S(OLD): Multilevel Marketing Organizations and Elder Financial Exploitation

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Financial abuse can occur at any stage in life. But when participation in a multilevel marketing company (MLM) intersects with the potential for elder financial abuse, there is a higher danger for loss. This Note seeks to begin exploration of the intersectional requirements of senior MLM victims. The Note first considers current age-neutral legal approaches to MLMs, including federal regulatory actions through the Federal Trade Commission and the Securities and Exchange Commission, as well as state direct and indirect MLM regulation. The Note then identifies how these age neutral MLM protections could fail senior citizens, and considers how Adult Protective Service statutes could rectify these shortcomings. The Note concludes by recommending a continuing education plan for law enforcement, lawyers, and Adult Protective Services case workers. The goal of this plan is to increase awareness of the multifarious legal solutions available to MLM-involved senior citizens, and to spur further legal research on this underserved group.

I. Introduction

Susan Senior Seller, a fifty-five-year-old grandmother of two, is now estranged from her social circle and carrying $2,500 dollars of credit card debt.[[2]](#footnote-3) Olga Older Orderer, the seventy-eight-year-old matriarch of Susan’s church,[[3]](#footnote-4) mourns as a long-time friendship[[4]](#footnote-5) with Susan gives way to a seemingly endless stream of business requests.[[5]](#footnote-6) Positive intentions on both sides are dashed, all due to Susan’s involvement with a multilevel marketing company, commonly referred to as an MLM.

Susan and Olga’s story is a fictionalized but statistically accuratecomposite of many often-reported MLM experiences.[[6]](#footnote-7) Their story begins much like any of the other 41.6 million US-based MLM participants.[[7]](#footnote-8) Susan’s company sold her on a potential dual income stream.[[8]](#footnote-9) She could earn money by selling products directly, or she could recruit other salespeople and share in their profits.[[9]](#footnote-10) This possibility of dual incomes was particularly appealing for Susan, given her past educational and financial difficulties.[[10]](#footnote-11) Decades ago, Susan dropped out of college before earning a degree.[[11]](#footnote-12) She had already experienced bankruptcy once,[[12]](#footnote-13) so she was eager to pursue a business opportunity that appeared to have low startup barriers[[13]](#footnote-14) and a strong potential for success.[[14]](#footnote-15)

Olga quickly became one of her preferred customers.[[15]](#footnote-16) At first, Olga enjoyed supporting Susan’s small business.[[16]](#footnote-17) But over time Olga felt increasingly pressured to purchase more product.[[17]](#footnote-18) At Susan’s urging, Olga even signed a contract to become a seller, despite having no intention of distributing product.[[18]](#footnote-19) Regretfully, Olga eventually broke off relations with her friend[[19]](#footnote-20) when the pressure to buy and sell became too overwhelming.[[20]](#footnote-21)

But this amalgamated story of Susan and Olga differs from the standard depiction of MLM experience in one important respect.[[21]](#footnote-22) This story focuses on the experiences of *older* MLM participants. Much has been written about the social, financial, and legal implications of MLM involvement, either without addressing any age-based concerns,[[22]](#footnote-23) or with a specific research focus on younger age groups.[[23]](#footnote-24) There has been limited specific academic focus on legal solutions for financial losses amongst the sixty-five-year-old-plus MLM market.[[24]](#footnote-25) Specifically, this author could not identify any law journal articles that address the needs and concerns of senior citizens involved with or hurt by MLMs.[[25]](#footnote-26)

This dearth of research is perhaps in part due to the average age distribution of MLM sellers and purchasers: seventy-seven percent of all MLM participants in the United States are under fifty-four years old,[[26]](#footnote-27) and seventy-seven percent of all worldwide MLM participants are below the age of fifty-five.[[27]](#footnote-28) Younger individuals are more likely to be targeted by MLM or other business opportunity schemes,[[28]](#footnote-29) and are more likely to report losing money in these schemes.[[29]](#footnote-30) Yet that still leaves twelve million American MLM participants over fifty-four,[[30]](#footnote-31) and twenty-nine million worldwide participants over fifty-five.[[31]](#footnote-32) And for every two individuals under age fifty-nine reporting a loss due to business opportunity fraud, one individual *over* age fifty-five reports a loss.[[32]](#footnote-33)

Part II of this Note will provide general background information on MLM structures and how older Americans interact with these companies. Part III will analyze two parallel existing legislative approaches that could potentially address financial harms to MLM-involved senior citizens. The first set of legal solutions—federal regulation of MLMs primarily through the Securities and Exchange Commission (SEC) and the Federal Trade Commission (FTC) along with state MLM legal limitations—addresses the harms caused by MLMs without addressing age-specific financial exploitation considerations. The second set of legal solutions—elder financial exploitation statutes and their implementation through adult protective service agencies—addresses the nuances of age-related financial exploitation without directly considering the nuances of financial harms from MLM involvement. This analysis also considers reasons for why the legal academic literature has not generally provided perspective on how these MLM regulations and elder financial exploitation statutes interact.

Ultimately, part IV of this Note recommends a practical, if prosaic, method to incentivize more stakeholder interest in and awareness of the interplay between MLMs and elder financial exploitation. Specifically, this Note provides guidelines for potential stakeholder training on MLM/elder financial abuse interactions. This Note intentionally does *not* suggest some form of a model statute that combines MLM regulations with elder financial exploitation statutes as an acknowledgment that law should not be created without stakeholder and victim input.

II. Background:

Older Americans are, on average, a rich target for fraudsters and legitimate businesses alike.[[33]](#footnote-34) Senior citizens hold great economic power and drive a significant amount of purchasing power within the United States.[[34]](#footnote-35) Households in which the oldest family member is between sixty-five and seventy-five have an average wealth of 1.2 million dollars.[[35]](#footnote-36) Senior citizens control over seventy percent of the nation’s wealth.[[36]](#footnote-37) Individuals between sixty-five and seventy-five years old are disproportionate drivers of physical goods purchases. [[37]](#footnote-38) People over fifty years old are responsible for forty-nine percent of all consumer packaged goods sales in the United States.[[38]](#footnote-39)

This aggregate wealth can translate into a higher payout for individuals attempting to gain funds through fraudulent or deceptive practices.[[39]](#footnote-40) When defrauded, individuals older than sixty have a higher median loss than those under sixty.[[40]](#footnote-41) As a group, senior citizens lose an estimated thirty-six billion dollars every year to scams, fraud, and exploitation.[[41]](#footnote-42) Most pertinently, over half of that thirty-six-billion-dollar loss comes from deceptive but technically legal sales tactics,[[42]](#footnote-43) leaving senior citizens unable to utilize traditional anti-fraud mechanisms to recoup losses.[[43]](#footnote-44)

When they are able to utilize traditional, age-neutral anti-fraud statutes to report egregious, fraudulent, unfair, or deceptive MLM behavior, senior citizens face the same reporting hurdles as the rest of the American population.[[44]](#footnote-45) These general reporting hurdles for usurious MLM behavior have been widely scrutinized.[[45]](#footnote-46) The hurdles include length and cost of legal action for regulatory bodies,[[46]](#footnote-47) apathy amongst victims due to relatively small fiscal losses,[[47]](#footnote-48) self-blame amongst victims,[[48]](#footnote-49) embarrassment about involving family in a failed business venture,[[49]](#footnote-50) fear of self-incrimination by MLM victim-participants,[[50]](#footnote-51) and unclear directions about where to report.[[51]](#footnote-52) Because most regulatory action requires aggregation of multiple reports, there is often significant lead time between reporting and restitution.[[52]](#footnote-53) Individual direct restitution may involve retention of and payment to a lawyer[[53]](#footnote-54) and legal action against the most proximate salesperson, not the company as a whole.[[54]](#footnote-55)

The effects of these barriers to MLM redress have not been analyzed in reference to senior citizens,[[55]](#footnote-56) but amongst all monitored consumer fraud groups, victims of pyramid-like financial schemes are the least likely to report to the authorities.[[56]](#footnote-57) In addition, age-cognizant legal solutions for fraudulent or usurious MLM behavior have not been suggested.[[57]](#footnote-58) There is an overall age-neutral reluctance by MLM participants of all ages to avail themselves of legal methods of redress, driven in part because of the structure of MLMs, [[58]](#footnote-59) described below.

A. What is a multilevel marketing company?

Any study of MLM impact is inherently connected to the structure of MLMs themselves. This section is designed to address the general structure of MLMs, without reference to the age of participants. A multilevel marketing company is defined by the combination of two separate revenue streams: 1) direct sales of a branded product from salespeople to consumers and 2) commissions from additional salespeople they recruit to sell that same branded product.[[59]](#footnote-60) This essential two-component nature of MLMs is key to understanding how legal MLMs function.

1. Direct Sales

The direct sales component of the MLM revenue stream consists of A) sales to B) consumers in a C) non-retail environment.[[60]](#footnote-61) These non-retail spaces can include sales completed over social media, in-person at home or other non-commercial gathering places, and over the phone,[[61]](#footnote-62) and can include sales of products in a variety of product categories.[[62]](#footnote-63) Wellness merchandise, including weight loss products, diet plans, and nutrient supplements, represents the largest direct sales product category (thirty-seven percent of all sales) for United States-based MLM companies.[[63]](#footnote-64) But MLM products span many categories, from sales of candles to investment advice.[[64]](#footnote-65) MLM advocacy groups emphasize this direct sales component of the business by referring to salespeople as “direct sellers,[[65]](#footnote-66)“ “independent distributors,[[66]](#footnote-67)“ and “independent business owners.[[67]](#footnote-68)“ MLMs often require that these direct sellers perform as retailers by purchasing an initial and/or continuing product stock.[[68]](#footnote-69) The initial investment in this stock can often range between $100 and $500.[[69]](#footnote-70)

2. Downline or Recruited Sales

MLMs combine this direct sales component with an “upline” and a “downline” participant recruitment structure.[[70]](#footnote-71) “Upline” participants receive a percentage of the sales from any participants that they recruit into selling product.[[71]](#footnote-72) Upline participants also receive a sales percentage from any participants recruited by these “downline” recruits.[[72]](#footnote-73) This structure incentivizes recruitment of new salespeople into a participant’s downline,[[73]](#footnote-74) and also gives rise to the visual resemblance between pyramid schemes and MLMs.[[74]](#footnote-75) A productive and large downline is essential for MLM distributor profitability,[[75]](#footnote-76) but this downline is a statistical impossibility at a certain size: if each upline participant recruited just six downline participants, the populace of the US would be exhausted in eleven layers.[[76]](#footnote-77)

3. Participants versus Customers

MLM salespeople often consume or use their initial stock themselves.[[77]](#footnote-78) This internal consumption of product has led researchers to recast all individuals involved in MLMs as “MLM participants,” regardless of their role as a seller, a seller/consumer, or a consumer.[[78]](#footnote-79) This all-encompassing phrasing also avoids the potentially-obfuscating[[79]](#footnote-80) industry-designated delineation between “preferred” consumers, who cannot sell the products they purchase but have signed a preferred customer agreement to receive discounts, and “standard customers,” who do not receive any discounts.[[80]](#footnote-81)

B. How are elder Americans represented in the MLM market?

1. Older MLM Participant Demographics

Older MLM participants make up a sizable minority of American MLM participants.[[81]](#footnote-82) Eighteen percent of current MLM participants are between fifty-five and sixty-five, and ten percent of MLM participants are older than sixty-five.[[82]](#footnote-83) Like the majority of MLM participants, older MLM sellers are more likely to be in a long-term cohabitation with a partner and to have experienced prior financial distress.[[83]](#footnote-84) Older MLM participants are also likely to have started their experiences with MLM participation at a younger age, with the average first-time participation occurring at around age twenty-nine.[[84]](#footnote-85)

Older American MLM participants also may have experienced the post-WWII shift from male-dominated door-to-door direct sales to a direct-sales environment in which female participants were more common than men.[[85]](#footnote-86) Currently, all MLM participants are more likely to be female than male, including those in the fifty-five and older age bracket.[[86]](#footnote-87) This gender imbalance has been subject to much research, and is attributed to a number of factors, including direct predatory sexism on the part of major MLMs,[[87]](#footnote-88) historical precedents,[[88]](#footnote-89) compatibility with the limited time available to primary child caregivers,[[89]](#footnote-90) and compatibility with limited ability to work away from home.[[90]](#footnote-91) Many of these compatibilities are also seized upon by MLMs looking to target older Americans, addressed in the next section.

2. MLMs Targeted Towards Older Americans

MLMs targeting senior citizens advertise health restoration,[[91]](#footnote-92) the potential to find a supportive community of other sellers,[[92]](#footnote-93) and the potential to earn additional retirement income.[[93]](#footnote-94) Advertising materials for MLMs address age through purported testimonials such as “I gave away my walker after using (MLM’s drink mix)”[[94]](#footnote-95) or claims that the product can “revers[e] the aging process in cells, skin, muscles, tissues, and organs, and significantly repair…age-related damage to the body’s organs, tissues, joints and muscles.”[[95]](#footnote-96) One marketing brochure for an MLM that markets anti-aging cream and a memory-boosting drink contains this testimonial: “I’m 57 and I feel like I’m 30 again. I love the company…I love that we are family.”[[96]](#footnote-97) Commentators have noted concerns with these anti-aging claims.[[97]](#footnote-98) Wellness-related products can be unregulated and potentially harmful, particularly amongst seniors.[[98]](#footnote-99) Any financial losses that occur because of MLM involvement are particularly onerous, as retirees have little time to recoup losses.[[99]](#footnote-100) Psychological ramifications from the loss of financial hope can be severe[[100]](#footnote-101) and can stem from MLM-participation-created divisions within elder communities.[[101]](#footnote-102)

3. MLM Participant Losses Across All Age Groups Create Generalizable Assumptions of Elderly Losses

MLMs are reluctant to publish internal sales and retention numbers.[[102]](#footnote-103) But available financial statistics are not positive.[[103]](#footnote-104) In one study, ninety-nine percent of MLM participants across all age groups lost money.[[104]](#footnote-105) As put colorfully by a few separate commentators, this statistic makes it more likely that an individual will win the lottery than gain a large profit through MLM participation.[[105]](#footnote-106) Less dismally, the AARP found that forty-nine percent of MLM participants lose money and twenty-seven percent break even, while also noting that half of all MLM participants quit within the first year.[[106]](#footnote-107) For one large-MLM company, the average income for all participants was $700 before expenses.[[107]](#footnote-108)

Publicly available age-stratified breakdowns of average financial loss due to MLM participation is limited.[[108]](#footnote-109) An author of one 2018 study on MLM loss demographics notes, “[t]o date, there exists no empirical or theoretical literature about the type of individuals who join a[n] MLM company. This is perhaps not surprising, as data about who participates, their motivations, their income, and their expenses are difficult to obtain. Many of the firms involved are privately held and are reluctant to share data on their customers.”[[109]](#footnote-110) The available data suggest that seniors experience financial loss at roughly the same rate as all other age groups,[[110]](#footnote-111) despite the fact that the current data cannot entirely eliminate the possibility that overall losses amongst the entire population are masking gains amongst senior citizens.[[111]](#footnote-112) However, given general financial fraud trends, such an error is unlikely.[[112]](#footnote-113) Senior citizens are more likely to be targeted for fraudulent business in general than younger adults,[[113]](#footnote-114) due to both their higher net wealth and perceptions about the ease of targeting older individuals.[[114]](#footnote-115) This vulnerability is even openly acknowledged by younger MLM participants, with one online MLM promoter stating that, “[a]lthough most [seniors] will not succeed in the business aspect of MLM, they may become good customers for many years as they are willing to spend money for health products.”[[115]](#footnote-116)

II. Analysis

Section A of this analysis considers legislative attempts to address the particulars of MLM harms *without* regard to age. Section B will address how these current age-neutral protections either work or do not work for senior citizens. Section C describes current legislative solutions that address age-related issues involved in financial fraud through elder financial exploitation statutes and adult protective services agencies, and sections D and E address why there is limited evidence that these statutes and agencies are utilized for MLM-related claims.

A. What are the current approaches to MLM regulation and what are their general limitations?

1. Overview

MLMs have been subject to a variety of regulatory actions at the federal and state levels.[[116]](#footnote-117) The federal protections are provided primarily through the Federal Trade Commission (FTC) or the Securities and Exchange Commission (SEC).[[117]](#footnote-118) In addition, all fifty states regulate MLMs or have MLM-specific statutory protections.[[118]](#footnote-119) These state-level protections include MLM company registration requirements, disclosure requirements, consumer protection statutes, anti-illegal-lottery statutes, and anti-fraud schemes.[[119]](#footnote-120) While MLM participant financial loss is a factor in many of these federal and state protections, specific MLMs that produce net losses for the majority of their participants are frequently deemed legal within current law and regulation, as long as their practices are not deceptive or unfair.[[120]](#footnote-121) Coldly put, it is not illegal to lose money in a legitimate business regardless of the age of the harmed investor.[[121]](#footnote-122)

2. Differentiating MLMs from Pyramid Schemes as Unfair or Deceptive Businesses under Section 5(a) of the FTC Act

Most federal regulatory protection against financial loss from MLM involvement is dedicated to classifying MLMs as either illegal pyramid schemes or legal MLMs.[[122]](#footnote-123) These anti-pyramid scheme regulatory actions are usually brought by the FTC under the unfair and deceptive business practice provisions within Section 5(a) of the Federal Trade Commission Act (FTC Act),[[123]](#footnote-124) and, to a lesser extent, the anti-price fixing provisions of the Clayt on Act. [[124]](#footnote-125) The FTC has had some past legal success in proving that MLMs were pyramid schemes because they had engaged in illegal “unfair and deceptive business practices.”[[125]](#footnote-126) Recently, the FTC has been able to elicit settlements through similar actions brought against MLMs.[[126]](#footnote-127) Some MLM participants have directly benefitted from these settlements. In one recent settlement against the large nutritional supplement MLM Herbalife, 350,000 consumers received “partial” refunds for losses as long as they directly paid the MLM $1,000 or more and made little to no money in direct sales.[[127]](#footnote-128) Most defrauded individuals received between $100 and $500 from the Herbalife settlement.[[128]](#footnote-129)

Unfortunately for MLM participants attempting to discern between legitimate and illegitimate businesses, finding a uniform definition for a pyramid scheme has proven to be “a Bermuda triangle” for legal and layperson stakeholders alike.[[129]](#footnote-130) Even individuals within the FTC struggle with the delineation.[[130]](#footnote-131) In 2015, an FTC spokesperson was asked by a reporter to distinguish between illegal pyramid schemes and legal MLMs. He answered, “I have nothing for you…we’re not going to answer it.”[[131]](#footnote-132) Despite this lack of a definitive dividing line, the chairwoman of the FTC has summarized factors from caselaw that can help determine if a company is engaging in pyramid-like unfair and deceptive business practices.[[132]](#footnote-133) The factors for a legal, non-pyramid structure are as follows: (1) sales must be to real customers; (2) sales must be profitable and verifiable; (3) program targets or thresholds should not be satisfied by product purchases alone; and (4) compensation must be based on genuine retail sales.[[133]](#footnote-134) However, even this simplified definition is complicated by the FTC’s acknowledgment that retail customers can include MLM participants themselves.[[134]](#footnote-135)

An FTC finding of “unfair and deceptive practice(s)” is difficult, time-consuming, and costly.[[135]](#footnote-136) Under Section 5(a), the FTC is required to engage in a fact-intensive investigation into whether there was an affirmative misrepresentation of potential earnings by the MLM.[[136]](#footnote-137) Due to the cost and governmental resources required to bring legal action against an MLM under Section 5(a), many reports are dismissed despite widespread financial loss by a particular MLM’s participants.[[137]](#footnote-138) By the point that a fraudulent MLM has aggregated enough consumer complaints to warrant FTC action, many individuals have already incurred great losses.[[138]](#footnote-139) This aggregation time for FTC Section 5(a) complaints can be substantial. In the words of one commenter, “(i)f you want timely action [on an MLM complaint], don’t hold your breath waiting for the Federal Trade Commission to act….”[[139]](#footnote-140) In one recent example, a Freedom of Information Act (FOIA) request shows that the FTC received consumer complaints against the MLM Herbalife as far back as December 2008,[[140]](#footnote-141) with a settlement occurring eight years later in 2016.[[141]](#footnote-142) This is not an atypical timeline for FTC settlements against MLMs.[[142]](#footnote-143)

3. Differentiating MLMs and Pyramid Schemes as Fraudulent Securities Through the Securities Exchange Commission (SEC)

Another federal agency, the SEC, may also have the ability at times to bring enforcement actions against MLMs.[[143]](#footnote-144) The SEC acts against MLMs under the Securities Act of 1933 and the Securities Exchange Act of 1934.[[144]](#footnote-145) In order to fall under the regulatory scope of the SEC, an MLM must first be classified as a security.[[145]](#footnote-146) This classification is most commonly achieved through finding that an MLM’s participatory interest constitutes an investment contract.[[146]](#footnote-147) Investment contracts are securities and are subject to SEC regulatory purview.[[147]](#footnote-148)

Neither the Securities Act of 1933 nor the Exchange Act of 1934 define the term investment contract.[[148]](#footnote-149) In lieu of a statutory definition, the Supreme Court constructed a test for classification of investment contracts in the 1947 case *S.E.C. v. W.J. Howey Co.*[[149]](#footnote-150)According to the *Howey* test, an investment contract is a “contract, transaction or scheme whereby a person [1] invests his money in a [2] common enterprise and is [3] led to expect profits solely from the efforts of the promoter or a third party.”[[150]](#footnote-151) This three-branch definition remains the functional delineation of an investment contract.[[151]](#footnote-152)

In creating the *Howey* definition, the Court sought flexibility, noting that the definition should be adapted to “meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.”[[152]](#footnote-153) This flexibility has been particularly visible in lower court interpretations of the third prong, which requires that profits “solely” derive from the efforts of a third party in order to be classified as a security.[[153]](#footnote-154) Courts now generally interpret sole derivation of profits from third-party membersin a non-literal manner.[[154]](#footnote-155) In *SEC v. Glenn W. Turner Enterprises, Inc*., the Ninth Circuit relaxed the definition of “solely,” asking instead “whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.”[[155]](#footnote-156) This relaxed definition of sole efforts is the current predominant interpretation.[[156]](#footnote-157)

Even under this relaxed interpretation, classification as a security can be a lengthy process and can be avoided by MLMs if they defeat one or more of the three prongs in the *Howey* investment contract definition. Prong one, the investment of money, can be negated by having a small or nonexistent startup fee.[[157]](#footnote-158) Prong two, the common enterprise, can be avoided by never offering bonuses or reducing payouts based on the company’s performance as a whole.[[158]](#footnote-159) And prong three can be negated by avoiding advertisement of ‘canned’ business opportunities (usually, language such as “you just need to sign up, the company will provide all of the leads”), ensuring that participants are involved in their own business’s success.[[159]](#footnote-160) Most MLMs can successfully avoid this classification and are, therefore, outside of the purview of the SEC.[[160]](#footnote-161) This avoidance of securities classification is a specific goal of law firms focused on providing legal advice to MLMs.[[161]](#footnote-162)

If an MLM were to make it through this investment contract test, it would be classified as a security, and would be required to meet several regulatory requirements.[[162]](#footnote-163) These requirements include filing a registration agreement with the SEC,[[163]](#footnote-164) and utilizing brokers for all investors soliciting other investments.[[164]](#footnote-165) While almost always impossible for a traditional MLM to meet, these requirements are also almost never prosecuted by the SEC, as they would lead to action against the individual MLM participants instead of the company itself.[[165]](#footnote-166)

Instead, any SEC litigation against MLMs is usually brought under section 10(b) and Rule 10b-5 of the 1934 Securities Exchange Act.[[166]](#footnote-167) These sections prohibit untrue statements of material facts connected with the sale of a security.[[167]](#footnote-168) A violation of these federal securities laws can result in asset freezing, asset disgorgement, monetary fines, and imprisonment.[[168]](#footnote-169) But to reach these resolutions, the SEC must undergo a fact- and time-intensive evaluation of the material facts and truthfulness elements, similar to the FTC’s affirmative misrepresentation analysis.[[169]](#footnote-170) This leads to critiques similar to the FTC’s regulation; namely, that enforcement takes too much time, and that there are significant gaps in enforcement due to limited agency resources.[[170]](#footnote-171)

4. Other Federal Enforcement Mechanisms

Individual MLMs may be subject to criminal liability under federal mail fraud,[[171]](#footnote-172) wire fraud,[[172]](#footnote-173) and money laundering[[173]](#footnote-174) statutes. Despite allowing potential additional pathways to levy fines, these regulatory pathways still suffer from the same entry barrier of significant agency time investment to breach the threshold issue of misrepresentation and are frequently only used to increase punishment in egregious cases. They are rarely used.[[174]](#footnote-175)

5. State Regulations, Overall

Federal regulations play an important symbolic role in dissuading usurious MLMs. The majority of MLM enforcement activity, however, occurs at the state level.[[175]](#footnote-176) All states regulate MLMs in some manner.[[176]](#footnote-177) These laws and regulations typically fall into one of four categories: pyramid statutes/endless chain schemes statutes, state lottery statutes, sales referral laws, or MLM-specific statutes.[[177]](#footnote-178)

6. State Anti-Lottery Regulations

Most states have broadly worded anti-lottery statutes designed to limit illegal gambling.[[178]](#footnote-179) These broad lottery statutes typically combine three different elements.[[179]](#footnote-180) They require advertisement of a prize, assignment of the prize through chance, and consideration for the opportunity to receive the prize.[[180]](#footnote-181) Challenges to potential pyramid schemes have occasionally been brought under these broad state anti-lottery statutes.[[181]](#footnote-182) These suits have been met with limited success,[[182]](#footnote-183) frequently due to difficulty in proving the chance element,[[183]](#footnote-184) and have been widely supplanted by state anti-pyramid scheme statutes.[[184]](#footnote-185)

7. State Anti-Pyramid Statutes

Similar to federal regulation, the primary method of state regulation of MLMs occurs through statutes that address pyramid schemes.[[185]](#footnote-186) Difficulty in proving the chance element of anti-lottery statutes led states to create specific anti-pyramid statutes, in which the term pyramid scheme is defined, and enterprises that fit this definition are either banned outright, or banned as illegal lotteries.[[186]](#footnote-187) Florida’s anti-pyramid statute provides an example of categorization of an illegal pyramid-type sales scheme as a lottery:[[187]](#footnote-188)

A “pyramid sales scheme,” which is any sales or marketing plan or operation whereby a person pays a consideration of any kind, or makes an investment of any kind, in excess of $100 and acquires the opportunity to receive a benefit or thing of value which is not primarily contingent on the volume or quantity of goods, services, or other property sold in bona fide sales to consumers, and which is related to the inducement of additional persons, by himself or herself or others, regardless of number, to participate in the same sales or marketing plan or operation, is hereby declared to be a lottery.[[188]](#footnote-189)

In most state-level cases brought under anti-pyramid statutes, the success of a regulatory action is wholly dependent on the fact- and time-intensive determination of fit within a particular state’s definition of pyramid scheme.[[189]](#footnote-190) While some of the factors considered at the state level when determining if a MLM is a pyramid scheme are more responsive to consumer losses, these pyramid-specific state statutes still suffer from a lack of predictability, and generally do not impose business sanctions solely because most participants lose money.[[190]](#footnote-191) Enforcement of these provisions is difficult, as MLMs can simply offer opportunities in a state with less restrictive laws.[[191]](#footnote-192) And, even if an action is able to be brought, any multi-state issues can become unmanageable by state agencies, again increasing timelines.[[192]](#footnote-193)

8. State Anti-MLM Statutes

Eight states or territories—Georgia, Louisiana, Maryland, Massachusetts, Puerto Rico, Wyoming, New Mexico, and South Dakota—have statutes that directly address multi-level marketing companies by name.[[193]](#footnote-194) Typically, these state statutes define an MLM as an entity that “sells, distributes, or supplies, for valuable consideration, goods or services, through independent agents or distributors at different levels and in which participants may recruit other participants in which commissions or bonuses are paid as a result of the sale of the goods or services or the recruitment of additional participants.”[[194]](#footnote-195) In addition to suggesting the possibility that MLM companies may run afoul of the other types of legal limitations mentioned in this section, these states also use the MLM delineation to impose specific limitations on MLMs.[[195]](#footnote-196) These limitations can include statutorily-required product buybacks, expanded rights to cancel contracts for distribution, limits on stated earning amounts, and requirements for sales percentages to end users.[[196]](#footnote-197) These state anti-MLM statutes are limited by the small number of states that have enacted the statues, and by conflation of participants and end users.[[197]](#footnote-198)

9. Overall Advantages of Current State and Federal Protections

These federal and state regulatory environments offer numerous pathways to address usurious MLMs.[[198]](#footnote-199) The legal frameworks addressed above have resulted in nuanced public governmental warnings about the dangers of certain MLMs,[[199]](#footnote-200) shutdown orders for prominent MLMs[[200]](#footnote-201) and refunds to consumers.[[201]](#footnote-202) Individuals involved in the leadership of MLMs have occasionally experienced consequences such as executive bans from future MLM participation,[[202]](#footnote-203) individual fines,[[203]](#footnote-204) and arrests.[[204]](#footnote-205) Least quantifiably but perhaps most importantly, the attention-grabbing settlement amounts elicited from MLMs under some of these statutes may have a dissuading impact on other MLMs.[[205]](#footnote-206)

10. Overall Limitations of Current State and Federal Protections

The current regulatory frameworks also contain numerous limitations for individuals of all age groups. Despite published government guidance on spotting illegal pyramid schemes,[[206]](#footnote-207) confusing and convoluted laws make it difficult for average potential participants to differentiate between these illegal pyramid schemes and legal MLMs.[[207]](#footnote-208) This confusing regulatory environment also makes it difficult to evaluate the risk of loss from a ‘legitimate’ MLM venture.[[208]](#footnote-209) Some lawyers may be reluctant to support individuals in cases alleging fraudulent business practices due to the time and expense involved in these cases.[[209]](#footnote-210) Both state and federal actions against MLMs require significant agency resources, as they often require finding that the MLM is functioning as a pyramid scheme.[[210]](#footnote-211) These state and federal actions also take a significant amount of time,[[211]](#footnote-212) particularly when considering the timeline from cost incurred, to regulatory action commencement, to resolution, and then to disbursement of restitution.[[212]](#footnote-213) Allocation of refunds from settlements have been slow[[213]](#footnote-214) and disproportionate to losses incurred.[[214]](#footnote-215) Occasionally, refunds have been disbursed to individuals that have not been harmed.[[215]](#footnote-216) And, even when MLMs structure themselves according to the guidance of these multifarious regulations, their internal compliance rules might not actually produce compliance, resulting in further harm to the consumer.[[216]](#footnote-217)

B. Do these current state and federal protections work for senior citizens?

1. Overall Limitations of Current State and Federal Protections for Senior Citizens (Or, What We Know)

In addition to the hurdles described above, senior citizens likely face unique challenges within these current legal protections. While by no means universal, cognitive differences amongst senior citizens can disproportionately impact complex financial decisions,[[217]](#footnote-218) reducing the likelihood that guidance on discerning legitimate investment opportunities will be appropriately utilized.[[218]](#footnote-219) Most of the regulatory mechanisms addressed above require that the defrauded individual make a report to an appropriate agency,[[219]](#footnote-220) but senior citizens are less likely to report potential financial fraud for numerous reasons, including shame and a desire to maintain agency.[[220]](#footnote-221) Retirees and elder senior citizens face financial timeline limitations different than other citizens,[[221]](#footnote-222) making fact-intensive but lengthy regulatory work likely less useful to individual elderly victims.

2. The Structure of Current Legal Protections Reduces Legal Research into Senior-Specific MLM Protections (Or, What We Don’t Know)

While there is an overall “paucity of legal research in the area of MLMs”[[222]](#footnote-223) for all age groups, these pitfalls in protections are still-more dramatically under-researched for protections as they impact senior citizens.[[223]](#footnote-224) This dearth of legal journal and law review work on MLMs for senior citizens—separate from general legal research into MLMs[[224]](#footnote-225) and separate from research into general elder financial exploitation[[225]](#footnote-226)—likely results from the structure of current legal protections against MLMs.

Two structures of current MLM legal protections support this dearth of MLM-focused legal research for senior citizens. 1) By having a complaint-based legal protections structure, MLMs are disproportionately shielded from inquiry into damages on senior citizens[[226]](#footnote-227) simply because crimes of fraud by senior citizens are vastly underreported,[[227]](#footnote-228) thus reducing the likelihood that an agency will receive a sufficient number of reports to justify inquiry. And 2) most current protections require a threshold classification of an MLM into a different legal entity,[[228]](#footnote-229) thus inherently increasing the length and complexity of a legal case against an MLM.

For example, as outlined above in Section B, the FTC and various state law enforcement agencies require classification of an MLM as a pyramid scheme to begin regulatory action,[[229]](#footnote-230) state anti-lottery statutes require classification as an illegal lottery before regulation,[[230]](#footnote-231) and the SEC requires classification of an MLM as a security to begin regulatory action.[[231]](#footnote-232) Once the regulating agency has 1) received a sufficient number of reports, and 2) determined that the MLM could likely meet these threshold classifications into a pyramid scheme/an investment fraud/an illegal lottery, the regulating agency moves against that company as a pyramid, an unregulated security, or an illegal lottery, not as an MLM.[[232]](#footnote-233) No matter how fiscally dangerous it is to invest in a mainstream MLM, MLMs are not illegal until they have met reporting and classification thresholds to justify agency action. This aggregation of reports classification of MLM structure takes time, and often leads agencies into settlements instead of court cases.[[233]](#footnote-234)

3. The Structure of Current Legal Protections Likely Impacts Senior Citizens Disproportionately (Or, What We Guess)

This ‘report, aggregate, classify, act’ pattern of current MLM legal protections contains many pitfalls for the average consumer,[[234]](#footnote-235) but likely disproportionately impacts senior citizens. All reports of potential fraud represent only a small fraction of all existing fraud.[[235]](#footnote-236) However, this underreporting trend is exacerbated when the defrauded individuals are older.[[236]](#footnote-237) One state-level report suggested that this underreporting of all elder fraud could be as low as one report out of every forty-four instances.[[237]](#footnote-238) And this financial exploitation is occurring at high rates.[[238]](#footnote-239) In a single year, between three and six percent of senior citizens experience financial exploitation or fraud.[[239]](#footnote-240) The reasons for senior-specific underreporting are somewhat under-explored,[[240]](#footnote-241) but likely include similar factors to overall underreporting of elder abuse.[[241]](#footnote-242) According to the National Center on Elder Abuse, these general underreporting explanations include “an older person’s fear of retaliation by the offender, reluctance to disclose the incident because of shame or embarrassment, concern they will be institutionalized, dependency on the offender, and an inability to report because of physical limitations or cognitive impairments.”[[242]](#footnote-243) When basing legal action against usurious MLMs on aggregation of reports, it is therefore likely that senior victims are underrepresented due to their underreporting of financial fraud.

This elderly fraud underreporting trend is complicated and likely exacerbated in the MLM sphere by the complexities of family/friend financial exploitation. Many MLM participants become involved through a friend or a family member[[243]](#footnote-244) and MLM participants often target family members and friends to make sales.[[244]](#footnote-245) At the same time, financial abuse by family members is likely dramatically underreported.[[245]](#footnote-246) While pressured MLM sales tactics are known to deleteriously impact bonds with family members,[[246]](#footnote-247) senior citizens are often more reliant on those same family members, leading to lower reporting of family member perpetrators.[[247]](#footnote-248) This underreporting of financial fraud based specifically on family ties is also understudied,[[248]](#footnote-249) but the fact that at least one study identified 3.5% of seniors as having experienced family-perpetrator financial fraud over the past year[[249]](#footnote-250) is worrying for a structure that relies on reporting to initiate cases.

In addition to this underreporting, the timeframe for regulatory action against MLMs disproportionately affects senior citizens. Put bluntly, senior citizens have shorter expected lifespans because they have lived for a longer time.[[250]](#footnote-251) The life expectancy of an individual at age sixty-five is nineteen years, and at age seventy-five is twelve years.[[251]](#footnote-252) These numbers can be *reduced* by experiencing financial fraud; financial fraud is associated with decreased survival in senior citizens.[[252]](#footnote-253) Additionally, senior citizens are also more likely to be on a fixed income, reducing the ability to adjust to unrecovered financial losses over a long time.[[253]](#footnote-254) While there are no fixed resources identifying MLM-related case lengths, anecdotal summarizations (“if you want timely action (on a MLM complaint), don’t hold your breath for the FTC to act”[[254]](#footnote-255)) and individual reviews of case lengths suggest that the process often takes years to decades from reporting to restitution.[[255]](#footnote-256)

While these disproportionate impacts on seniors likely exist within the MLM context, legislatures have broadly acknowledged that financial manipulation targeted at the elderly requires a different legislative response than other financial crimes.[[256]](#footnote-257) This general legislative response to potentially illegal financial mistreatment includes use of both elder financial exploitation statutes and Adult Protective Services programs,[[257]](#footnote-258) both of which are addressed in more detail in Section C below.

C. What current legal frameworks address generalized financial harm to senior citizens, without a specific emphasis on MLMs?

1. Overview of Adult Protective Acts

Adult protective acts (also known as “adult protection laws” or “protective services to adults”[[258]](#footnote-259)) are the primary legal method by which states address all forms of elder abuse. These acts include civil and criminal elder financial exploitation statutes.[[259]](#footnote-260) In general, these laws define financial exploitation of elders,[[260]](#footnote-261) authorize law enforcement to investigate financial abuse of elders,[[261]](#footnote-262) authorize the establishment of adult protective services agencies to address financial abuse,[[262]](#footnote-263) and provide for different or enhanced punishments for abuse.[[263]](#footnote-264) However, there is significant variation between different statutes in legal approaches to this common goal of protecting senior citizens from exploitation,[[264]](#footnote-265) and on who can access these services.[[265]](#footnote-266) Civil and criminal financial exploitation statutes exist in all fifty states.[[266]](#footnote-267) Criminal adult protective statutes that explicitly separate *elder* financial abuse from theft laws of general application exist in thirty-four states and at the federal level.[[267]](#footnote-268) These differences lead to variability in the definitions, protections, applicability, and breadth of these financial exploitation laws.[[268]](#footnote-269)

2. Differences in the Vulnerable Adult Threshold Age and Impairment in Elder Financial Exploitation Statutes

All state elder financial exploitation definitions under their respective adult protective acts include a threshold minimum victim age, a minimum victim level of ability impairment, or both.[[269]](#footnote-270) The minimum victim ages vary between sixty[[270]](#footnote-271) and sixty-five;[[271]](#footnote-272) the definitions of ability have considerable irregularity[[272]](#footnote-273) and do not lend themselves to easy classification.[[273]](#footnote-274) The variation in these threshold age or ability requirements represents broader legislative debate about the synonymity (or lack thereof) between age and financial vulnerability.[[274]](#footnote-275) This multifaceted debate about age-based vulnerability is rooted in agism,[[275]](#footnote-276) evolving psychological and physiological science,[[276]](#footnote-277) ease of statutory implementation,[[277]](#footnote-278) the desire to provide services for a group frequently targeted for exploitation,[[278]](#footnote-279) and other practical and philosophical concerns. While it is entirely beyond the scope of this Note to address these issues, the existence of this deep legislative debate helps explain the breadth of difference in threshold ages and definitions of threshold vulnerability between states.[[279]](#footnote-280)

Outside of the threshold vulnerability debate, one of the most common areas of disagreement between state statutes exists in the breadth of activities that should be included in the definition of “financial abuse” or “financial exploitation.”[[280]](#footnote-281) Given that financial exploitation laws address public issues, the state’s *parens patriae* power does not exist if the behavior to be regulated does not fit into one of these statutory definitions of mistreatment.[[281]](#footnote-282) A widely-cited[[282]](#footnote-283) “basic” definition—that financial abuse is the “improper use of a person’s assets”—is representative of an inclusively-phrased financial exploitation statute.[[283]](#footnote-284) Some federal statutes share this breadth. [[284]](#footnote-285) The Older Americans Act, which funds a variety of social services for senior citizens, provides an example of a broadly-written definition:[[285]](#footnote-286)

(T)he fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.[[286]](#footnote-287)

Here, this inclusive language means that the abuser does not need to have a particular relationship with the abused (e.g., the abuser does not need to be a fiduciary, a family member, or a nurse), that the use of the elder’s finances does not have to lead to the user’s personal gain if this use causes deprivation of funds to the elder, and that the abuser does not have to have explicitly broken a different law (“improper…unauthorized”) to have committed elder financial abuse.[[287]](#footnote-288) Contrast the Older Americans Act’s definition of elder abuse with Florida’s definition of civil elder financial exploitation:

“Exploitation” means a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.[[288]](#footnote-289)

Under Florida’s law, the abuser must “stand in a position of trust.”[[289]](#footnote-290) The abuser must knowingly “by deceit or intimidation” intend to deprive the senior citizen of their financial assets[[290]](#footnote-291) or, alternately, know that the vulnerable adult is incapable of rendering consent while knowingly intending to deprive them of assets.[[291]](#footnote-292)

3. Definitions of Exploitation Can Include Both Permissive and Strict Components

It is not possible to categorize each individual state and federal criminal and civil financial exploitation statute from most strict to most permissive, because these statutes may be conservative in one area but permissive in others.[[292]](#footnote-293) Carolyn Dessin’s widely cited work on the financial abuse of elders divides these occasionally counterintuitive definitional variations into five separate categories.[[293]](#footnote-294)

1. Conduct Constituting the Abusive Act. The most permissive phrasing is a neutral phrasing such as “use”[[294]](#footnote-295) of the elder’s assets. More limited constructions include “without informed consent.”[[295]](#footnote-296) Some statutes limit the activity to “illegal activity.”[[296]](#footnote-297)

2. Benefit to Another.[[297]](#footnote-298) While most states mention benefit to another as a factor in determining abuse,[[298]](#footnote-299) some expressly require that this benefit occur.[[299]](#footnote-300)

3. Lack of Consent.[[300]](#footnote-301) Like Texas, some states explicitly require a lack of consent. Others are more permissive, explicitly allowing a finding of elder financial abuse even when the elder consents to the action.[[301]](#footnote-302)

*4. \*Object of Exploitation.* [[302]](#footnote-303) *This fourth category, Object of Exploitation, focuses on whether there is any inclusion of physical abuse along with the financial abuse. It is less useful for this Note’s purpose and is therefore omitted here.*[[303]](#footnote-304)

5. Relationship of Abuser to Victim. Permissive states do not require an abuser to be in a position of power over the abused.[[304]](#footnote-305) More restrictive states require that an abuser have a particular relationship with the abused.[[305]](#footnote-306)

These categories make it possible to subdivide and characterize different portions of a statute’s definition of financial exploitation. For example, Texas’s criminal financial exploitation statute requires that prosecution of financial exploitation include a finding of lack of informed consent from the victim,[[306]](#footnote-307) yet the Texas statute also allows the abuser to have any “ongoing relationship” with the abused elder.[[307]](#footnote-308) Dessin’s categories would likely describe Texas’s criminal financial exploitation as strict within the third category, Lack of Consent, because the Texas statute requires fully informed consent. But Dessin’s categories might characterize Texas’s statute as having a middling level of strictness for the fifth category, Relationship of Abuser to Victim, as the statute does require some connection to the victim but does not strictly define this relationship.

3. Structure of Financial Exploitation Statute Implementation

While all states have elder financial exploitation statutes that involve either civil or criminal consequences, there are significant differences in the process through which elder financial exploitation is treated from state to state.[[308]](#footnote-309) Some states only use a finding of elder financial exploitation to increase the severity of sentencing *after* a finding of theft under a general criminal statute.[[309]](#footnote-310) In these sentence-enhancing states, one of the violations listed above (e.g., a securities violation, a finding of general fraud) is therefore the threshold issue instead of general elder financial abuse.[[310]](#footnote-311) Other states treat financial exploitation as a crime that is completely separate from general theft statutes.[[311]](#footnote-312) In these cases, a permissive or broadly-phrased elder financial exploitation statute will permit more findings of criminal or civil action.[[312]](#footnote-313)

4. Adult Protective Service Agencies, Generally

As part of these state-level adult protective acts, all states have established adult protective services (APS) agencies. These APS agencies are subject to different state APS regulations,[[313]](#footnote-315) including different criteria on who qualifies for APS services.[[314]](#footnote-316) However, all APS agencies share the same core service: they receive initial reports of alleged abuse, investigate whether there is reason to believe that a statute-defined abusive event has occurred, and determine if the agency can respond to the abuse through investigation or services.[[315]](#footnote-317) This determination of addressability generally involves evaluating whether the client meets the agency’s threshold requirements for APS involvement (including pertinent age or vulnerability requirements), evaluating whether the report should be accepted for investigation based on the allegations in the report and the pertinent elder financial exploitation law in the state, and evaluating if services can be provided based on the report.[[316]](#footnote-318)

5. Differences Between Adult Protective Service Agency Investigations and Prosecutorial Investigations

APS agency investigations and law enforcement/prosecutorial investigations into elder financial exploitation are both governed by the same state-level adult protective acts.[[317]](#footnote-319) However, there are a few significant differences between the burdens of proof[[318]](#footnote-320) and explicit goals of either organization.[[319]](#footnote-321) While an APS agency investigation and a law enforcement investigation into the same incident could occur simultaneously, they have different burdens of proof.[[320]](#footnote-322) APS agencies only need to meet a preponderance of the evidence standard to substantiate the claim and provide services.[[321]](#footnote-323) For the same violation of the same financial exploitation statute, a prosecutor’s office is held to the dramatically higher ‘beyond a reasonable doubt’ burden of proof.[[322]](#footnote-324)

This difference is rational—incorrect provision of services does not involve as much risk as potentially jailing an innocent individual. But it also reflects a broader design difference between APS agencies and their prosecutorial counterparts. APS agencies are designed to approach financial exploitation investigations with the goal of protecting victim safety instead of a primary emphasis on perpetrator punishment.[[323]](#footnote-325) All APS agencies have individuals who are familiar with their state’s elder financial exploitation statutes,[[324]](#footnote-326) and many have considered region-specific cultural, language, religious, and gender concerns surrounding determinations of financial abuse.[[325]](#footnote-327)

6. Additional Services Provided By Adult Protective Service Agencies, Absent Substantiation of Financial Exploitation Claims

All APS agencies have the ability to offer differing levels of assistance outside of the judicial system, including counseling services, transportation, assistance when attending court hearings, and assistance with facilitating communications with law enforcement.[[326]](#footnote-328) Most APS agencies have the ability to provide emergency food or shelter prior to meeting the preponderance of the evidence standard.[[327]](#footnote-329) And even if the report is not substantiated, most APS agencies can assist senior citizens in finding resources or other methods to address unmet needs,[[328]](#footnote-330) including simply having a conversation about the senior’s financial health.[[329]](#footnote-331) In every state, victims contacting APS can decline APS services unless the victim is deemed legally incompetent by a qualified professional.[[330]](#footnote-332)

D. Why are elder financial exploitation *statutes* generally unused for MLM-related claims?

1. Scope of the Available Evidence Precludes Conclusive Determination That Elder Financial Exploitation Statutes Have Never Been Used For MLM-Related Claims

Elder financial exploitation statutes represent an exceptionally broad array of different state and federal laws enforced and utilized by a broad span of law enforcement agencies, private attorneys, adult protective services agencies, and federal investigative divisions.[[331]](#footnote-333) This Note does not intend to suggest that the actions of this large legal arena can be exhaustively analyzed. However, with this acknowledgment of large scope in mind, this author could find no academic literature suggesting that elder financial exploitation statutes have been used to directly and successfully prosecute usurious MLM behavior.[[332]](#footnote-334)

2. General Reasons for Lack of Evidence of Elder Financial Exploitation Statutes Used in MLM-Related Claims

While perhaps superficially surprising, this lack of evidence of MLM prosecution under elder financial exploitation statutes is understandable for numerous reasons. As already noted, all forms of elder abuse are underreported,[[333]](#footnote-335) and elder financial exploitation is underreported at even higher rates than general elder abuse.[[334]](#footnote-336) This lack of reporting is compounded by a lack of criminal prosecution and civil litigation overall. Criminal prosecution and civil litigation of all forms of elder abuse are rare,[[335]](#footnote-337) and criminal prosecution of elder financial exploitation is rarer still,[[336]](#footnote-338) due to reluctance on the part of elderly victims to testify,[[337]](#footnote-339) limited numbers of professionals capable of successfully addressing elder financial abuse at trial,[[338]](#footnote-340) and allocation of prosecutorial resources to other forms of elder abuse.[[339]](#footnote-341) Civil litigation is limited by a dearth of available assistance for attorney retention,[[340]](#footnote-342) uncertainty about coverage of attorney fees,[[341]](#footnote-343) and concerns about the ability of MLM companies to pay damages.[[342]](#footnote-344) Prosecution of elder financial abuse is hampered by the continuing (incorrect) belief amongst law enforcement that elder financial abuse is an exclusively civil issue; paradoxically, civil litigation is likely limited by perceptions of the criminality of these offenses.[[343]](#footnote-345) For these reasons and others, elder financial exploitation is potentially amongst the least prosecuted and litigated of all crimes.[[344]](#footnote-346)

3. Justifications for Not Utilizing Elder Financial Exploitation Statutes for MLM-Related Claims

Anecdotally, these limitations also impact prosecutorial and private attorney willingness to address specific *types* of elder financial exploitation cases,[[345]](#footnote-347) and these less-preferred types of cases share much in common with MLM-involved losses. Prosecutors, law enforcement, legal aid groups, and private attorneys may be reluctant to pursue cases in which there are superficial (but perhaps inaccurate) indications that the senior *consented* to the behavior in question.[[346]](#footnote-348) Additionally, there may be less interest in potential elder financial abuse cases which do not clearly meet the exact wording of the applicable statute.[[347]](#footnote-349)

Any prosecution or litigation of a potential MLM-based case under elder financial exploitation statutes in most states would likely trigger both the statutory fit and senior consent concerns. MLM losses are not easily recognized as fitting neatly within both criminal and civil elder financial exploitation statutes. No state elder-specific financial exploitation statute explicitly addresses MLMs, [[348]](#footnote-350) and most fold pyramid scheme prosecution under general labels of “illegal or improper use of assets”[[349]](#footnote-351) and “knowingly and willfully obtain[ing] assets by deception[.][[350]](#footnote-352) Additionally, many MLM participants likely behave in manners that indicate consent to transactions. Purchasers often repeat purchases over long periods of time,[[351]](#footnote-353) and MLM participants affirmatively recruit others to join the MLM.[[352]](#footnote-354) These combined factors lead to an environment in which civil and criminal litigation of MLM-related claims has not been utilized in a manner that leaves an accessible record. However, given the scale of the issue, it follows logically that there may be creative prosecutors or civil attorneys that have attempted, or are attempting, to utilize these statutes in MLM-related cases. This Note does not intend to dismiss their efforts.

E. Why are Adult Protective Services *agencies* generally unused for MLM-related claims?

1. General Reasons for Lack of Evidence of Adult Protective Service Agencies Addressing MLM-Related Claims

As with the elder financial exploitation statutes—and with the same caveats about the scale of this type of claim—there is limited legal academic evidence that APS agencies are addressing usurious MLM behavior for senior citizens.[[353]](#footnote-355) Much of the reasoning for this lack of legal commentary on or evidence of APS agency action on MLMs is the same as the logic addressed in Section D above. APS agency investigations and law enforcement/prosecutorial investigations are both governed by the same state-level adult protective acts,[[354]](#footnote-356) with the same issues of unclear consent for MLM participants and unclear fit of MLM losses within financial exploitation statutes. Underreporting issues for all forms of elder abuse is still an issue,[[355]](#footnote-357) and the same additional higher-than-average underreporting of elder financial exploitation underreporting exists for APS involvement.[[356]](#footnote-358) As with criminal and civil cases, these broader reporting issues reduce evidence of APS agency interaction with MLM-involved senior financial exploitation situations.

2. Data Source Limitations on Evidence of Adult Protective Service Agencies Addressing MLM-Related Claims

Like criminal prosecutions and civil litigations of senior financial exploitation violations, evidence of APS agency involvement in MLM-involved financial exploitation cases is also reduced by reluctance on the part of elderly victims to testify[[357]](#footnote-359) and insufficient agency resources.[[358]](#footnote-360) However, evidence of APS agency action in MLM-involved cases is hampered further by a lack of *any* pathway to identify whether substantiated financial exploitation reports involved MLMs. When an APS agency substantiates a report of elder financial abuse, the details of that substantiation are not made public.[[359]](#footnote-361) Some general statistical information about APS agency reports is made available through the National Adult Maltreatment Reporting System, but this data does not contain enough detail to subdivide by particulars of individual financial exploitation reports.[[360]](#footnote-362)

IV. Recommendation

The legal world is awash with acknowledgment of the dangers of elder financial exploitation. All fifty states and the federal government have acknowledged the potential for financial abuse of vulnerable adults through statutory protections, establishment and funding of adult protective service agencies, prosecution of offenders, and a deep body of academic literature on the subject.[[361]](#footnote-363) Simultaneously, there is widespread academic[[362]](#footnote-364) and cultural acknowledgment[[363]](#footnote-365) of the dangers of usurious MLMs. Numerous federal agencies have attempted to regulate these businesses.[[364]](#footnote-366) All fifty states address MLMs in some manner, including five states that explicitly address the potentially deleterious effects of MLMs through statutes.[[365]](#footnote-367)

Yet there has been surprisingly limited acknowledgment of the overlap between these two recognized issues, despite sizable senior participation in MLMs. Cognizant of the dangers of overreaching in underdeveloped areas of the law, this Note suggests engaging a substantial number of stakeholders in the legal, police and social service fields to increase awareness of this overlap and concomitant potential pitfalls. Specifically, this Note suggests engaging lawyers*,* law enforcement and APS caseworkers by developing and implementing a widely available continuing professional education course on elder financial exploitation and MLMs.

These stakeholders are chosen because they are represented in most of the currently existing legal recourses for MLM-harmed senior citizens. APS caseworkers provide both investigatory and resource assistance through lower-burden substantiation of elder financial abuse claims and through extrajudicial provision of resources. [[366]](#footnote-368) Law enforcement officers address financial fraud in all forms, have experience in applicable state and local laws, and can provide logistical and physical support for carrying out protections. Lawyers are passim in this field. They can help interpret esoteric phrasing (see the previous sentence), and help evaluate the reasonableness of prosecutions, settlements, or civil actions against MLMs based on deeply variable state law.

In conjunction with the issues noted throughout this Note, this course should:

*1. Briefly address the structure of MLMs.* Addressing the pressures of MLM structures may allow for stakeholders to avoid determining that a ‘seller’ must be consenting to involvement in the MLM simply by virtue of having a superficially supervisory position.

*2. Briefly address generalized financial losses of all MLM participants*. If stakeholders are more aware of generalized MLM losses,[[367]](#footnote-369) they may be more likely to investigate signs of significant MLM involvement.

*3. Briefly address the existence of senior citizen MLM participants, their demographics, and their assumed financial losses.* Older MLM participants may not be as numerous[[368]](#footnote-370) as younger participants, but they have, on average, significantly more wealth to lose.[[369]](#footnote-371) Increasing awareness of this risk may increase willingness of stakeholders to act in potentially exploitative situations.

*4. Describe the drawbacks and advantages to current federal and state MLM protections for senior citizens and provide links to the relevant reporting websites.* Though not appropriate in all circumstances for all senior citizens, stakeholders should be aware of these reporting options because they require relatively little effort, and do not require the stakeholder to substantiate a claim, move forward with criminal prosecution, or decide to accept a case. Conversely, familiarity with the drawbacks of these sites for senior clients may help encourage stakeholders to pursue these more onerous—but potentially more age-appropriate—actions.

*5. Include the state-specific language of the appropriate financial exploitation statutes, as well as any relevant statutes of general application.* While this information may appear to be unnecessarily cumulative for stakeholders in these positions, it should be included to remove the limiting effect of job-specific summarizations of the law. All three stakeholder professions addressed here make use of decision trees,[[370]](#footnote-372) standard forms,[[371]](#footnote-373) and procedure manuals.[[372]](#footnote-374) While useful from an efficiency standpoint, these summaries may preclude novel application of these statutes, particularly in states with permissively written statutes. The tacit contextual suggestion is that these permissive statutes might permit movement against a usurious MLM under permissive state financial exploitation statutes, but given the novelty of this application, it should not be explicitly advised.

*6. Explicitly list the numerous known reasons for underreporting of elder financial exploitation and address how each reason may interact with the structure of senior citizen MLM participation.* Stakeholders in these roles will likely be intimately aware of general elder financial exploitation underreporting causes, including elder dependence on perpetrator family members, fear of losing independence, embarrassment over financial mistakes, or cognitive impairment. [[373]](#footnote-375) MLM trends—such as the high incidence of family/friend MLM sales[[374]](#footnote-376) or explicit advertisement of MLMs as panacea for cognitive decline, physical ailments, and financial struggles[[375]](#footnote-377)—align closely with these known reporting barriers. Hopefully, explicit connection of these structural similarities will increase stakeholder awareness that usurious MLM involvement might indeed need to be addressed by their respective organizations.

*7. Close by acknowledging the overall legality of MLMs and acknowledging reasons why an individual of any age may choose to participate in a MLM despite the likelihood of financial loss.* Reintroducing examples of the reasons for fully-informed MLM participation—e.g., the desire to support a family member’s business, or the desire to participate in a social selling group—is a requirement for reinforcing the independence of individuals of all ages.

All three selected categories of stakeholders are required to participate in continuing education of some form. Most state bar associations require lawyers to take Continuing Legal Education (CLE) courses.[[376]](#footnote-378) All members of law enforcement are required to take continuing education classes.[[377]](#footnote-379) While there is no federal requirement for APS continuing education,[[378]](#footnote-380) many APS caseworkers are required to take continuing education courses by their employers[[379]](#footnote-381) and most states explicitly require continuing education for supervisory APS positions.[[380]](#footnote-382) While a superficially limited intervention, a certified and widely disseminated course in MLM financial awareness could potentially surreptitiously invigorate interest in this topic amongst millions of individuals that are deeply involved in the issues at hand.

IV. Conclusion

As the US populace becomes less financially stable,[[381]](#footnote-383) any undue fiscal losses reasonably become increasingly interesting to the legal community. And as the US populace gets older,[[382]](#footnote-384) concerns about the welfare and autonomy of elderly people sensibly attract legal support. Monetary losses of older Americans due to usurious MLMs sit at the confluence of these two expanding areas of law, yet this intersection has experienced remarkably little legal academic attention. Robust and multifarious protections exist for both discrete topics, but significant further research is required to begin to understand how these laws could potentially interplay. By incentivizing the engagement of stakeholders in simultaneous consideration of MLM losses and elder financial exploitation statutes, meaningful first steps towards building this literature can be achieved.

1. Christopher Opie, Notes Editor 2022–2023, The Elder Law Journal; J.D. 2023,
University of Illinois at Urbana‐Champaign; B.A 2019, English, B.A. 2015, Bates
College. [↑](#footnote-ref-2)
2. . Marguerite DeLiema et al*.*,AARP Study of Multilevel Marketing: Profiling Participants and Their Experiences in Direct Sales, 9-10 (2018), [hereinafter DeLiema et al.] (noting 27% of MLM participants broke even, 47.0% lost money; the average loss was less than $5000). [↑](#footnote-ref-3)
3. *. See* Kate Shellnutt, *The Divine Rise of Multilevel Marketing,* Christianity Today (Nov. 23, 2015), https://www.christianitytoday.com/ct/2015/december /divine-rise-of-multilevel-marketing-christians-mlm.html; *see also* Laura Richards, *How MLMs are Hurting Female Friendships*, The Washington Post (Jan. 21, 2019), https://www.washingtonpost.com/outlook/2019/01/21/how-mlms-are-hurting-female-friendships/ (“My church’s member directory, for instance, explicitly states that it is for church and ministry use only, but I’ve been added to at least one MLM mailing list despite that warning.”). [↑](#footnote-ref-4)
4. *. See* Heidi Liu, *The Behavioral Economics of Multilevel Marketing*, 14 Hastings Bus. L.J. 109, 133 n. 76 (“However, it appears that excessive MLM activity by consultants may cause friendships to actually weaken, as people become irritated by solicitations.”); *see also,* Brittany Laryea, *Survey Vast Majority of Multilevel Marketing Participants Earn Less Than 70 Cents an Hour*, Magnify Money by LendingTree (Sept. 17, 2018), https://www.magnifymoney.com/blog/news/survey-vast-majority-multilevel-marketing-participants-earn-less-70-cents-hour/ (explaining that 42% of MLM consultants who received money from friends or family fought with that family member or friend, 30.9% of those individuals lost a friendship, and 35.2% lied to a family member or friend). [↑](#footnote-ref-5)
5. . Jill Campbell, *The Truth Behind Multilevel Marketing: Is It Worth It?,* The Mabelhood (May 31, 2019), https://mabelslabels.com/blog/2019/05/31/the-truth-behind-multi-level-marketing-compelling-or-corrupt-2/ (describing how MLM involvement can change friendships) (*“*Now when we see each other, she just wants to ‘support me’ as she says it. She never asks about my regular life. It’s all business now and I miss the friendship.”). [↑](#footnote-ref-6)
6. *. See* notes 1-15 for support of the various characteristics in Susan Seller/Olga Orderer example. [↑](#footnote-ref-7)
7. *.* Direct Selling Ass’n, Direct Selling in the United States: 2020 Industry Overview, https://www.dsa.org/docs/default-source/research/dsa-industry-overview-factsheetd601b69c41746fcd88eaff000002c0f4.pdf?Status=Temp&sfvrsn=6e75d9a5\_2%27 (last visited Sept. 8, 2022) [hereinafter 2020Industry Overview] (documenting that 49% of sellers are between the ages of thirty-six to fifty-four4). [↑](#footnote-ref-8)
8. . Multi-Level Marketing Businesses and Pyramid Schemes, Fed. Trade Comm’n (May 2021) [hereinafter *FTC 2021 Report*], https://www.consumer.ftc.
gov/articles/multi-level-marketing-businesses-and-pyramid-schemes.. [↑](#footnote-ref-9)
9. *. Id.* [↑](#footnote-ref-10)
10. 8. DeLiema et. al. *supra* note 1, at 5. [↑](#footnote-ref-11)
11. . *Id*. at 5 (participating MLM sellers were likely to have completed some college but not gained a bachelor’s degree or higher). [↑](#footnote-ref-12)
12. *. Id.* at 12 (“Significantly more MLM participants have declared bankruptcy at some point in their lifetimes compared to non-participants.”). [↑](#footnote-ref-13)
13. *. See 2020 Consumer Attitudes & Entrepreneurship Study,* Direct Selling Ass’n [hereinafter *2020 Consumer Attitudes*], dsa.org/docs/default-source/research/dsa-ipsos-2020-consumerattitudesinfographic227.pdf?sfvrsn=68ddfa5\_2%27 (last visited Sept. 8, 2022) (stating that direct selling organizations had an average $82 dollar startup cost). [↑](#footnote-ref-14)
14. *. See* Jon M. Taylor, The Case (for and) Against Multi-level Marketing (2011) at 4. (“[L]oss rates are extraordinary – over 99% for all of the MLMs for which I have been able to obtain relevant data.”). *But see 2020 Industry Overview*, *supra* note 6 (“[D]irect sellers averaged $5208 dollars in retail sales in 2020.”). [↑](#footnote-ref-15)
15. . DeLiema et. al*.*, *supra* note 1, at 6-7. (“[M]any MLM companies advise direct sellers to market to their friends and relatives first as potential customers and prospective recruits.”). [↑](#footnote-ref-16)
16. *. See 2020 Consumer Attitudes*, *supra* note 12 (“Consumers find the following most appealing about the direct selling channel: supporting small business (69%).”). [↑](#footnote-ref-17)
17. *. See* DeLiema et. al *supra* note 1 (citing the number one reason for leaving an MLM organization: “I found it awkward pitching my friends and relatives.”); *see also* Richards, *supra* note 2 (“The pressure to sell and recruit has led to underhanded tactics that strain, fracture and sometimes end, friendships and family relationships.”). [↑](#footnote-ref-18)
18. *. See* 2020 Industry Overview, *supra* note 6 (“Discount buyers are eligible to purchase, sell, &sponsor, but are product lovers only.”). [↑](#footnote-ref-19)
19. *. See, e.g.*,Richards, *supra* note 2. [↑](#footnote-ref-20)
20. *. Id.* [↑](#footnote-ref-21)
21. . *Id.* [↑](#footnote-ref-22)
22. *. See, e.g.*,Taylor, *supra* note 13, at 2; Liu*,* *supra* note 3, at 113–14; Jessica Sweeb, *Health Multi-Level Marketing: Robbing People of Their Money and Their Health*, 27 Annals Health L. Advance Directive 223, 223 (2018). *But see* Adam Epstein, *Multi-Level Marketing and Its Brethren: The Legal and Regulatory Environment in the Down Economy*, 12 Atl. L.J. 91, 92 (2010) (“Published legal research in the area of MLM appears to be somewhat lacking, however.”). [↑](#footnote-ref-23)
23. *. See e.g.*,Aidah Qureshi*, How Pyramid Schemes Target College Students*, 34th Street (Nov. 9, 2020, 6:28 PM), https://www.34st.com/article/2020/11/boss-babe-mlm-multi-level-marketing-scheme-pyramid-instagram; Stephanie Asymkos, *Popular MLM Businesses are Leaving Young Women Broke and Friendless*, Cashay (Feb. 4 2020, 9:59 AM), https://www.cashay.com/mlm-businesses-leave-young-women-broke-friendless-155931120.html. [↑](#footnote-ref-24)
24. . An author-run search of the LexisNexis database for (“senior citizen” OR elder! OR “retirement age”) w/p (MLM OR “multilevel marketing” OR “multi-level marketing”) returned zero secondary source results. An author-run search of the Westlaw database for (“senior citizen” OR elder! OR “retirement age”) /p (MLM OR “multilevel marketing” OR “multi-level marketing”) returned six secondary sources, none of which directly addressed MLM concerns for senior citizens. [↑](#footnote-ref-25)
25. *. Id. See also* Claes Bäckman and Tobin Hanspal, Multi-Level Marketing Participation And Social Connectivity (Think Forward Initiative 2018), https://born05-thinkforward-initiative-axaxzmkc.netdna-ssl.com/development/
downloads/TFI-Report-\_-Multi-Level-Marketing-Participation-and-Social-Connectivity-\_-Backman-and-Hanspal.pdf (“[T]he academic attention on the direct-selling industry has been surprisingly limited.”). [↑](#footnote-ref-26)
26. *.* 2020 Industry Overview, *supra* note 6 (defining participants as any individual permitted to sell product). [↑](#footnote-ref-27)
27. . WFDSA, *Distribution of People Working in the Direct Selling Market Worldwide in 2019, By Age*, Statista, https://www.statista.com/statistics/1031644/share-of-people-working-in-the-global-direct-selling-market-by-age/ (last visited Sept. 8, 2022). [↑](#footnote-ref-28)
28. . Fed. Trade Comm’n, Protecting Older Consumers 3 (2018) [hereinafter FTC Protecting Older Consumers], https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2017-2018-report-congress-federal-trade-commission/protecting\_older\_consumers\_-\_ftc\_report\_10-18-18.pdf [↑](#footnote-ref-29)
29. *. Id.* [↑](#footnote-ref-30)
30. *.* 2020 Industry Overview, *supra* note 6. [↑](#footnote-ref-31)
31. . WFDSA, *supra* note 27. [↑](#footnote-ref-32)
32. . FTC Protecting Older Consumers, *supra* note 27, at 4–5. [↑](#footnote-ref-33)
33. *. A Complete Guide to Elder Financial Abuse*, MedicareAdvantage.com, https://www.medicareadvantage.com/complete-guide-to-elder-financial-abuse (last visited Sept. 8, 2022) (“Elder financial abuse is big business.”). [↑](#footnote-ref-34)
34. . Megan DeMatteo, *Here’s the Average Net Worth of Americans Ages 65 to 74*, CNBC, https://www.cnbc.com/select/average-net-worth-of-americans-ages-65-to-74/ (last updated Oct. 5, 2021). [↑](#footnote-ref-35)
35. *. Id.* [↑](#footnote-ref-36)
36. *. Id.*  [↑](#footnote-ref-37)
37. *. See generally A Complete Guide to Elder Financial Abuse*, *supra* note 33. [↑](#footnote-ref-38)
38. *. See id.* [↑](#footnote-ref-39)
39. *. See* FTC Protecting Older Consumers, *supra* note 27, at 6. [↑](#footnote-ref-40)
40. *. Id.* [↑](#footnote-ref-41)
41. *. See A Complete Guide to Elder Financial Abuse*, *supra* note 32. [↑](#footnote-ref-42)
42. *. Id.* [↑](#footnote-ref-43)
43. *. See id.* [↑](#footnote-ref-44)
44. *. See* Taylor, *supra* note 13, at 9. [↑](#footnote-ref-45)
45. . James Walsh, *”Tis the Time’s Plague When Madmen Lead the Blind”: How the IRS Can Prevent Pyramid-Scheme Formation (and Why It Should),* 67 Case W. Res. L. Rev. 577 (2016) (“History has proven that pyramid schemes are tough to regulate.”). [↑](#footnote-ref-46)
46. . James Walsh, You Can’t Cheat an Honest Man: How Ponzi Schemes and Pyramid Frauds Work . . . And Why They’re More Common Than Ever 18 (1998) (quoting Larry Hodapp, a senior attorney at the Federal Trade Commission) (“There’s not a lot to be done about pyramids . . . . People just have to be educated that the return rates these operations suggest are ridiculous.”). [↑](#footnote-ref-47)
47. . Corey Matthews, *Using A Hybrid Securities Test to Tackle the Problem of Pyramid Fraud*, 88 Fordham L. Rev. 2045, 2057 (2020) (“Unfortunately, of all monitored consumer fraud victim groups, pyramid scheme victims are the least likely to make formal reports to government authorities.”). [↑](#footnote-ref-48)
48. . Epstein, *supra* note 22, at 123 (“Potential MLM members are able to conduct thorough investigations of an MLM on their own time, in their own home, even before agreeing to attend 'opportunity meetings' in order to make an informed, educated decision.Thus, MLM prospects must share some measure of personal responsibility for participating in any MLM venture today.”); *See also* Taylor, *supra* note 13, at 9-3. [↑](#footnote-ref-49)
49. . Matthews, *supra* note 46, at 2057. [↑](#footnote-ref-50)
50. *. See* Taylor, *supra* note 13, at 9-3. [↑](#footnote-ref-51)
51. *. See* Liu, *supra* note 3, at 115 (“Prosecution methods crosscut agencies(e.g., Department of Justice, Securities and Exchange Commission, Federal Trade Commission) and approaches.”); Taylor, *supra* note 13, at 12-2 (noting thirteen different legal recourses for defrauded MLM participants). [↑](#footnote-ref-52)
52. . *See* Taylor, *supra* note 13, at 11-2. [↑](#footnote-ref-53)
53. *. See* Model Civ. Provisions on Elder Fin. Exploitation 12 (A.B.A. Comm’n on L. & Aging, Nat’l Ctr. for Victims of Crime, 2017) [hereinafter ABA Model Provisions] (“A fundamental problem is that the costs and fees associated with a typical case make it cost-prohibitive for a civil attorney to accept such cases."). [↑](#footnote-ref-54)
54. . Taylor, *supra* note 13, at 12-3 (“You will likely find it much easier to sue your immediate upline for misrepresentation than the company itself, which likely has a team of attorneys.”). [↑](#footnote-ref-55)
55. *. See* Author-Run Search, *supra* note 24; *see also* Epstein, *supra* note 21, at 91 (describing an instance in which Epstein entered “multi-level marketing” into the Lexis.com database on Nov. 3, 2009 and noted only thirty-two articles which mentioned the phrase under US Law Reviews and Journals, combined). [↑](#footnote-ref-56)
56. . Matthews, *supra* note 47, at 2057 (“[O]f all monitored consumer fraud victim groups, pyramid scheme victims are the least likely to make formal reports to government authorities.”). [↑](#footnote-ref-57)
57. *. See* Author-Run Search, *supra* note 24; *see also* Epstein, *supra* note 22, at 91. [↑](#footnote-ref-58)
58. *. Id.* [↑](#footnote-ref-59)
59. *. FTC 2021 Report, supra* note 7, at 1. [↑](#footnote-ref-60)
60. *.* Mindy Lilyquist, *What is Direct Selling?*,the balance small bus. (July 19, 2020), https://www.thebalancesmb.com/what-is-direct-selling-1794391. [↑](#footnote-ref-61)
61. *. Id*. [↑](#footnote-ref-62)
62. *. 2020 Industry Overview, supra* note 6. [↑](#footnote-ref-63)
63. *. Id.* [↑](#footnote-ref-64)
64. *.* Chuck Holmes, *Categories of MLM Products,* OnlineMLMCommunity.com (July 6, 2017), https://onlinemlmcommunity.com/categories-of-mlm-products/. [↑](#footnote-ref-65)
65. *. 2020 Industry Overview*, *supra* note 6. [↑](#footnote-ref-66)
66. *. Start Your Business Today*, Herbalife Nutrition, https://www.herbalife.com/start-your-business/ (last visited Sept. 8, 2022). [↑](#footnote-ref-67)
67. *. Start a Business,* Amway, https://www.amway.com/en\_US/start-a-business (last visited Sept. 8, 2022). [↑](#footnote-ref-68)
68. . Melanie Hicken, *The Money Behind Herbalife, Mary Kay and Others*, CNN (Jan. 10, 2013, 1:58 PM),https://money.cnn.com/2013/01/09/pf/multilevel-marketing-industry/. [↑](#footnote-ref-69)
69. *. Id.* [↑](#footnote-ref-70)
70. *. What’s a Downline? What is an Upline?*, MLMLegal.com (July 18, 2013), http://mlmlegal.com/MLMBlog/whats-a-downline-what-is-an-upline/. [↑](#footnote-ref-71)
71. *. Id.* [↑](#footnote-ref-72)
72. *. Id.* [↑](#footnote-ref-73)
73. *. Id.* [↑](#footnote-ref-74)
74. *. See* Liu, *supra* note 3, at 115. [↑](#footnote-ref-75)
75. . Epstein*, supra* note 21, at 103–04 (“[T]he downline generates multiple levels of possible commissions to the upline member as long as the downline distribution continues to sell.”). [↑](#footnote-ref-76)
76. *. Protect Older Adults from Pyramid Schemes*, The Alden Network (Apr. 15, 2021), https://www.thealdennetwork.com/protect-older-adults-from-pyramid-schemes/. [↑](#footnote-ref-77)
77. . Taylor, *supra* note 13. [↑](#footnote-ref-78)
78. . *See* DeLiema et. al, *supra* note 1; Taylor, *supra* note 13. [↑](#footnote-ref-79)
79. . William Keep, *MLM In The U.S.: More Bad News*, Seeking Alpha (Apr. 15, 2021, 11:29 PM), https://seekingalpha.com/article/4419341-mlm-in-u-s-bad-news (“A lack of uniform meaning for the terms used makes it difficult to have confidence in these reported numbers, and especially so for “Preferred Customers,” given the self-serving nature of the label.”). [↑](#footnote-ref-80)
80. *. See 2020 Industry Overview, supra* note 6. [↑](#footnote-ref-81)
81. *. See id.* [↑](#footnote-ref-82)
82. *. Id.* [↑](#footnote-ref-83)
83. . *See* DeLiema et al., *supra* note 1. [↑](#footnote-ref-84)
84. *. Id.* at 5. [↑](#footnote-ref-85)
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86. . DeLiema et al., *supra* note 1, at 4. [↑](#footnote-ref-87)
87. *. Id.* [↑](#footnote-ref-88)
88. *. See* Wren & Waller, *supra* note 84. [↑](#footnote-ref-89)
89. . Tiffany Lamoreaux, Home is Where the Work is: Women, Direct Sales, and Technologies of Gender (Apr. 2013) (Ph.D. dissertation, Arizona State University). [↑](#footnote-ref-90)
90. . Casey Bond, *MLMs Are a Nightmare for Women and Everyone They Know*,HuffPost (Jan 29, 2021), https://www.huffpost.com/entry/mlm-pyramid-scheme-target-women-financial-freedom\_l\_5d0bfd60e4b07ae90d9a6a9e.. [↑](#footnote-ref-91)
91. . Robert Laura, *Can Network Marketing Save Your Retirement?*, Forbes: Retirement, (July 27, 2017, 1:44 PM), https://www.forbes.com/sites/robertlaura/2017/
07/27/can-network-marketing-save-your-retirement/?sh=5be313c5c689 ("Wellness based MLM's in particular are well positioned to help people retire with greater ease and success . . . ."). [↑](#footnote-ref-92)
92. *. Id.* (“Many network marketing companies offer weekly calls, local meetings, and an annual conference. All of which get members out of the house . . . while offering them the opportunity to meet new people and deepen existing connections.”). [↑](#footnote-ref-93)
93. *. See generally id.*  [↑](#footnote-ref-94)
94. *. FTC Stops Marketers from Making False Arthritis Treatment Claims*, Fed. Trade Comm’n (Dec. 5, 2019), https://www.ftc.gov/news-events/press- [↑](#footnote-ref-95)
95. . Complaint at 21, Fed. Trade Comm'n v. Quantum Wellness Botanical Inst., LLC,, No. 2:20-cv-00244, https://www.ftc.gov/system/files/documents/cases/quantum\_complaint\_0.pdf (“Defendants have represented that this increased production of human growth hormone and stem cells causes numerous anti-aging benefits, including, but not limited to: reversing the aging process in cells, skin, muscles, tissues, and organs, and significantly repairing age-related damage to the body’s organs, tissues, joints and muscles . . . .”). [↑](#footnote-ref-96)
96. *. Become a Member,* New U Life*,*https://newulife.com/members/become-member/ (last visited Sept. 6, 2022). [↑](#footnote-ref-97)
97. *. See* Sweeb, *supra* note 21, at 224 (“Further, some of the MLMs that have jumped on the health bandwagon have begun to promote products that are unregulated, adulterated, and have the potential to be harmful to consumers.”). [↑](#footnote-ref-98)
98. *. See id.* [↑](#footnote-ref-99)
99. . Donald L. Redfoot, Susan C. Reinhard & Debra B. Whitman, Building Lifetime Middle-Class Security, AARP Pub. Pol’y Inst. (Jan. 2013), https://www.
aarp.org/content/dam/aarp/research/public\_policy\_institute/security/2013/building-lifetime-middle-class-security-AARP-ppi-sec.pd. [↑](#footnote-ref-100)
100. *. Id.* [↑](#footnote-ref-101)
101. *. See* DeLiema et al, *supra* note 1. [↑](#footnote-ref-102)
102. *.* Wrenn & Waller, *supra* note 84, at 445 (“MLMs go to great lengths to avoid disclosing their practices, retail sales, distributor distributions of income, and distribution of profits. Instead selective information that misrepresents the likelihood of success is provided.”). [↑](#footnote-ref-103)
103. *. See generally* Taylor, *supra* note 13. [↑](#footnote-ref-104)
104. *. See id.* at 7 (“On average, one in 545 is likely to have profited after subtracting expenses, and 997 out of 1,000 individuals involved with an MLM lose money—to say nothing of the time invested."). [↑](#footnote-ref-105)
105. . Abby Vesoulis & Eliana Dockterman, *Pandemic Schemes: How Multilevel Marketing Distributors Are Using the Internet—and the Coronavirus—to Grow Their Businesses*, Time (July 9, 2020 6:29 AM), https://time.com/5864712/multilevel-marketing-schemes-coronavirus/ (“'Statistically, it is more likely you will win the lottery than you will make hundreds of thousands of dollars selling for an MLM,' says Robert FitzPatrick, the co-author of False Profits, a book about MLMs, and the president of PyramidSchemeAlert.org”). [↑](#footnote-ref-106)
106. . DeLiema et al., *supra* note 1, at 4. [↑](#footnote-ref-107)
107. . William W. Keep & Peter J. Vander Nat, *Multilevel Marketing and Pyramid Schemes in the United States*: *A Historical Analysis*, 6 J. of Hist. Rsch. in Mktg. 188 (2014). [↑](#footnote-ref-108)
108. *. See generally* Bäckman & Hanspal, *supra* note 24. [↑](#footnote-ref-109)
109. *.* Backman & Hanspal, *supra* note 24, at 2. [↑](#footnote-ref-110)
110. *.* Backman & Hanspal, *supra* note 24, at 23, tbl.8 (noting that median age was not a strong predictor of negative MLM financial impact regardless of average county MLM participation by quartile [columns 1-4, with 4 representing the most MLM-involved counties]); *see also* Backman & Hanspal, *supra* note 24,at 10, tbl.1 (noting that the sample size was 3098 counties). [↑](#footnote-ref-111)
111. . *See Lurking Variables: Definition & Examples,* Statology (May 3, 2019) https://www.statology.org/lurking-variables/ (noting this is referred to by data scientists as a potential lurking variable problem). [↑](#footnote-ref-112)
112. . Financial Fraud and Fraud Susceptibility in the United States, Research Report from a 2012 National Survey, Applied Rsch. & Consulting LLC, 3 (Sept. 2013), https://www.finrafoundation.org/sites/finrafoundation/files/financial-fraud-and-fraud-susceptibility\_0.pdf [↑](#footnote-ref-113)
113. *. Id.*  [↑](#footnote-ref-114)
114. *. Id*. [↑](#footnote-ref-115)
115. . Irene Mori, *Better Health for Senior Citizens,* Nev. Senior Guide (Sept. 13, 2013) https://nvseniorguide.com/tag/network-marketing-mlm/. [↑](#footnote-ref-116)
116. *.* David O. Klein & Johnathan E. Turco, *Multilevel Marketing: How to Avoid Building the Pyramid,* Justia (May 6, 2013), https://verdict.justia.com/2013/05/06/
multilevel-marketing. [↑](#footnote-ref-117)
117. *. Id.* [↑](#footnote-ref-118)
118. . *Id.* [↑](#footnote-ref-119)
119. *. Id.* [↑](#footnote-ref-120)
120. *. See* Taylor, *supra* note 13, at 10 (explaining that 99.4% of Nu Skin participants lost money despite Nu Skin’s legal operation); *See also Skincare Products Maker Nu Skin Settles Class Action Suit,* Reuters (Feb. 26, 2016, 9:49 AM), https://www.reuters.com/ article/us-nu-skin-enter-settlement/skincare-products-maker-nu-skin-settles-class-action-suit-idUSKCN0VZ25H (“Nu Skin Enterprises Inc will pay $47 million to settle a lawsuit that alleged the skincare products maker operated a pyramid scheme in China and made false and misleading statements about its operations in the country.”). [↑](#footnote-ref-121)
121. . Tim Mullaney, *Be a Boss Like Bezos and Musk: 5 Reasons Losing Money Can Lead to Billionaire Success*, CNBC (Aug. 1, 2017, 4:40 PM), https://www.cnbc.
com/2017/08/01/be-like-bezos-musk-5-reasons-losing-money-can-lead-to-success.
html. [↑](#footnote-ref-122)
122. *. See Business Guidance Concerning Multi-Level Marketing*, Fed. Trade Comm’n (2018),https://www.ftc.gov/tips-advice/business-center/guidance/business-guidance-concerning-multi-level-marketing [hereinafter *FTC Bus. Guidance*]. [↑](#footnote-ref-123)
123. *. See id.* [↑](#footnote-ref-124)
124. *. See, e.g.*, *In re Matter of Koscot Interplanetary, Inc.,* 86 F.T.C. 1106, 1106(1975). [↑](#footnote-ref-125)
125. *. Id.* [↑](#footnote-ref-126)
126. *. See*, *e.g.*, *FTC Settlement Bans Pyramid Scheme Operators From Multi-Level Marketing,* Fed. Trade Comm’n (May 13, 2014), https://www.ftc.gov/news-events/
press-releases/2014/05/ftc-settlement-bans-pyramid-scheme-operators-multi-level; *see also*, *Herbalife Will Restructure Its Multi-level Marketing Operations and Pay $200 Million For Consumer Redress to Settle FTC Charges*, Fed. Trade Comm’n (July 15, 2016), https://www.ftc.gov/news-events/press-releases/2016/07/herbalife-will-restructure-its-multi-level-marketing-operations. [↑](#footnote-ref-127)
127. *. FTC Sends Checks to Nearly 350,000 Victims of Herbalife’s Multi-Level Marketing Scheme*, Fed. Trade Comm’n (Jan. 10, 2017), https://www.ftc.gov/news-events/
press-releases/2017/01/ftc-sends-checks-nearly-350000-victims-herbalifes-multi-level. [↑](#footnote-ref-128)
128. *. Id.* [↑](#footnote-ref-129)
129. . Walsh, *supra* note 44, at 584. [↑](#footnote-ref-130)
130. . Joe Nocera, Opinion, *The Pyramid Scheme Problem*, N.Y. Times (Sept. 15, 2015), http://www.nytimes.com/2015/09/15/opinion/joe-nocera-the-pyramid-scheme-problem.html. [↑](#footnote-ref-131)
131. *. Id.*  [↑](#footnote-ref-132)
132. . Edith Ramirez, Chairwoman, Fed. Trade Comm’n, Keynote Remarks of FTC Chairwoman Ramirez: DSA Business & Policy Conference 5-6 (Oct. 25, 2016), https://www.ftc.gov/system/files/documents/public\_statements/993473/ramirez\_-\_dsa\_speech\_10-25-16.pdf. [↑](#footnote-ref-133)
133. *. Id.* [↑](#footnote-ref-134)
134. *. See FTC Business Guidance*, *supra* note 122 (“Product that is purchased and consumed by participants to satisfy their own genuine product demand – as distinct from all product purchased by participants that is not resold – is not in itself indicative of a problematic MLM compensation structure.”). [↑](#footnote-ref-135)
135. *. Id.* [↑](#footnote-ref-136)
136. *. See* Matthews, *supra* note 46, at 2062. [↑](#footnote-ref-137)
137. *. Id.* at 2062 (“shutting down a scheme under the Federal Trade Commission Act of 1914 is difficult, time-consuming, and costly”); *FTC 2021 Report, supra* note 7 (“[I]n some cases, people believe they’ve joined a legitimate MLM, but it turns out to be an illegal pyramid scheme that steals everything they invest and leaves them deeply in debt.”). [↑](#footnote-ref-138)
138. *. See* Matthews*, supra* note 46, at 2062–63 (“by the time pyramid schemes achieve the size and visibility necessary to attract FTC attention, most stakeholders have already incurred significant losses that they are unlikely to recoup”). [↑](#footnote-ref-139)
139. . Taylor, *supra* note 13, at 13-2. (source is continually updated). [↑](#footnote-ref-140)
140. *. Freedom of Information Act Requests Detailing Herbalife FTC Complaints as of 1/2013,* https://www.ftc.gov/system/files/documents/foia\_requests/1301herbalifecmpts.pdf (last visited Sept. 8, 2022). [↑](#footnote-ref-141)
141. *. Herbalife FTC Settlement Invoice*,https://www.ftc.gov/system/files/documents/foia\_requests/Doc%2001%20%281%20pg%29.pdf. [↑](#footnote-ref-142)
142. *.* Matt Stroud*, An Insider Explains Why the FTC Can't Put an End to Pyramid Schemes*, Bloomberg (Feb. 27, 2015), https://www.bloomberg.com/news/articles/2015-02-27/an-insider-explains-why-the-ftc-can-t-put-an-end-to-pyramid-schemes (last visited Sept. 6, 2022). [↑](#footnote-ref-143)
143. . Walsh, *supra* note 44, at 586. [↑](#footnote-ref-144)
144. *. See id.* [↑](#footnote-ref-145)
145. *. Id.* at 587. [↑](#footnote-ref-146)
146. . Epstein, *supra* note 21, at 114. [↑](#footnote-ref-147)
147. *. See* Matthews, *supra* note 46, at 2064. [↑](#footnote-ref-148)
148. *. See* 15 U.S.C. §§ 77a-aa; 15 U.S.C. § 78a-qq. [↑](#footnote-ref-149)
149. *. SEC v. W.J. Howey Co*., 328 U.S. 293, 298–99 (1946). [↑](#footnote-ref-150)
150. *. Id.* [↑](#footnote-ref-151)
151. . Epstein, *supra* note 21, at 116. [↑](#footnote-ref-152)
152. *. Howey,* 328 U.S. at 299. [↑](#footnote-ref-153)
153. . Matthews, *supra* note 46, at 2067 (“In the years after Howey, several lower courts lessened the restrictiveness of the third prong of the test”). [↑](#footnote-ref-154)
154. *. Id.* at 2068. [↑](#footnote-ref-155)
155. *.* SEC v. Glenn W. Turner Enter., Inc.*,* 474 F.2d 476, 482 (9th Cir. 1973). [↑](#footnote-ref-156)
156. . Matthews, *supra* note 46, at 2068. [↑](#footnote-ref-157)
157. *. Multilevel Marketing Primer−The MLM Startup*, Reese & Richards, P.L.L.C. (Sept. 30, 2019), https://www.mlmlaw.com/law-library/multilevel-marketing-primer-the-mlm-startup#N\_1\_. [↑](#footnote-ref-158)
158. *. Id.* [↑](#footnote-ref-159)
159. *. Id.* [↑](#footnote-ref-160)
160. *. See id.*  [↑](#footnote-ref-161)
161. *. See* Reese & Richards P.L.L.C., *supra* note 156 (“Classification as a security is a death sentence for any MLM program”). [↑](#footnote-ref-162)
162. . See 15 U.S.C. § 77f(2018). [↑](#footnote-ref-163)
163. . See *id.*  [↑](#footnote-ref-164)
164. *.* 15 U.S.C. § 78c*. See also* Matthews, *supra* note 46, at 2063 (“investors recruiting or soliciting others in exchange for a commission or other compensation need to be brokers”). [↑](#footnote-ref-165)
165. . See 15 U.S.C. § 77c (2018); *See* Sergio Pareja, *Sales Gone Wild: Will the FTC’s Business Opportunity Rule Put an End to Pyramid Marketing Schemes?*, 39 McGeorge L. Rev. 83, 13097 n.100 (2008) (“Thus, a buyer cannot recover against his seller’s seller unless the remote seller solicits the purchase.”).  [↑](#footnote-ref-166)
166. . Pareja, *supra* note 164, at 96–97 (noting that almost all cases involve claims of materially false or misleading statements). [↑](#footnote-ref-167)
167. *. Id.* [↑](#footnote-ref-168)
168. . See 15 U.S.C. § 77x (2018). [↑](#footnote-ref-169)
169. . Pareja, *supra* note 164, at 112. [↑](#footnote-ref-170)
170. *. Id.* at 103. [↑](#footnote-ref-171)
171. . *See* 18 U.S.C. § 1341. [↑](#footnote-ref-172)
172. . *See* 18 U.S.C. § 1343. [↑](#footnote-ref-173)
173. . *See* 18 U.S.C. § 1957. [↑](#footnote-ref-174)
174. . Pareja, *supra* note 164, at 104 (“However, the usual issue of proof makes prosecution difficult and labor intensive.”). [↑](#footnote-ref-175)
175. *. Babener & Assoc., MLM Laws In 50 States*, MLMLegal, https://www.mlmlegal.com/statutes.html (last visited Sept. 27, 2022). [↑](#footnote-ref-176)
176. *. Id.* [↑](#footnote-ref-177)
177. *. Id.* [↑](#footnote-ref-178)
178. . *See* Reese & Richards, *supra* note 156. [↑](#footnote-ref-179)
179. *. Id.* [↑](#footnote-ref-180)
180. *. Id.* [↑](#footnote-ref-181)
181. *. Unimax Corp. v. Tax Appeals Tribunal,* 589 N.E.2d 358, 360 (N.Y. 1992). [↑](#footnote-ref-182)
182. . Reese & Richards, *supra* note 156. [↑](#footnote-ref-183)
183. . Liu, *supra* note 3, at 115–16 (“[H]istorically, chance has been the most difficult element to prove.”). [↑](#footnote-ref-184)
184. *. See* Reese & Richards, *supra* note 156. [↑](#footnote-ref-185)
185. *. Id.* [↑](#footnote-ref-186)
186. *. Id.* [↑](#footnote-ref-187)
187. *.* Fla. Stat. Ann. § 849.091 (West). [↑](#footnote-ref-188)
188. . Fla. Stat. Ann. § 849.091 (West). [↑](#footnote-ref-189)
189. . Reese & Richards, *supra* note 156 (“[S]o long as a multilevel compensation plan does not fit within the parameters of the prohibited activities, it is permissible (at least as regards anti-pyramid laws) . . . If any of the elements listed above are absent, the program does not violate state anti-pyramid legislation.”). [↑](#footnote-ref-190)
190. *. Id.* [↑](#footnote-ref-191)
191. . Pareja, *supra* note 164, at 105. [↑](#footnote-ref-192)
192. *. Id.* (“[T]he primary problem with these laws is that companies operating pyramid marketing schemes can work around these laws by offering the opportunities in states without stringent disclosure requirements. In summary, state laws are difficult to enforce against pyramid marketing schemes. . .[S]tate disclosure rules and other statutes are inadequate because pyramid marketing schemes by their very nature quickly spread across state lines and become unmanageable by state law enforcement agencies.”). [↑](#footnote-ref-193)
193. . Reese & Richards, *supra* note 156. [↑](#footnote-ref-194)
194. . Andrew J. Sherman, Franchising & Licensing: Two Ways to Build Your Business 356–57 (2nd ed. 1999). [↑](#footnote-ref-195)
195. *. Id.* at 357. [↑](#footnote-ref-196)
196. *. See* MLMLegal, *supra* note 174. [↑](#footnote-ref-197)
197. *. See id.* (“For instance, in recent years, a significant debate has arisen between the direct selling industry and regulators as to whether or not personal use by distributors should be accorded the status of a “retail sale” in the same fashion that sales to nonparticipants are accorded ‘retail sale status.’”). [↑](#footnote-ref-198)
198. . Reese & Richards, *supra* note 156 (“Federal and state multilevel marketing and anti-pyramid statutes are components of a comprehensive consumer protection umbrella. These laws are designed to protect individuals from being defrauded through illegitimate programs which lure participants with the promise of easy money by compensating them from the investments of additional participants rather than from legitimate product sales.”). [↑](#footnote-ref-199)
199. *. See FTC 2021 Report, supra* note 7; *see also* *Multi-Level Marketing or Illegal Pyramid Scheme?*,Mich. Dep’t Att’y Gen., https://www.michigan.gov/ag/consumer-protection/consumer-alerts/consumer-alerts/invest/mlm-illegal-pyramid-scheme (last visited Sept. 27, 2022). [↑](#footnote-ref-200)
200. *. See Five Famous Pyramid Scheme Companies That Ended in Legal Action*, FIRMEX, https://www.firmex.com/resources/uncategorized/five-famous-pyramid-schemes-that-ended-in-legal-action/ (last visited Mar. 9, 2023) (“Ultimately, the whole pay-for-the-right-to-sell and earn bonuses for recruiting members caught the eyes of the FTC and earned the site a hasty shutdown order.”). [↑](#footnote-ref-201)
201. *. Id.* (“Operators were ordered to pay US $17 million to refund the consumers that got burnt.”*).* [↑](#footnote-ref-202)
202. *. Multi-Level Marketer AdvoCare Will Pay $150 Million To Settle FTC Charges it Operated an Illegal Pyramid Scheme,* Fed. Trade Comm’n (Oct. 2, 2019), https://
www.ftc.gov/news-events/press-releases/2019/10/multi-level-marketer-advocare-will-pay-150-million-settle-ftc (“Two top promoters also settled charges that they promoted the illegal pyramid scheme and misled consumers about their income potential, agreeing to a multi-level marketing ban . . . .”). [↑](#footnote-ref-203)
203. *. Id.* (“Two top promoters also settled charges that they promoted the illegal pyramid scheme and misled consumers about their income potential, agreeing to . . . a judgment of $4 million that will be suspended when they surrender substantial assets.”). [↑](#footnote-ref-204)
204. *. Three Men Arrested for Wire Fraud Scheme Involving Multilevel Marketing Company,* U.S. Att’y Off., W. Dist. N.Y. (Mar. 23, 2017), https://www.justice.gov/usao-wdny/pr/three-men-arrested-wire-fraud-scheme-involving-multilevel-marketing-company. [↑](#footnote-ref-205)
205. *. Herbalife Will Restructure Its Multi-level Marketing Operation*, *supra* note 126; *see FTC Settlement Bans Pyramid Scheme Operators From Multi-Level Marketing, supra* note 126. [↑](#footnote-ref-206)
206. *. See FTC Bus. Guidance, supra* note 121. [↑](#footnote-ref-207)
207. . Matthews, *supra* note 46, at 2076 (“Further, the convoluted and obfuscated nature and structure of such schemes makes it incredibly difficult for the average potential participant to adequately assess the risk of loss or the legality of the venture.”). [↑](#footnote-ref-208)
208. *. Id.* [↑](#footnote-ref-209)
209. . Brief for AARP as Amico Curiae Supporting Plaintiffs at 6, *Torres v. S.G.E. Mgmt.*, 838 F.3d 629 (5th Cir. 2016), 2016 WL 2897752 (“Most people who lose money to illegal pyramid schemes would be unable to pursue relief on an individual basis due to the relative expense of pursuing a remedy or inability to find a lawyer willing to take on the risk of pursuing such a complex case, particularly on an individual basis.”). [↑](#footnote-ref-210)
210. . Pareja, *supra* note 165. [↑](#footnote-ref-211)
211. *. LuLaRoe To Pay $4.75 Million To Resolve AG Ferguson’s Lawsuit Over Pyramid Scheme*, Wash. Dep’t Att’y Gen (Feb. 2, 2021), https://www.atg.wa.gov/news/news-releases/lularoe-pay-475-million-resolve-ag-ferguson-s-lawsuit-over-pyramid-scheme. [↑](#footnote-ref-212)
212. *. Id.* (“Since January 2014, more than 3,600 Washingtonians joined LuLaRoe’s network as retailers. . . In January 2019, (Washington Attorney General Bob) Ferguson filed a lawsuit against LuLaRoe . . . [Feb. 2, 2021] Attorney General Bob Ferguson announced today that LuLaRoe will pay $4.75 million to resolve Ferguson’s consumer protection lawsuit.”). [↑](#footnote-ref-213)
213. . Jen Wieczner, *Herbalife Paid a $200 Million Fine. Then the FTC Screwed it Up,* YahooFinance (Feb. 2, 2017), https://finance.yahoo.com/news/herbalife-paid-200-million-fine-183811850.html. [↑](#footnote-ref-214)
214. *. Id.* (“‘I’m not happy at all,’ Maria David, a former Herbalife distributor in New York, told Fortune about getting a $777 check when she says she lost $25,000 with the company.”). [↑](#footnote-ref-215)
215. *. Id.* (“But now that almost 350,000 checks have been mailed, a curious pattern has begun to emerge: Many of the people receiving money from the FTC don’t appear to be victims at all. . . Neither the FTC nor Herbalife has any data on this, though the company has already heard from as many as 100 check recipients who say they never had any complaints, according to a person familiar with the situation.”). [↑](#footnote-ref-216)
216. *. Webster v. Omnitrition Int’l, Inc.,* 79 F.3d 776, 783 (9th Cir. 1996) (“[T]he existence and enforcement of rules like Amway’s is only the first step in the pyramid scheme inquiry . . . Our review of the record does not reveal sufficient evidence to establish as a matter of law that Omnitrition’s rules actually work.”). [↑](#footnote-ref-217)
217. . Stephen Deane, Sec. & Exch. Comm’n, Off. of the Inv. Advoc., Elder Financial Exploitation: Why It Is A Concern, What Regulators Are Doing About It, And Looking Ahead 2 (2018), https://www.sec.gov/files/elder-financial-exploitation.pdf (“Cognitive decline is a key factor that makes the elderly more susceptible to financial exploitation.”). [↑](#footnote-ref-218)
218. *. Id.* at 3 (“A study of healthy, community-dwelling older adults found that many of them displayed troubling behaviors, such as believing deceptive and misleading advertisements and buying falsely advertised products. Researchers also speak of a “doubt deficit,” in which false and far-fetched claims fail to prompt doubt in older adults and others who are overly credulous. Similarly, such persons may be unable to infer the intentions of others, including those with the intent to deceive.”). [↑](#footnote-ref-219)
219. . Taylor, *supra* note 13, at 11-2 (“[M]LMs are protected against action by authorities because only a tiny percentage of victims file complaints with law enforcement.”). [↑](#footnote-ref-220)
220. . Elder Fraud, Fed. Bureau of Investigation,https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/elder-fraud (last visited Sept. 8, 2022) (“[S]eniors may be less inclined to report fraud because they don’t know how, or they may be too ashamed at having been scammed. They might also be concerned that their relatives will lose confidence in their abilities to manage their own financial affairs. And when an elderly victim does report a crime, they may be unable to supply detailed information to investigators.”). [↑](#footnote-ref-221)
221. *.* Genevieve Waterman, *The Top Five Financial Scams Targeting Seniors*, Nat’l Couns. on Aging (July 27, 2022), https://www.ncoa.org/article/top-5-financial-scams-targeting-older-adults (“However, they’re devastating to many older adults and can leave them in a very vulnerable position with little time to recoup their losses.”). [↑](#footnote-ref-222)
222. . Epstein, *supra* note 21, at 124. [↑](#footnote-ref-223)
223. *. See* Author-Run Search, *supra* note 23. *See also* Epstein, *supra* note 21, at 124 (suggesting MLM inclusion under state consumer protection statutes to balance the concern between personal responsibility and consumer protection). [↑](#footnote-ref-224)
224. *. See, e.g.,* Epstein, *supra* note 21; DeLiema et al., *supra* note 1. [↑](#footnote-ref-225)
225. *. See, e.g.*,Deane, *supra* note 216. [↑](#footnote-ref-226)
226. . Deane, *supra* note 216, at i (“The overwhelming majority of incidents of elder financial exploitation go unreported to authorities. For every documented case of elder financial exploitation, 44 went unreported according to a New York state study”). [↑](#footnote-ref-227)
227. . *Id.* [↑](#footnote-ref-228)
228. . Taylor, *supra* note 13, at 2-27. [↑](#footnote-ref-229)
229. *. See FTC Business Guidance, supra* note 121. [↑](#footnote-ref-230)
230. . *See* Reese & Richards, *supra* note 156. [↑](#footnote-ref-231)
231. . *See* Walsh, *supra* note 44, at 587; *see also* Reese & Richards, *supra* note 156. [↑](#footnote-ref-232)
232. *. See generally* Walsh, *supra* note 44, at 587–88*.* [↑](#footnote-ref-233)
233. *. See, e.g.*, *FTC Settlement Bans Pyramid Scheme Operators From Multi-Level Marketing, supra* note 125; *Herbalife Will Restructure Its Multi-level Marketing Operation*, *supra* note 125. [↑](#footnote-ref-234)
234. *. See generally, e.g.*,Matthews, *supra* note 46, at 2076. [↑](#footnote-ref-235)
235. . Kristy Holtfreter, Michael D. Reisig, Daniel P. Mears, & Scott E. Wolfe, *Financial Exploitation of the Elderly in a Consumer Context*, U.S. Dept. of Just. 23
(Mar. 2014), https://www.ojp.gov/pdffiles1/nij/grants/245388.pdf (“For example, the incidence of consumer fraud attempts in the United States was estimated at one-third… ”). [↑](#footnote-ref-236)
236. . FTC Protecting Older Consumers, *supra* note 27, at 4 (“In 2017, older adults were more likely to report fraud to Sentinel than younger people, and in those reports, indicated less frequently that they had lost money. But as detailed below, while consumers ages 20-59 more frequently report losing money in their complaints, older adults reported much higher dollar losses, individually, than younger consumers”). *See also* Holtfreter et al., *supra* note 234, at 24 (“One consistency across the national and local studies is that the elderly are less likely to report fraud victimization, although reasons for underreporting remain largely unexplored in the literature.”). [↑](#footnote-ref-237)
237. . Deane, *supra* note 216, at 9 (“[F]or every documented case of elder financial exploitation, 44 went unreported”). [↑](#footnote-ref-238)
238. *. See id.* [↑](#footnote-ref-239)
239. *. See id.* [↑](#footnote-ref-240)
240. . Holtfreter et al., *supra* note 234, at 23. [↑](#footnote-ref-241)
241. . Edward O. Laumann, Sara A Leitsch, & Linda J Waite, *Elder Mistreatment in the United States, Prevalence Estimates From a Nationally Representative Study,* 63 J. of Gerontology S248 (2008) (“Given the complexity of elder mistreatment and its relatively recent appearance in the research arena, it is perhaps unsurprising that no unifying theory or perspective dominates.”). [↑](#footnote-ref-242)
242. *. Research Statistics and Data*, Nat’l Ctr. on Elder Abuse, https://ncea.
acl.gov/What-We-Do/Research/Statistics-and-Data.aspx (last visited Sept. 19, 2022). *See also* Katherine Lee, *Fighting Financial Fraud*, 48 Monitor on Psychology 48 (2017) (“Older adults may also not report financial abuse for fear that their relatives may think they’re no longer capable of making financial decisions or of living independently.”). [↑](#footnote-ref-243)
243. . DeLiema et. al, *supra* note 1, at fig. 2 (noting that 40% of participants became involved through a family member or friend, with 34% via friend and 6% via family member). [↑](#footnote-ref-244)
244. . Anne Stych, *Friends And Family Feel Pressure of Multi-Level Marketing*, bizwoman (Jan. 9, 2020, 7:00 AM), https://www.bizjournals.com/bizwomen/
news/latest-news/2020/01/friends-and-family-feel-pressure-of-multi-level.html?
page=all (“Two in five Americans surveyed by Lending Tree said they had felt pressured to buy products from MLM consultants within the last 12 months. About a third said that pressure came from a family member, and 24 percent from a friend … slightly more than half said they’ve spent ‘too much’ buying such products from friends and family members who sell them.”). [↑](#footnote-ref-245)
245. . *Broken Trust: Elders, Family, and Finances, MetLife Mature Market Inst.* 13 (Mar. 2009), https://www.giaging.org/documents/mmi-study-broken-trust-elders-family-finances.pdf (“[C]ommunity service providers and other professionals agree that cases actually reported to authorities represent only the very ‘tip of the iceberg’.”). [↑](#footnote-ref-246)
246. . Stych, *supra* note 243 (“… 20 percent said MLMs have affected their bond with a family member.”). [↑](#footnote-ref-247)
247. . *Broken Trust*, *supra* note 244, at 13 (“[W]hen people in their later years encounter health problems that diminish their physical or cognitive capacities, they usually first turn to family members for assistance and support.”). [↑](#footnote-ref-248)
248. *. Id.* at 13 (“[T]here is no definitive estimate of the number of older adults who experience financial abuse by family members … ”). [↑](#footnote-ref-249)
249. . Deane, *supra* note 216, at 9 (“An earlier national survey… found a past-year prevalence of 3.5 percent for financial mistreatment by a family member.”). [↑](#footnote-ref-250)
250. *. Life Expectancy at Birth, at Age 65, and at Age 75, by Sex, Race, and Hispanic Origin: United States, Selected Years 1900–2016*, Ctrs. For Disease Control tbl.15 (2017), https://www.cdc.gov/nchs/data/hus/2017/015.pdf. [↑](#footnote-ref-251)
251. *. See generally id.* [↑](#footnote-ref-252)
252. . David Burnes et al*., Prevalence of Financial Fraud and Scams Among Older Adults in the United States: A Systematic Review and Meta-Analysis*, 107 Am. J. of Pub. Health 13 (2017) (“As the population ages, the financial exploitation of older adults is a growing issue that is associated with major consequences, such as shortened survival, hospitalization, and poor physical and mental health”). [↑](#footnote-ref-253)
253. . Lorie Konish, *Half of Single Seniors Can’t Pay for the Basics. Here’s Why Social Security’s Not Enough*, CNBC (Jan. 13, 2020, 1:51 PM), https://www.cnbc.com/
2020/01/13/why-its-hard-to-for-retirees-to-get-by-on-social-security-benefits.html (quoting Jan E. Mutchler) (“For older people, it can be a challenge to find work to make up for those income gaps, especially as they age… ”). [↑](#footnote-ref-254)
254. *.* Taylor, *supra* note 13, at 13-2 (noting that filing a complaint with the FTC is slow). [↑](#footnote-ref-255)
255. *. See, e.g.*, *FTC Settlement Requires Online Trading Academy to Forgive Consumer Debt, and Principals to Turn Over Millions in Cash and Assets,* Fed. Trade Comm’n (Sept. 15, 2020), https://www.ftc.gov/news-events/press-releases/2020/09/ftc-settlement-requires-online-trading-academy-forgive-consumer (“In February, the FTC brought a lawsuit alleging that OTA … had deceived consumers for years”). [↑](#footnote-ref-256)
256. *. See generally Elder Abuse and Elder Financial Exploitation Statutes,* U.S. Dep’t of Just., https://www.justice.gov/elderjustice/prosecutors/statutes (last visited Sept. 27, 2022) (“The federal government, states, commonwealths, territories and the District of Columbia all have laws designed to protect older adults from elder abuse and guide the practice of adult protective services agencies, law enforcement agencies, and others.”). [↑](#footnote-ref-257)
257. *. See generally id.* [↑](#footnote-ref-258)
258. . Jini L. Roby & Richard Sullivan, *Adult Protection Service Laws: A Comparison of State Statutes From Definition to Case Closure*, 12 J. of Elder Abuse & Neglect 17, 18 (2000). [↑](#footnote-ref-259)
259. *. Id. at 19.*  [↑](#footnote-ref-260)
260. *. Id.* at27 (explaining various types of legal interventions that can benefit elder financial abuse victims). [↑](#footnote-ref-261)
261. *. 50 State Regulatory Surveys: Family Law: Adult Care, Physical And Financial Abuse Of The Elderly*, Thomson Reuters (June 2022) (“[R]egulations that address specific issues such as the prohibition of such abuse, requirements to report abuse, investigatory requirements, the effect of past elderly abuse on one’s ability to obtain certain state licenses or certifications and sanctions for those who fail to report abuse of elders.”). [↑](#footnote-ref-262)
262. *. See generally, An overview of our HISTORY*, Nat’l Adult Protective Servs. Ass’n, https://www.napsa-now.org/history/ (last visited Mar. 11, 2022).  [↑](#footnote-ref-263)
263. . David Godfrey, *Understanding and Utilizing State Elder Abuse Statutes,* Nat’l Ctr. on L. and Elder Rts. (Jan. 2020) https://ncler.acl.gov/getattachment/Legal-Training/State-Elder-Abuse-Statutes-Issue-Brief.pdf.aspx?lang=en-US (*“*Elder abuse and criminal laws may allow enhanced punishments for crimes committed against persons covered under the elder abuse statute.”). [↑](#footnote-ref-264)
264. . Roby & Sullivan, *supra* note 257, at 44 (“Adult protection laws vary greatly in breadth and depth, creating a patchwork of rights for the protected adults and responsibilities for government agencies in dealing with elder abuse.”). [↑](#footnote-ref-265)
265. *. See Threshold Eligibility Requirements for Adult Protective Services,* Am. Bar Ass’n Comm’n on L. and Aging (2020), https://www.americanbar.org/content/
dam/aba/administrative/law\_aging/2020-threshold-eligibility-aps.pdf. [↑](#footnote-ref-266)
266. . Carolyn L. Dessin, *Financial Abuse of the Elderly: Is the Solution a Problem?,* 34 McGeorge L. Rev. 267, 288 (2003), https://ideaexchange.uakron.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1065&context=
ua\_law\_publications. [↑](#footnote-ref-267)
267. *. Id.* at 290–91. [↑](#footnote-ref-268)
268. . *Id.* at 270 (“It is virtually impossible to generalize a definition of “exploitation” from the various states’ definitions of the term, although there are some common themes in many of the definitions.”). [↑](#footnote-ref-269)
269. *. Id.* at 289 (“Some states specifically criminalize exploitation of the elderly and vulnerable. Some states criminalize financial abuse of both the elderly and the vulnerable. Others criminalize exploitation of only the elderly or only the vulnerable.”). *See also* Roby & Sullivan, *supra* note 257, at 26 (“In most states the protected population is adults eighteen years of age and older who are determined to lack the mental, physical, or emotional ability to make and carry out decisions regarding their own lives. In some other states those 60 or 65 and older are considered ‘vulnerable’ regardless of other factors. In yet others, only those 60 or 65 and older and ‘incapacitated’ or ‘vulnerable’ as these terms are defined by statute are protected.”). [↑](#footnote-ref-270)
270. *. See, e.g.*,Colo. Rev. Stat. Ann. § 18-6.5-102(2) (West 2022); Conn. Gen. Stat. Ann. § 17b-450(1) (West 2015). [↑](#footnote-ref-271)
271. *. See, e.g.*,GA. Code Ann. § 30-5-3(6) (West 2000); OR. Rev. Stat. § 124.050(3) (1999). [↑](#footnote-ref-272)
272. *. Elder Abuse and Elder Financial Exploitation Statutes, supra* note 255 (“These laws vary considerably from state to state.”). [↑](#footnote-ref-273)
273. *. Compare* Ala. Code. § 38-9-2(18) (2020) (“[Protected person].—Any person over 18 years of age subject to protection under this chapter or any person, including, but not limited to, persons with a neurodegenerative disease, persons with intellectual disabilities and developmental disabilities, or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others.”), *with* Md. Code Ann. Fam. Law § 14-101 (West 2020) (“’Vulnerable adult’ means an adult who lacks the physical or mental capacity to provide for the adult’s daily needs.”). [↑](#footnote-ref-274)
274. *. See* Dessin, *supra* note 265, at 295 (“Thus, one frequently sees statements indicating that the older population needs protection without any real examination of whether this is true. For example, in deciding to treat a crime against an older person as a more serious offense, the California Legislature stated: The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused.”). [↑](#footnote-ref-275)
275. *. See id.* at 292–93 (“Perhaps the most insidious weakness in existing legislation addressing financial abuse is that many states focus on abuse of the elderly. Such a focus perpetuates ageist stereotyping that furthers neither the interests of the elderly nor of society as a whole . . . . When legislatures talk about protecting the elderly, they often do so without any evidence to support the idea that the elderly need protection. Thus, one frequently sees statements indicating that the older population needs protection without any real examination of whether this is true.”) (forcefully arguing that all age requirements in elder financial abuse statutes are ageist). [↑](#footnote-ref-276)
276. *. See, e.g.*,Deane, *supra* note 216, at 2 (“Cognitive decline is a key factor that makes the elderly more susceptible to financial exploitation.”); *But see* Meredith Minkler*, Aging and Disability: Behind and Beyond the Stereotypes*, 4 J. Aging Stud. 245, 256 (1990). [↑](#footnote-ref-277)
277. *. See* Dessin, *supra* note 265, at 292 (“In an interesting juxtaposition, legislatures and others seem willing to use both minority and advanced age as a proxy for the inability to make knowing and informed decisions.”). [↑](#footnote-ref-278)
278. . Roby & Sullivan, *supra* note 257, at 26 (“Proponents of specifying the elderly (i.e., those who are over 60 or 65) believe that the term elderly and reference to age expands protection for that age group which is frequently targeted for abuse, neglect, and exploitation (Stallings, 2000). The opposing view is that the grouping of all individuals over 60 or 65 in the protected population can perpetuate the image of the elderly as being vulnerable and in need of protection regardless of their mental and physical condition simply by virtue of age. This view supports a scheme recognizing the need for protection of adults regardless of age, based on their physical and mental capabilities as being more compatible with the concepts of dignity, privacy, and client self-determination.”). [↑](#footnote-ref-279)
279. *. See* Dessin, *supra* note 265, at 292. [↑](#footnote-ref-280)
280. *. See id.* [↑](#footnote-ref-281)
281. . Roby & Sullivan *supra* note 257, at 18 (“To address a public issue such as the protection of vulnerable adults, a legally defined problem must exist before the state’s parens patriae powers can be activated to implement solutions and impose consequences. If the reported incident or pattern of behavior does not fit into one of the statutory definitions of mistreatment, there will be no authority for intervention.”). [↑](#footnote-ref-282)
282. *.* Matthew N. Andres*, Making Elder Financial Exploitation Cases Part of a Sustainable Practice: Tips from the Experiences of the University of Illinois College of Law’s Elder Financial Justice Clinic*, 23 Elder L. J. 297, 299 (2016). [↑](#footnote-ref-283)
283. *. Id.* at 299*; See also,* Dessin, *supra* note 265, at 269. [↑](#footnote-ref-284)
284. *. Andres*, *supra* note 281, at 299. [↑](#footnote-ref-285)
285. *. Id.* [↑](#footnote-ref-286)
286. . 42 U.S.C. § 1397j(8) (2010). [↑](#footnote-ref-287)
287. *. Id.* [↑](#footnote-ref-288)
288. . Fla. Stat. Ann. § 415.102(8)(a) (West 2022). [↑](#footnote-ref-289)
289. *. Id.* [↑](#footnote-ref-290)
290. *. Id.* [↑](#footnote-ref-291)
291. *. Id.* [↑](#footnote-ref-292)
292. *. See generally* Dessin, *supra* note 265, at 271. [↑](#footnote-ref-293)
293. . Dessin, *supra* note 265, at 267–275. [↑](#footnote-ref-294)
294. . N.D. Cent. Code Ann. § 50-25.2-01(7) (West 2022) (“‘Financial exploitation’ means use or receipt of services provided by the vulnerable adult without just compensation.”). [↑](#footnote-ref-295)
295. . Iowa Code Ann. §§ 235B.2(5.a.)(1)(c) (2019) (“Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources, without the informed consent of the dependent adult, including theft.”). [↑](#footnote-ref-296)
296. . Civil Financial Exploitation, N.H. Rev. Stat. Ann. § 161-F:43 (2016) (“’Exploitation’ means the illegal use of a vulnerable adult’s person or property for another person’s profit or advantage.”). [↑](#footnote-ref-297)
297. . Dessin, *supra* note 265, at 274. [↑](#footnote-ref-298)
298. *. Id.* (“Many states include an idea of benefit to a person other than the owner of the asset in their definitions of exploitation.”). [↑](#footnote-ref-299)
299. . Conn. Gen. Stat. Ann. § 17b-450 (West 2017). [↑](#footnote-ref-300)
300. . Dessin, *supra* note 265, at 274. [↑](#footnote-ref-301)
301. . Alaska Stat. Ann. § 47.24.900(8)(A) (West 2017) (“[Exploitation] means unjust or improper use of another person or another person’s resources for one’s own profit or advantage, with or without the person’s consent.”). [↑](#footnote-ref-302)
302. . Dessin, *supra* note 265 (Dessin’s category 4, Object of Exploitation, focuses on whether there is any inclusion of physical abuse along with the financial abuse. It is less useful for this Note’s purpose and is therefore omitted). [↑](#footnote-ref-303)
303. *. Id.* [↑](#footnote-ref-304)
304. . Ariz. Rev. Stat. Ann. § 13-3623 (2009) (“Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty.”). [↑](#footnote-ref-305)
305. . Nev. Rev. Stat. Ann. § 200.5092 (West 2019)(“[Exploitation] means any act taken by a person who has the trust and conﬁdence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person.”). [↑](#footnote-ref-306)
306. . Tex. Hum. Res. Code Ann. § 48.002(a)(3) (West 2000) (“‘Exploitation’ means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly person or person with a disability that involves using, or attempting to use, the resources of the elderly person or person with a disability, including the person’s social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the person”). [↑](#footnote-ref-307)
307. *. Id.* [↑](#footnote-ref-308)
308. *. Adult Protective Services, What You Must Know,* Nat’l Ctr. on Elder Abuse https://ncea.acl.gov/NCEA/media/publications/APS-Fact-Sheet.pdf (last visited Sept. 27, 2022) [hereinafter *NCEA Fact Sheet*]. [↑](#footnote-ref-309)
309. . Dessin, *supra* note 265, at 288 (“Every state has a means of punishing financial abuse under its criminal statutes. There is, however, significant variance in the way states have chosen to address the problem. A state may use criminal statutes of general application, may use a statute directed specifically to financial abuse of the elderly, or may use a sentencing enhancement when the victim of the financial abuse is elderly”). [↑](#footnote-ref-310)
310. *. Id.* at 288. [↑](#footnote-ref-311)
311. *. Id.*  [↑](#footnote-ref-312)
312. *. Id.*  [↑](#footnote-ref-313)
313. *. Id.*; *see* Buckman*,* *supra* note 312, § 2.(no other Buckman source. Full citation?) [↑](#footnote-ref-315)
314. *.* Deborah F. Buckman, Annotation*, Determination of Who Is “Vulnerable Adult” Entitled to Protection Under Adult Protection Acts*, 19 A.L.R.7th Art. 2, §, 2 (2016) [↑](#footnote-ref-316)
315. . Holly Ramsey-Klawsnik, Nat’l Ctr. on Elder Abuse & Nat’l. Adult Protective Servs. Ass’n, Understanding and Working with Adult Protective Services 3 (2018) [hereinafter Ramsey-Klawsnik Part I] (“In addition to shared goals, all APS programs are authorized by their state legislatures to receive and respond to reports of alleged ANE. All conduct investigations, make determinations as to the veracity of reports received and investigated, and seek to provide appropriate, effective, and ethical intervention services to alleviate danger and suffering experienced by victims. All must create and follow policies and practices consistent with state laws and professional standards of practice”).”). [↑](#footnote-ref-317)
316. *. APS Example Flow Chart,* Nat’l Ctr. on Elder Abuse, https://ncea.
acl.gov/NCEA/media/publications/APS-Flow-Chart.pdf (last visited Sept. 8, 2022). [↑](#footnote-ref-318)
317. . Ramsey-Klawsnik Part I, *supra* note 315, at 3 (“All [APS agencies] must create and follow policies and practices consistent with state laws”). . . .”). [↑](#footnote-ref-319)
318. . Candace Heisler, Nat’l. Adult Protective Servs. Ass’n, Working with Prosecutors: Ideas to Guide APS Programs 3 (2014), http://www.napsa-now.org/wp-content/uploads/2016/04/TA-Brief-Working-with-Prosecutors.pdf (“If, as a result of the investigation, APS develops evidence that there is slightly more evidence in favor of the allegation than against its existence, APS can usually substantiate the allegation and offer services. This level of proof is called ‘preponderance of the evidence.’. . . The legal difference between the APS and prosecution standards of proof to prevail or act is significant”). [↑](#footnote-ref-320)
319. . Holly Ramsey-Klawsnik, Understanding and Working with Adult Protective Services 3 (2018) [hereinafter Ramsey-Klawsnik Part II] https://
ncea.acl.gov/NCEA/media/Publication/NCEANAPSAbriefpartII.pdf (“There are critical distinctions between APS and criminal justice (CJ) or police investigations which are designed to determine if crimes have been committed and arrests are warranted. APS is designed to protect victim safety rather than punish perpetrators”). [↑](#footnote-ref-321)
320. . *Id.* at 3. [↑](#footnote-ref-322)
321. *. Id.*  [↑](#footnote-ref-323)
322. *. Id.*  [↑](#footnote-ref-324)
323. . Ramsey-Klawsnik Part II, *supra* note 319, at 3. [↑](#footnote-ref-325)
324. *. What Is Adult Protective Services?*, Nat’l. Adult Protective Servs. Ass’n., https://www.napsa-now.org/what-is-adult-protective-services/ [https://web.archive.org/web/20220808192506/https://www.napsa-now.org/what-is-adult-protective-services/] (“The details provided in the report will be screened by a trained professional to evaluate if it meets the statutory requirements for APS services in the state and/or municipality receiving the report”). [↑](#footnote-ref-326)
325. . Adult Protective Services (APS) Training Project, *Financial Exploitation—Trainer’s Manual*, S.F. State Univ. Sch. of Soc. Work 37 (2010), https://theacademy.sdsu.edu/wp-content/uploads/2015/06/financial-exploitation-trainers-manual.pdf (“Cultural Factors—certain cultural factors may make some situations more difficult to determine if financial exploitation is occurring - it is important not to ignore red flags by attributing the cause solely to cultural differences. Aspects to consider when working with persons from different cultures: Language barriers[,] Stereotypes [,] Religious beliefs [,and] Gender roles”). [↑](#footnote-ref-327)
326. *.* *Abuse Case Studies,* Nat’l. Adult Protective Servs. Ass’n., /https://
web.archive.org/web/20210730031854/http://www.napsa-now.org/about-napsa/
success/abuse-case-study/. [↑](#footnote-ref-328)
327. *. Id.* (noting that most APS agencies address emergency needs for food, shelter or law enforcement protection). [↑](#footnote-ref-329)
328. . U.S. Admin. for Cmty. Living, Adult Maltreatment Report 2020 12 (2020), https://acl.gov/sites/default/files/programs/2021-10/2020\_NAMRS\_Report\_
ADA-Final\_Update2.pdf (“In most programs, a report does not need to be substantiated for APS to assist the client with finding resources to address unmet needs.”). [↑](#footnote-ref-330)
329. *. Id.* at 11 (“If the report does not meet the population, setting, and jurisdiction eligibility criteria, APS may refer the case to a more appropriate agency (e.g., a regulatory/ licensing program. . . other social service program) or information may be provided to the reporter to assist the alleged victim.”). [↑](#footnote-ref-331)
330. *. NCEA Fact Sheet*, *supra* note 307 (“As is the case with any adult, victims have the right to decline protective services unless a qualified professional determines they are unable to make decisions for themselves.”). [↑](#footnote-ref-332)
331. . *See generally* Andres, *supra* note 281. (Matthew N. Andres, *Making Elder Financial Exploitation Cases Part of A Sustainable Practice: Tips from the Experiences of the University of Illinois College of Law's Elder Financial Justice Clinic*, 23 Elder L.J. 297 (2016)). [↑](#footnote-ref-333)
332. . Author-run searches of the LexisNexis database for “(“adult financial exploitation” OR “elder financial exploitation” OR “senior financial exploitation” OR “adult financial abuse” OR “elder financial abuse” OR “senior financial abuse”) AND (“MLM” OR “multilevel marketing” OR “multi-level marketing”)” returned zero secondary source results. An author-run search of the Westlaw database for “advanced: (“adult financial exploitation” OR “elder financial exploitation” OR “senior financial exploitation” OR “adult financial abuse” OR “elder financial abuse” OR “senior financial abuse”) AND (“MLM” OR “multilevel marketing” OR “multi-level marketing”) (“senior citizen” OR elder! OR “retirement age”) /p (MLM OR “multilevel marketing” OR “multi-level marketing”) also returned zero secondary sources. [↑](#footnote-ref-334)
333. *. See* Lee, *supra* note241, at 48 (noting that underreporting could be caused by a multitude of different factors). [↑](#footnote-ref-335)
334. *. See* FTC Protecting Older Consumers, *supra* note 27, at 4. [↑](#footnote-ref-336)
335. . Adria E. Navarro, Zachary D. Gassoumis, & Kathleen H. Wilber, *Holding Abusers Accountable: An Elder Abuse Forensic Center Increases Criminal Prosecution of Financial Exploitation*, 53 The Gerontologist 303, 304 (2012) (“In elder abuse, prosecution is rare for a number of reasons.”). [↑](#footnote-ref-337)
336. *. Andres*, *supra* note 281, at 307. [↑](#footnote-ref-338)
337. . Navarro et al., *supra* note 335, at 304 (“Moreover, the elder may be reluctant to or lack capacity to testify.”). [↑](#footnote-ref-339)
338. *. Id.*  [↑](#footnote-ref-340)
339. *. Id.*  [↑](#footnote-ref-341)
340. *. Andres*, *supra* note 281, at 314 (“Unfortunately, there is far too little civil legal assistance available for victims of elder financial exploitation, and as a result, very few cases of financial abuse are litigated.”).  [↑](#footnote-ref-342)
341. *. Id.* at 315 (“Several states have established elder financial exploitation as an independent civil cause of action. In those states, attorney’s fees are recoverable for all financial abuse that meets the definition in the statute. Yet, in states where no such cause of action exists, the availability of attorney’s fees often depends on the claim brought.”). [↑](#footnote-ref-343)
342. *. Id.*  [↑](#footnote-ref-344)
343. *. See generally* ABA Model Provisions, *supra* note 52. [↑](#footnote-ref-345)
344. . Pamela Glasner, *Mickey Rooney to Star in New Documentary About Elder Abuse*, HuffPost (Nov. 16, 2011), https://www.huffpost.com/entry/mickey-rooney-to-star-in-\_b\_965382 (“Elder exploitation is among the safest and most lucrative criminal enterprises in the world, being the least reported and least prosecuted of all crimes”). [↑](#footnote-ref-346)
345. *. Andres*, *supra* note 281, at 307. [↑](#footnote-ref-347)
346. *. Id.* at 309 (“Even when cases of financial abuse are reported, it can be challenging for victims to get police and prosecutors interested in their cases….On the surface, many instances of abuse may appear as though the senior has consented to a transaction into which he or she has actually entered due to undue influence or coercion.”). [↑](#footnote-ref-348)
347. *. Id.* (“Such situations may not fit neatly into definitions of specific crimes in criminal statutes, and thus police and prosecutors may not be able to identify the crime that was committed.”). [↑](#footnote-ref-349)
348. *. See generally* US Dep’t of Just., *supra* note256. [↑](#footnote-ref-350)
349. *. See, e.g.*,Miss. Code Ann. § 43- 47-5(i), (q)). [↑](#footnote-ref-351)
350. *. See, e.g.*,Md. Code Ann. Crim. Law § 8-801(a) (1),)-(8), (b)(1)-(2) (LexisNexis 2020). [↑](#footnote-ref-352)
351. . Taylor, *supra* note 13, at 4–8 (“MLM products are also consumable to encourage repeat purchases.”). [↑](#footnote-ref-353)
352. *. Id.* at Intro-9 (“Recruitment-driven MLMs (which is virtually all MLMs) can be distinguished from legitimate businesses. . .”). [↑](#footnote-ref-354)
353. . Author-run search of the LexisNexis database for “(“adult protective services” OR “adult protective service agency”) AND (“MLM” OR “multilevel marketing” OR “multi-level marketing”)” returned one secondary source addressing both MLM-type pyramid schemes and general APS agency responses to fraud, but not connecting the two (1 Blue Sky Regulation § 1.07 (2022)). Author-run search of the Westlaw database for “advanced:(“adult protective services” OR “adult protective service agency”) AND (“MLM” OR “multilevel marketing” OR “multi-level marketing”)” returned three secondary sources, all of which did not address the topic considered. [↑](#footnote-ref-355)
354. . Ramsey-Klawsnik Part I, *supra* note 314, at 3 (“All [APS agencies] must create and follow policies and practices consistent with state laws. . .”). [↑](#footnote-ref-356)
355. *. See* Laumann et al., *supra* note240, at 2. [↑](#footnote-ref-357)
356. *.* Deane, *supra* note 216, at 9 (“[t]he overwhelming majority of incidents of elder financial exploitation go unreported to authorities…for every documented case of elder financial exploitation, 43.9 went unreported"); *see also* Burnes *supra* note 252 (“[elder financial abuse and elder financial fraud] victims tend to underreport their victimization”). *But see* FTC Protecting Older Consumers, *supra* note 27, at 4 (“report data suggest that older adults are good at reporting frauds they encounter”). [↑](#footnote-ref-358)
357. . Navarro et al., *supra* note 335, at 304. [↑](#footnote-ref-359)
358. *. NCEA Fact Sheet*, *supra* note 307. [↑](#footnote-ref-360)
359. *. Id.* (“All client information is held in strict confidence by APS and generally may not be disclosed without a court order or a release of information signed by the client.”). [↑](#footnote-ref-361)
360. . *See* Adult Maltreatment Report 2020, U.S. Admin. for Cmty. Living 12 (2020), https://acl.gov/sites/default/files/programs/2021-10/2020\_NAMRS\_Report\_
ADA-Final\_Update2.pdf. [↑](#footnote-ref-362)
361. *. See generally* Deane, *supra* note 216. [↑](#footnote-ref-363)
362. *. See generally* Taylor, *supra* note 13. [↑](#footnote-ref-364)
363. *. See* Richards, *supra* note 2. [↑](#footnote-ref-365)
364. *. See* Walsh, *supra* note 44, at 587. [↑](#footnote-ref-366)
365. . Reese & Richards *supra* note 156, at 3. [↑](#footnote-ref-367)
366. . Heisler, *supra* note 318, at 3. [↑](#footnote-ref-368)
367. *. See generally* Taylor, *supra* note 13. [↑](#footnote-ref-369)
368. *. See 2020 Industry Overview, supra* note 6. [↑](#footnote-ref-370)
369. *. See generally* Bäckman & Hanspal *supra* note 24. [↑](#footnote-ref-371)
370. *. See generally e.g.*,Kristen Johnson, Kathy Park, Andrea Bogie, Shannon Flasch & Jennifer Cotter, *Developing an Actuarial Risk Assessment to Inform Decisions Made by Adult Protective Services Workers*, Nat’l Council on Crime and Delinq., (2012). [↑](#footnote-ref-372)
371. . *Automated Templates*, LexisNexis, https://plus.lexis.com/api/permalink/0d2
dc614-8360-44c3-b254-5edfd1b77166/?context=1530671 (last visited Sept. 6, 2022). [↑](#footnote-ref-373)
372. *. See e.g.,* Gregg Satula & Gary Sparger, *Write It Out: The Importance of the Law Enforcement Procedures Manual*, Lexipol (Aug. 17, 2020), https://www.lexipol.
com/resources/blog/write-it-out-the-importance-of-the-law-enforcement-procedures-manual/. [↑](#footnote-ref-374)
373. *. See* Laumann et al., *supra* note240, at 2. [↑](#footnote-ref-375)
374. . Matthews, *supra* note 46, at 2057. [↑](#footnote-ref-376)
375. *. What’s the Best MLM Business For Seniors?*,Senior Living Mag. (June 8, 2020), https://seniorlivingnepa.com/whats-the-best-mlm-business-for-seniors/. [↑](#footnote-ref-377)
376. *.* Lauren Lee, *A Complete Guide To Continuing Legal Education Requirements By State*, SimpleLegal (Sept. 26, 2021), https://www.simplelegal.com/blog/a-complete-guide-to-continuing-legal-education-requirements-by-state. [↑](#footnote-ref-378)
377. . Tatiana Follett, Suzanne Hultin, Amber Widgery & Lesley Kennedy, *Law Enforcement Certification and Discipline*, Nat’l Conf. of State Legis. (Aug. 17, 2020), https://www.ncsl.org/research/labor-and-employment/policing-oversight-and-new-legislation.aspx. [↑](#footnote-ref-379)
378. . *National Voluntary Consensus Guidelines for State Adult Protective Services Systems*, Admin. For Cmty. Living 3 (2018), https://acl.gov/sites/default/files/programs/2020-05/ACL-Guidelines-2020.pdf (“APS programs are not subject to federal rules and regulations.”). [↑](#footnote-ref-380)
379. *. Id.* at 57(“It is recommended that APS systems provide ongoing training to workers on a regular basis.”). [↑](#footnote-ref-381)
380. *. Id.* at 59(“According to the APS Survey, all but nine states require training for supervisors.”). [↑](#footnote-ref-382)
381. . *See* Eric Rosenbaum, *Millions of Americans are Only $400 Away From Financial Hardship*, CNBC (May 23, 2019, 12:38 PM), https://www.cnbc.com/2019/05/23/millions-of-americans-are-only-400-away-from-financial-hardship.html. [↑](#footnote-ref-383)
382. *.* S. Colby & J. Ortman, *Demographic Changes and Aging Population,* Rural Health Info. Hub (Mar. 2015)**,** https://www.ruralhealthinfo.org/toolkits/aging/1/
demographics#:~:text=Today%2C%20there%20are%20more%20than,increase%20
by%20almost%2018%20million. [↑](#footnote-ref-384)