with author).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

ing victimized by scams more frequently than younger adults if they are targeted more by age-specific scams than younger adults are or if the scams of the COVID-19 pandemic were particularly effective against younger adults. More research will be required to ascertain whether this study's findings are limited to facially age-agnostic scams and whether some age groups may be targeted more frequently by scams tailored to their vulnerabilities. Moreover, further research can clarify whether frauds and scams of the COVID-19 pandemic differ materially from scams at other times.

Additionally, further research on why American seniors were victimized less frequently than other age groups during the pandemic is warranted. As discussed above, this finding is difficult to square with the well-established cognitive changes that occur as people age. But it might be that, notwithstanding those changes, public campaigns warning seniors of the danger of scams have been successful at encouraging them to rely on heuristics that prevent them from falling victim to scams, such as not clicking on links in emails from unknown senders.<sup>213</sup>

Finally, if further research shows that raising awareness about the vulnerability of older adults to fraud has been successful in preventing victimization, additional research will be required to assess whether this success can be replicated in the general population. Indeed, it might be that part of the success of the movement against senior scams has been its specificity, its claim that a specific group of people is uniquely vulnerable and should have unique protections. If that turns out to be correct, it may be much more difficult to encourage the general population to take measures to limit their personal vulnerability to fraud.

## 2. *Leveling Up or Leveling Down*

If seniors are in fact scammed less frequently than other age groups—and we end up concluding that the potential normative reasons for thinking of scamming seniors differently from other age groups are unpersuasive—there is no reason for the law to treat the scam victimization of older adults differently from that of everyone else. But this would offer two alternative paths forward for law reform: we might “level up” the protections for the general population to be comparable to the apparatus protecting seniors, or we might “level down” the protections for older adults and strip back the growing fraud protections that apply only to them.<sup>214</sup> Both paths are defensible, and we might find that the optimal path is some combination of both.

For instance, several important commentators in elder law, including Professor Nina Kohn, have criticized the trend toward criminalizing various aspects of elder abuse that would not be criminal if the victim were not an

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<sup>213</sup> See *supra* text accompanying notes 191–92.

<sup>214</sup> See, e.g., Kenneth W. Simons, *The Logic of Egalitarian Norms*, 80 B.U. L. REV. 693, 721 (2000) (noting that in pursuit of an egalitarian norm, a “decisionmaker may either ‘level up’ or ‘level down’ the benefits or burdens at issue, in order to rectify . . . the inequality”).

older adult.<sup>215</sup> From this perspective, the punitive approach to combatting elder abuse can be understood as part of a broader trend in American law towards using the retributive apparatus of criminal justice to address a variety of social problems for which it is not appropriate.<sup>216</sup> “Leveling up” in this context would entail increasing penalties for committing a scam against anyone to those for committing a scam against an older adult. This response may be objectionable for the same reasons that increasing the criminal penalties for elder scams is objectionable in the first place—it applies the blunt, violent instrument of criminal justice in increasingly pervasive ways to address social problems that cannot be so solved. We might think, then, that we ought to strip back the heightened penalties for scams based on the age of the victim.

On the other hand, there is good evidence that measures such as authorizing financial institutions to report and freeze suspicious transactions are highly popular among seniors, the group whose transactions are most subject to freezes and reporting.<sup>217</sup> In other words, although such measures could be objected to as paternalistic,<sup>218</sup> it appears that the group subject to the paternalism appreciates the support. It may well be that the same dynamic extends to the general population—people generally may be more comfortable with their financial institutions actively monitoring their accounts and taking measures to prevent their losing money to scams than lawmakers have thus far apparently assumed. In short, if measures such as relieving financial institutions of liability for freezing suspicious transactions are the right move—and a very popular one—with respect to seniors, perhaps we should “level up” similar protections for the general population, or strip back the banking privacy laws that gave rise to liability in the first place.

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<sup>215</sup> See KOHN, *supra* note 31, at 513–17. See generally Kohn, *supra* note 11 (discussing legal trend towards criminalizing conduct directed towards older adults differently than the same conduct directed towards others).

<sup>216</sup> See, e.g., Kohn, *supra* note 11, at 27–28 (“The move toward the criminalization of elder abuse parallels similar moves in other social policy domains. The United States is a highly legalistic society in which legal system responses to social problems are increasingly the norm, and in which the criminal justice system serves not only to punish and deter, but also to express social condemnation of acts deemed morally wrong.”); Radford, *supra* note 7, at 259 (noting that the danger of “suffocating an older person’s autonomy by our well-meaning attempts to protect her” is a substantial danger of efforts to combat elder financial abuse).

<sup>217</sup> See, e.g., JILENNE GUNTHER, BANKSAFE: A COMPREHENSIVE APPROACH TO BETTER SERVING AND PROTECTING CONSUMERS, AARP PUB. POL’Y INST. (2016), [http://www.canhr.org/reports/2016/AARP\\_BankSafe\\_REPORT.pdf](http://www.canhr.org/reports/2016/AARP_BankSafe_REPORT.pdf) [<https://perma.cc/9EUL-QUP6>] (finding that eighty-three percent of seniors favored extra monitoring of their accounts to prevent unauthorized withdrawals and eighty-five percent wanted to set up an alert that notifies them if more than a specified amount of money is withdrawn from their account).

<sup>218</sup> See, e.g., Michael A. Furlong, *How America’s Newest Consumer Credit Statute Fails to Protect Its Oldest Consumers: A Critique of the Credit CARD Act of 2009*, 64 OKLA. L. REV. 171, 202 (2012) (“Some commentators have expressed concern regarding the potential for elder-specific consumer protection laws to be paternalistic—shielding competent elderly consumers from full participation in the market.” (citing Deann Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 HARV. J. LEGIS. 167, 190 (2007)).



### 3. Understanding Fraud

Finally, this study may have broader implications for how we think about fraud and scam crimes and how to prevent them. In brief, it appears that we've been far more willing to treat scams as a serious social problem worthy of legal remedy where we consider the victims uniquely vulnerable through no fault of their own—simply because of the inevitable cognitive changes of ordinary aging. But this study has shown, at a minimum, that more of the population is more vulnerable to scams than we had perhaps anticipated—with 12% of a population of adults ages 25–35 engaging with scams during the COVID-19 pandemic.<sup>219</sup> In other words, notwithstanding our perceptions of fraud as primarily a problem for a subset of particularly vulnerable adults, the data suggest that it is a much broader problem less neatly ascribed to the cognitive idiosyncrasies of a particular group.

Addressing the social problem of fraud and scams may therefore require a rethinking of the nature of the problem. Unlike with other crimes, our approach to combatting fraud largely relies on individuals to avoid engaging with scams themselves—an approach of personal responsibility.<sup>220</sup> From this perspective, it makes sense to take a more proactive role to prevent scams targeting groups of people—like older adults—presumed to be less capable of exercising personal responsibility to avoid victimization.

The results of this study suggest that our understanding of fraud—as essentially a challenge of personal responsibility in most cases and a public problem only with respect to particular groups—may be misguided. Indeed, the older adults in the study sample showed themselves to be largely capable of exercising personal responsibility to avoid victimization.<sup>221</sup> In contrast, an alarmingly high percentage of younger adults reported engaging with scammers during the COVID-19 pandemic.<sup>222</sup>

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<sup>219</sup> See *supra* Part II.B (arguing that there is a widespread assumption that scams are a particular problem for older adults because of their unique vulnerability).

<sup>220</sup> See, e.g., FINRA FOUNDATION, HEART & MIND STRATEGIES & AARP, BLAME AND SHAME IN THE CONTEXT OF FINANCIAL FRAUD: A MOVEMENT TO CHANGE OUR SOCIETAL RESPONSE TO A RAMPANT AND GROWING CRIME 4 (2022), <https://www.finra.org/sites/default/files/2022-07/Blame-and-Shame-in-the-Context-of-Financial-Fraud.pdf> [<https://perma.cc/7UCB-LSTG>] [hereinafter BLAME AND SHAME] (“Financial fraud continues to be a far-reaching and devastating problem, with annual losses in the billions of dollars. Beyond the money stolen, the emotional repercussions are significant, fueled by our typical response as a society to place blame and responsibility on the victim (especially on ourselves if we are the victim).”); Christina Ianzito, *Let’s Stop Blaming Scam Victims*, *New AARP Report Says*, AARP (July 22, 2022), <https://www.aarp.org/money/scams-fraud/info-2022/victim-blaming.html> [<https://perma.cc/7RQ8-LT5U>] (noting how our societal response to scams might be different if we conceptualized it as “like the robbery it is”).

<sup>221</sup> See *supra* notes 173–78 and accompanying text (quoting survey responses from the Older Group expressing an awareness of and ability to fend off scam attempts, in particular by using software).

<sup>222</sup> See *supra* Part IV.A (finding that 12% of a cohort of 25–35-year-olds reported engaging with scammers during the COVID-19 pandemic).

There are many ways we could realign the way we think about scams to better fit these empirical facts. We might, for instance, continue to think of scams as primarily a problem of personal responsibility but adopt the view that that particular personal responsibility is a kind of wisdom that develops over the course of adulthood—that the youngest adults are the least responsible for avoiding scams because they haven't yet learned how. Through this lens, older adults would be fully personally responsible for not engaging with scammers, but we might be more understanding of younger adults' difficulty in distinguishing tricks from genuine opportunities.

But there is another way forward, and one we might ultimately find to be more appealing. We might come to see scams and frauds—like other crimes—as not primarily a matter of personal responsibility at all. We might in the end come to realize that we are all, or at least many of us—not a demographic easily circumscribed by age—vulnerable to the psychological tactics on which scammers rely, and not reserve our sympathy—and legal and social support—for only the victims of scams we think of as less responsible than us.<sup>223</sup>

#### D. Limitations

As discussed throughout, there are limitations on the generalizability of the data in this study, and further research will be required to determine whether the findings will extend more broadly. In particular, the online recruitment strategy of an older adult population may not reflect the general population of older adults. Indeed, studies have found that among Mechanical Turk populations, the “oldest old,” or individuals over eighty, are underrepresented,<sup>224</sup> and that the pool of older adults available on online crowdsourcing platforms is “limited to generally healthy, technologically active, and well-educated older adults.”<sup>225</sup> Thus, further research with mixed recruitment methods, including community interviews with older adults who may not regularly access the internet, would be necessary to establish whether the findings regarding the Older Group in this study generalize to American seniors.

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<sup>223</sup> See BLAME AND SHAME *supra* note 220, at 2 (arguing that a “cultural shift” to “end the practice of victim blaming in cases of fraud” would “drive a long-term change in how victims of financial fraud are treated,” including that “victims no longer hide in shame, and instead report the crime,” “families remain united despite a horrible fraud encounter by a family member,” and “more law enforcement understand that fraud is a crime”); see also John Gapper, *We Will All Get Fooled by Online Scams One Day*, FIN. TIMES, <https://www.ft.com/content/fdbd9ee3-b583-47b9-93cd-05504ef59f88> (last visited Oct. 25, 2022) (“[W]e should reflect before blaming victims, given the likelihood that one day we will ourselves fall for an online scam.”).

<sup>224</sup> Mueller, *supra* note 84, at 21–22 (“The oldest old, over age 80, are underrepresented on MTurk and may have unique vulnerabilities not captured by this methodology.”)

<sup>225</sup> Turner et al., *supra* note 151, at 1230.

Moreover, although this study used scams during the COVID-19 pandemic as a means to assess scam victimization during a discrete period in which commentators expected scam solicitation and victimization to be particularly high, the study's limitation to scams of the pandemic may also limit its findings' generalizability. It might be that scam dynamics during the pandemic differed from other periods of time in meaningful ways. It may also be that the specific pandemic scams the survey asked about are less age-agnostic than anticipated, and that pandemic-era scams were targeted disproportionately towards younger adults.

The relatively small sample size of the study further ensures that it is not representative of the general American population. As demonstrated in Appendix B, the study population—in both the Older Group and Younger Group—was more atheistic, more Democratic, more highly educated, and less Hispanic than the American population. It is possible that these variables are related to scam victimization dynamics, or that a more representative sample would offer a better understanding of the comparative scam victimization rates in the American population generally.

Finally, it is important to note that this study's findings are confined to elder financial frauds and scams, not elder financial abuse generally. There is no reason to believe that they would generalize to fiduciary or familial financial abuse, and this study is not in tension with the robust literature on the prevalence and problem of elder financial abuse in its more common form. Indeed, far fewer younger adults have their assets subject to fiduciary administration, through a power of attorney or guardianship, than older adults do, so it is unclear that fiduciary financial abuse could present the same kind of problem across the age spectrum, in contrast to frauds and scams that can in principle be pitched to anyone.<sup>226</sup> To the extent that many measures designed to prevent elder financial frauds and scams are primarily directed towards elder abuse more generally, then, this study does not implicate their justification.

## VI. CONCLUSION

This study is the first to systematically interrogate whether older adults were victimized by scams during a bounded period of time more frequently than the general adult population was. The study found that, contrary to prevailing wisdom, older adults were not more frequently victimized, and indeed, younger adults more frequently engaged with scams during the

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<sup>226</sup> See, e.g., Kevin Hansen, Rebecca C. Morgan, Pamela Teaster & Randolph Thomas, *Empowering the Wicked: How Some Agents Use a Power of Attorney to Commit the Crime of Financial Exploitation*, 30 ELDER L.J. 1, 2–4 (2022) (discussing the use of powers of attorney as a vehicle for elder financial abuse); Nina A. Kohn & Catheryn Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 WASH. L. REV. 581, 616 n.128 (2016) (“Durable powers of attorney are extremely common among older adults, especially among the oldest of the old.”).

COVID-19 pandemic, a period in which commentators expected vulnerability to scams—particularly that of seniors’—would be significantly heightened.

These findings unsettle the assumptions of the widespread legal movement to treat scams that victimize seniors differently from other scams. Indeed, that movement appears to be largely (if not exclusively) based on the empirical premise that seniors are more susceptible to scams than other age groups. Although the empirical findings presented in this study do not necessitate the conclusion that these law reform efforts are misguided, as further research and normative theorizing is required, they offer important insights into our response to mitigating the problem of fraud in our society. Whatever path forward we choose, we must keep in mind that the shape of the problem of fraud may not be what we thought it was. Fraud may, in short, not be a problem concentrated among older adults. It might be a problem better thought of, and tackled, across the age spectrum.

## APPENDIX A: ONLINE SURVEY PROTOCOL

**Consent Information**

Thank you for your interest in participating in this study. This page outlines the purposes of the study and provides a description of your involvement and rights as a participant.

The purpose of this study is to better understand people's experiences with scams and fraud during the 2020 coronavirus pandemic.

This study will ask you to reflect on your experiences with scammers during the 2020 coronavirus pandemic. Some of the questions may be embarrassing or sensitive. You may end your participation in this study at any time. We do not believe there are any physical or non-physical risks associated with completing the survey. There are no direct benefits to you from your taking part in this research.

Your participation in this research is voluntary. You have the right to withdraw at any point during the study if you no longer wish to participate. Your decision whether or not to participate will not affect your current or future relations with Harvard University.

Your [Prolific/Mechanical Turk] unique ID will be collected by the research team to ensure that no one completes the survey twice. However, [Prolific/Mechanical Turk] IDs will be deleted from the data before it is analyzed, and no other personally identifying information will be collected. If your response is referenced in publications, it will be referred to with a pseudonym or a number.

After your [Prolific/Mechanical Turk] has been removed, your remaining survey responses may be used for future research studies or distributed to another investigator for future research studies without your additional informed consent.

If you would like to contact the Principal Investigator in the study to discuss this research, please e-mail:

Principal Investigator: James Toomey

Contact: [jtoomey@law.harvard.edu](mailto:jtoomey@law.harvard.edu)

Research Organization: Harvard University

If you have any questions or concerns regarding this study and would like to talk to someone other than the researcher, you are encouraged to contact the Harvard University Area Institutional Review Board at (617) 496-2847 or [cuhs@harvard.edu](mailto:cuhs@harvard.edu).

By continuing, you are agreeing to participate in this research study.

**Q1: Vaccine Scam:**

During the 2020 coronavirus pandemic, did anyone suggest to you that you could be **moved up in the vaccine line** if you entered personal informa-

tion, paid money, or clicked a link? You might have been contacted by **email, phone, or text**.

- Yes
- No
- I don't remember

**Q2: If Yes to Q1:**

Did you click the link, enter personal information, or pay any money?

- Yes
- No

**Q3: If Yes to Q2:**

Are you aware of any personal financial loss, identity theft, freezes on your account, or impacts on your credit score as a result of your following the instructions?

- Yes. Please elaborate: \_\_\_\_\_
- No

**Q4: If Yes to Q1:**

Were you aware that this was a scam?

- Yes, I had heard of this particular scam before being contacted.
- Yes. When I was contacted I determined for myself that it was a scam.
- Not at the time, but I found out later.
- No, and I did not know until taking this survey.

**Q5: If Yes to Q1:**

If you would like to tell us more about your experience with this scam, please do so here:

**Q6: Stimulus Scam:**

During the 2020 coronavirus pandemic, did anyone tell you that you were required to disclose additional personal information in order to **receive a federal stimulus check**? You might have been contacted by **phone, email, or text**.

- Yes
- No
- I don't remember

**Q7: If Yes to Q6:**

Did you disclose additional personal information in response to this email, text, or call?

- Yes
- No

**Q8: If Yes to Q7:**

Are you aware of any personal financial loss, identity theft, freezes on your accounts, or impacts on your credit score as a result of your following the instructions?

- Yes. Please elaborate:
- No

**Q9: If Yes to Q6:**

Were you aware that this was a scam?

- Yes, I had heard of this particular scam before being contacted.
- Yes. When I was contacted I determined for myself that it was a scam.
- Not at the time, but I found out later.
- No, and I did not know until taking this survey.

**Q10: If Yes to Q6:**

If you would like to tell us more about your experience with this scam, please do so here:

**Q11: Treatment Scam:**

During the 2020 coronavirus pandemic, did anyone tell you that you could receive a **treatment, test, or vaccine for COVID-19** in exchange for paying money, entering personal information, or clicking a link? You might have been contacted by **phone, email, or text**.

- Yes
- No
- I don't remember

**Q12: If Yes to Q11:**

Did you follow the link, enter personal information, or pay any money?

- Yes
- No

**Q13: If Yes to Q12:**

Are you aware of any personal financial loss, identity theft, freezes on your accounts, or impacts on your credit score as a result of your following the instructions?

- Yes. Please elaborate: \_\_\_\_\_
- No

**Q14: If Yes to Q11:**

Were you aware that this was a scam?

- Yes, I had heard of this particular scam before being contacted.
- Yes. When I was contacted I determined for myself that it was a scam.
- Not at the time, but I found out later.
- No, and I did not know until taking this survey.

**Q15: If Yes to Q11:**

If you would like to tell us more about your experience with this scam, please do so here:

**Q16: Generic Financial Scam:**

During the 2020 coronavirus pandemic, did someone tell you that your **bank or other financial account had been locked** and prompt you to enter personal information, pay money, or click a link? You might have been contacted by **phone, email, or text**.

- Yes
- No
- I don't remember

**Q17: If Yes to Q16:**

Did you follow the link, enter personal information, or pay any money?

- Yes
- No

**Q18: If Yes to Q17:**

Are you aware of any personal financial loss, identity theft, freezes on your accounts, or impacts on your credit score as a result of your following the instructions?

- Yes. Please elaborate: \_\_\_\_\_
- No

**Q19: If Yes to Q16:**

Were you aware that this was a scam?

- Yes, I had heard of this particular scam before being contacted.
- Yes. When I was contacted I determined for myself that it was a scam.
- Not at the time, but I found out later.
- No, and I did not know until taking this survey.



**Q20: If Yes to Q16:**

If you would like to tell us more about your experience with this scam, please do so here:

**Q21: Other Scams:**

During the 2020 coronavirus pandemic, were you solicited for **any** scam *other than* those asked about previously in this survey?

- Yes
- No
- I don't remember

**Q22: If Yes to Q22:**

Did you lose money, have freezes or locks put on your accounts, have your identity stolen, or have your credit score impacted by any fraud or scam *other than* those asked about previously in this survey?

- Yes. Please tell us about the fraud or scam and your experience with it:
- No

**Q23: Attention Filter**

In this experiment, you have been asked to make decisions after evaluating information. Most modern theories of decision making recognize the fact that decisions do not take place in a vacuum. Individual preferences and knowledge, along with situational variables can greatly impact the decision process. In order to facilitate our research on decision making we are interested in knowing certain factors about you, the decision maker. Specifically, we are interested in whether you actually take the time to read the directions; if not, then some of our questions will be ineffective. So, in order to demonstrate that you have read the instructions, please ignore the question below. Instead, please click only the "Magazines" button and then type 654 into the Other field at the bottom of the screen, and then click on the next button below to proceed to the next screen.

**From which of these sources have you received information in the past month?**

(Click all that apply and answer according to the directions above)

- Local newspaper
- National newspaper
- Local TV news
- Nightly network news
- Cable TV news
- Magazines
- Speaking with family/friends
- Radio newscast
- Internet web sites
- Other

**Q24:** How old are you?

**Q25:** Generally speaking, during the 2020 coronavirus pandemic, **how worried were you about contracting the virus?**

- Not at all worried
- Somewhat worried
- Very worried

**Q26:** Generally speaking, during the 2020 coronavirus pandemic, **how worried were you about meeting your financial needs?**

- Not at all worried
- Somewhat worried
- Very worried

**Q27:** Which best describes your **employment status** during the 2020 coronavirus pandemic?

- Employed full time
- Employed part time
- Unemployed looking for work
- Unemployed not looking for work
- Retired
- Student
- Disabled

**Q28:** During the 2020 coronavirus pandemic, approximately how large of an **unanticipated emergency expense** (such as a medical expense or car break-down) would you have been able to cover without having to take out a loan, carry an additional credit card debt from month to month, or rely on family and friends for help?

- I would not have been able to cover any unanticipated expenses on my own.
- Under \$500
- \$500 - \$5,000
- \$5,000 - \$10,000
- Above \$10,000

**Q29:** What **religion** do you associate yourself with?

- |                       |                     |
|-----------------------|---------------------|
| • Agnostic            | • Eastern Orthodox  |
| • Assemblies of God   | • Episcopalian      |
| • Atheist             | • Evangelical       |
| • Baptist             | • Hindu             |
| • Buddhist            | • Islamic           |
| • Catholic            | • Jewish            |
| • Christian Scientist | • Latter Day Saints |
| • Church of Christ    | • Lutheran          |

- Methodist
- Non-denominational Christian
- Pentecostal/Apostolic
- Presbyterian
- Seventh Day Adventist
- Sikh
- Southern Baptist
- Unitarian Universalist
- United Church of Christ
- Other Christian religion
- Other or don't have a religious affiliation

**Q30:** What is the **highest level of education** you have completed?

- Less than high school
- High school graduate
- Some college
- 2 year degree
- 4 year degree
- Professional degree
- Doctorate

**Q31:** Have you ever been diagnosed with a **mental or neurological illness**? (Select all that apply)

- Depression
- Anxiety
- Bipolar disorder
- Attention Deficit Hyperactivity Disorder (ADHD)
- Schizophrenia
- Obsessive Compulsive Disorder (OCD)
- Autism
- Post-Traumatic Stress Disorder (PTSD)
- Dementia
- Mild Cognitive Impairment (MCI)

**Q32:** Generally speaking, how do you usually think about your **political affiliation**?

- Strong Democrat
- Weak Democrat
- Independent Democrat
- Independent Independent
- Independent Republican
- Weak Republican
- Strong Republican
- Apolitical

**Q33:** Generally speaking, how worried are you about **losing money to financial fraud**?

- Not at all worried
- Somewhat worried
- Very worried

**Q34:** Please select **all states you've lived in** during the pandemic:

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

**Q35:** What is your **marital status**?

- Married
- Widowed
- Divorced
- Separated
- Never married

**Q36:** What is your **gender**?

- Male
- Female
- Non-binary/third gender
- Prefer not to say

**Q37:** What is your **household income**?

- Less than \$10,000
- \$10,000 - \$19,999
- \$20,000 - \$29,999
- \$30,000 - \$39,999
- \$40,000 - \$49,999
- \$50,000 - \$59,999
- \$60,000 - \$69,999
- \$70,000 - \$79,999
- \$80,000 - \$89,000
- \$90,000 - \$99,000
- \$100,000 - \$149,999
- More than \$150,000

**Q38:** What is your **approximate net worth** (the approximate total value of your assets, including cash, investments, and property minus the approximate total value of your debts, including student debt, credit card debt, and other debts)?

- My debts exceed the value of my assets and I do not have a plan for paying them off
- My debts exceed the value of my assets but I have a plan for paying them off
- \$0 - \$10,000
- \$10,000 - \$100,000
- \$100,000 - \$500,000
- More than \$500,000

**Q39:** Generally speaking, do you **agree that most people can be trusted**?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

**Q40:** Are you of Hispanic, Latino, or of Spanish origin?

- Yes
- No

**Q41:** How would you describe yourself?

- White
- Black or African American
- American Indian or Alaska Native
- Asian
- Native Hawaiian or Pacific Islander
- Other

## APPENDIX B: DEMOGRAPHIC STATISTICS

**Which best describes your employment status during the 2020 coronavirus pandemic?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population <sup>227</sup>
Employed full time	62	17%	248	64%	58% <sup>228</sup>
Employed part time	54	15%	65	17%	11% <sup>229</sup>
Unemployed looking for work	12	3%	41	11%	10% <sup>230</sup>
Unemployed not looking for work	9	2%	21	5%	4% <sup>231</sup>
Retired	224	62%	0	0%	22% <sup>232</sup>
Student	0	0%	8	2%	7% <sup>233</sup>
Disabled	3	1%	5	1%	0.3% <sup>234</sup>

<sup>227</sup> These data are drawn from nationally representative polling data where available.

<sup>228</sup> This figure is the approximate average monthly full-time employees in the United States from May 2020 to April 2021, divided by the American adult population. See *Monthly Number of Full-time Employees in the United States from May 2020 to May 2021*, STATISTA, <https://www.statista.com/statistics/192361/unadjusted-monthly-number-of-full-time-employees-in-the-us/> (last visited June 15, 2021) [https://perma.cc/PX3A-NC DK].

<sup>229</sup> See *Monthly Number of Part-time Employees in the United States from May 2020 to May 2021*, STATISTA, <https://www.statista.com/statistics/192342/unadjusted-monthly-number-of-part-time-employees-in-the-us/> (last visited June 15, 2021) [https://perma.cc/2N6N-WKJV].

<sup>230</sup> This figure is the approximate midpoint of the range of monthly unemployment rates during the pandemic. See GENE FALK, PAUL D. ROMERO, ISAAC A. NICCHITTA & EMMA C. NYHOF, CONG. RSCH. SERV., R46554 UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC 2 (2021), <https://crsreports.congress.gov/product/pdf/R/R46554> [https://perma.cc/E48L-34VN].

<sup>231</sup> See U.S. DEP'T OF LABOR, BUREAU OF LABOR STATS., THE EMPLOYMENT SITUATION—MAY 2021 2 (2021), [https://www.bls.gov/news.release/archives/empisit\\_06042021.pdf](https://www.bls.gov/news.release/archives/empisit_06042021.pdf) [https://perma.cc/U48R-A7TY].

<sup>232</sup> See *Number of Retired Workers Receiving Social Security in the United States from 2010 to 2020*, STATISTA, available at <https://www.statista.com/statistics/194295/number-of-us-retired-workers-who-receive-social-security/> (last visited June 15, 2021).

<sup>233</sup> See Melanie Hanson, *College Enrollment & Student Demographic Statistics*, EDUCATIONDATA.ORG (Mar. 1, 2021), <https://web.archive.org/web/20210301044123/https://educationdata.org/college-enrollment-statistics>.

<sup>234</sup> See *Fast Facts & Figures About Social Security, 2020*, SOC. SEC. OFF. RETIREMENT & DISABILITY POL., [https://www.ssa.gov/policy/docs/chartbooks/fast\\_facts/2020/fast\\_facts20.html](https://www.ssa.gov/policy/docs/chartbooks/fast_facts/2020/fast_facts20.html) [https://perma.cc/FPN8-ZXS V].

**What religion do you associate yourself with?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Agnostic	33	9%	101	26%	4.0% <sup>235</sup>
Assemblies of God	2	1%	2	1%	< 1.4%
Atheist	31	9%	59	15%	3%
Baptist	26	7%	29	7%	6%
Buddhist	9	2%	2	1%	< 1%
Catholic	62	17%	70	18%	20.8%
Christian Scientist	0	0%	3	1%	< 1%
Church of Christ	3	1%	2	1%	< 1%
Eastern Orthodox	0	0%	0	0%	< 1%
Episcopalian	14	4%	2	1%	1%
Evangelical	10	3%	5	1%	25%
Hindu	0	0%	2	1%	< 1%
Islamic	0	0%	4	1%	< 1%
Jewish	21	6%	7	2%	2%
Latter Day Saints	1	0%	3	1%	2%
Lutheran	15	4%	4	1%	2%
Methodist	19	5%	6	2%	4%
Non-denominational Christian	27	7%	20	5%	1%
Pentecostal/Apostolic	5	4%	8	2%	4%
Presbyterian	13	4%	6	2%	2%
Seventh Day Adventist	0	0%	0	0%	< 1%
Sikh	0	0%	0	0%	< 1%
Southern Baptist	1	0%	3	1%	5%
Unitarian Universalist	6	2%	0	0%	1%
United Church of Christ	0	0%	0	0%	< 1%
Other Christian Religion	17	5%	0	0%	< 1%
Other	58	16%	51	13%	16%

**What is the highest level of education you have completed?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Less than high school	3	1%	1	0%	13%
High school graduate	31	9%	27	7%	34%
Some college	71	20%	58	15%	22%
2 year degree	30	8%	28	7%	12%
4 year degree	115	32%	199	51%	25%
Professional degree	101	28%	69	18%	2%
Doctorate	13	4%	6	2%	2%

<sup>235</sup> These data are drawn from the Pew Research Center's Religious Landscape study. See *Religious Landscape Study*, PEW RESEARCH CENTER, <https://www.pewforum.org/religious-landscape-study/> (last visited June 15, 2021).

**Generally speaking, how do you usually think about your political affiliation?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Strong Democrat	132	36%	103	27%	29% <sup>236</sup>
Weak Democrat	28	8%	78	20%	
Independent Democrat	35	10%	58	15%	
Independent Independent	45	12%	57	7%	37%
Independent Republican	23	6%	27	7%	31%
Weak Republican	37	10%	27	7%	
Strong Republican	59	16%	31	8%	
Apolitical	5	1%	7	2%	

**Please select all states you've lived in during the pandemic:**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Alabama	8	2%	8	2%	1% <sup>237</sup>
Alaska	1	0%	0	0%	0%
Arizona	15	4%	8	2%	2%
Arkansas	1	0%	3	1%	1%
California	33	9%	40	10%	12%
Colorado	11	3%	6	2%	2%
Connecticut	4	1%	10	3%	1%
Delaware	2	1%	4	1%	0%
Florida	51	14%	26	7%	7%
Georgia	17	5%	17	4%	3%
Hawaii	2	1%	1	0%	0%
Idaho	2	1%	2	1%	1%
Illinois	13	4%	26	7%	4%
Indiana	7	2%	4	1%	2%
Iowa	4	1%	2	1%	1%
Kansas	2	1%	5	1%	1%
Kentucky	10	3%	4	1%	1%
Louisiana	2	1%	5	1%	1%
Maine	5	1%	4	1%	0%
Maryland	7	2%	12	3%	2%
Massachusetts	17	5%	15	4%	2%
Michigan	15	4%	15	4%	3%
Minnesota	5	1%	7	2%	2%
Mississippi	4	1%	2	1%	1%
Missouri	5	1%	8	2%	2%
Montana	3	1%	2	1%	0%
Nebraska	1	0%	3	1%	1%
Nevada	3	1%	5	1%	1%
New Hampshire	3	1%	3	1%	0%

<sup>236</sup> See *Party Affiliation*, GALLUP, <https://news.gallup.com/poll/15370/party-affiliation.aspx> [https://perma.cc/4HSB-LMXU].

<sup>237</sup> These figures represent the approximate percentage of the population living in each state as of 2019. See *State Population Totals and Components of Change: 2010-2019*, U.S. CENSUS BUREAU (Nov. 4, 2021), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> [https://perma.cc/TS8V-GL29].



**Please select all states you've lived in during the pandemic:**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
New Jersey	11	3%	18	5%	3%
New Mexico	4	1%	2	1%	1%
New York	26	7%	45	12%	6%
North Carolina	11	3%	10	3%	3%
North Dakota	1	0%	0	0%	0%
Ohio	17	5%	15	4%	4%
Oklahoma	4	1%	4	1%	1%
Oregon	7	2%	7	2%	1%
Pennsylvania	19	5%	19	5%	4%
Rhode Island	3	1%	2	1%	0%
South Carolina	7	2%	6	2%	2%
South Dakota	3	1%	0	0%	0%
Tennessee	12	3%	7	2%	2%
Texas	22	6%	33	9%	9%
Utah	3	1%	2	1%	1%
Vermont	3	1%	0	0%	0%
Virginia	12	3%	22	6%	3%
West Virginia	1	0%	5	1%	1%
Wyoming	0	0%	0	0%	0%

**What is your marital status?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Married	195	54%	172	44%	48% <sup>238</sup>
Widowed	40	11%	2	1%	6%
Divorced	79	22%	4	1%	14%
Separated	4	1%	3	1%	
Never married	46	13%	207	53%	28%

**What is your gender?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Male	160	44%	217	56%	49.2% <sup>239</sup>
Female	204	56%	168	43%	50.8%
Non-binary	0	0%	3	1%	0.5%
Prefer not to say	0	0%	0	0%	

<sup>238</sup> These data are drawn from the Pew Research Center. See D'VERA COHN, JEFFREY S. PASSEL, WENDY WANG & GRETCHEN LIVINGSTON, BARELY HALF OF U.S. ADULTS ARE MARRIED—A RECORD LOW, PEW RSCH. CTR. (Dec. 14, 2011), <https://www.pewresearch.org/social-trends/2011/12/14/barely-half-of-u-s-adults-are-married-a-record-low/> [https://perma.cc/Z37M-HSVZ].

<sup>239</sup> These data are drawn from the Census. See LINDSAY M. HOWDEN & JULIE A. MEYER, AGE AND SEX COMPOSITION: 2010 (2011), <https://www.census.gov/content/dam/Census/library/publications/2011/dec/c2010br-03.pdf> [https://perma.cc/P4X6-GYXH].

**What is your household income?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Less than \$10,000	3	1%	18	5%	5% <sup>240</sup>
\$10,000 - \$19,999	45	12%	23	6%	8%
\$20,000 - \$29,999	39	11%	35	9%	8%
\$30,000 - \$39,999	53	15%	47	12%	8%
\$40,000 - \$49,999	39	11%	42	11%	8%
\$50,000 - \$59,999	49	13%	39	10%	6%
\$60,000 - \$69,999	27	7%	23	6%	6%
\$70,000 - \$79,999	22	6%	41	11%	6%
\$80,000 - \$89,999	23	6%	24	6%	5%
\$90,000 - \$99,999	19	5%	23	6%	5%
\$100,000 - \$149,999	28	8%	46	12%	14%
More than \$150,000	17	5%	27	7%	19%

**Are you of Hispanic, Latino, or of Spanish origin?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
Yes	7	2%	38	10%	18.9% <sup>241</sup>
No	357	98%	350	90%	81.5%

**How would you describe yourself?**

Answer	Older Group (number)	Older Group (percent)	Younger Group (number)	Younger Group (percent)	Approximate percent American population
White	337	93%	286	74%	76% <sup>242</sup>
Black	19	5%	55	14%	13%
American Indian	0	0%	4	1%	1%
Asian	6	2%	44	11%	6%
Native Hawaiian	0	0%	1	0%	0%
Other	3	1%	10	3%	3%

<sup>240</sup> These data are drawn from the Census. See HINC-01. SELECTED CHARACTERISTICS OF HOUSEHOLDS BY TOTAL MONEY INCOME IN 2019 (2020), <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-hinc/hinc-01.2019.html#list-tab-LRMTDB7B8OFF61CFB9> [<https://perma.cc/JM9T-XDS2>].

<sup>241</sup> These data are drawn from the Census. See *QuickFacts*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/RHI725219> [<https://perma.cc/9C9A-8X7H>].

<sup>242</sup> These data are drawn from the Census. See *QuickFacts*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/PST045219> [<https://perma.cc/4XBG-FYGZ>].