



The 5 Big Insights On Zelle In The Report

- Nearly two-thirds (62%) of consumers who disputed a transaction as fraud at the three major banks in 2023 were not reimbursed, leaving over \$100 million worth of fraud disputes unreimbursed that year.
- Almost 9 out of 10 consumers (88%) who disputed a transaction as a scam at the three banks in 2023 were not reimbursed. The banks rejected scam disputes worth a combined total of approximately \$560 million from 2021-2023.
- In 2020, JPMorgan reimbursed only 3 transactions out of 41,390 scam disputes, and Wells Fargo did not reimburse any of the 25,061 scam disputes that year.
- Between 2019 and 2022, consumers under 35 at the three banks were reimbursed at lower rates than older consumers. In 2022, consumers over 65 were almost twice as likely to be reimbursed for fraud disputes than consumers under 18 (68% vs 35%).
- The number of business accounts registered on Zelle grew by approximately 1,728% from 2019 to 2023 (from 361,000 to 6.6 million), despite Zelle stating it's intended for payments between "friends, family, and others you trust."

What They Recommend

1. Congress should amend the **Electronic Fund Transfer Act (EFTA)** to require financial institutions to reimburse consumers for "fraudulently induced" authorized transactions (i.e., scams). This would expand consumer protection beyond just unauthorized transactions to include cases where consumers are tricked into authorizing payments under false pretenses.
2. The Consumer Financial Protection Bureau (CFPB) should **update Regulation E** to provide more extensive guidance on what qualifies as a "reasonable" investigation when banks review disputed transactions. This would create a higher standard for dispute investigations, giving banks a minimum set of requirements they must meet as part of a thorough investigation of disputed claims.



PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Majority Staff Report

A FAST AND EASY WAY TO LOSE MONEY:

Insufficient
Consumer
Protection on
the Zelle
Network



TABLE OF CONTENTS

TABLE OF CONTENTS	2
EXECUTIVE SUMMARY.....	4
Introduction.....	4
Summary of Findings.....	5
Recommendations.....	8
BACKGROUND	10
I. The Rise of P2P Payments, Fraud, and Scams.....	10
II. How Zelle Works.....	11
III. Development of the Zelle Network by Early Warning Services and the Owner Banks.....	15
IV. The Electronic Fund Transfer Act and Regulation E	18
V. The Subcommittee’s Investigation	24
FINDINGS.....	26
Finding 1: The Percentage of Consumers Reimbursed for Transactions Disputed as Fraud at the Three Banks Declined from 62% in 2019 to 38% in 2023	26
a. Nearly Two-Thirds of Consumers Who Disputed a Transaction as Fraud at the Three Banks in 2023 Were Not Reimbursed.....	26
b. Almost Nine Out of Ten Consumers Who Disputed a Transaction as a Scam at the Three Banks in 2023 Were Not Reimbursed.....	29
c. Banks Have Broad Discretion but Offer Little Transparency When Investigating and Resolving Disputed Transactions	34
Finding 2: EWS and the Three Banks Promote Zelle for Commercial Payments Without Offering Purchase Protections to Consumers.....	39
a. EWS Offers Functionality That Extends Beyond Consumers Using Zelle with “Friends, Family, and Others You Trust,” as the Company Claims the Service is Intended	39
b. Zelle Network Rules Explicitly Do Not Provide Purchase Protection for Commercial Transactions	41

Finding 3: Zelle Network Rules Include Self-Regulation Measures Intended to Reduce Scams and Fraud, but They Fall Short of Making All Consumers Whole	42
a. EWS Implemented an Expanded Scam Reimbursement Policy in 2023, but it Covered a Small Percentage of Scam Claims.....	42
b. EWS Monitors Scams and Fraud on the Zelle Network but Appears to be Inconsistent in Enforcing Policy Violations.....	44
Finding 4: EWS Generates its Primary Revenue from the Data it Collects from Consumers and Member Banks	47
Finding 5: Younger Consumers Are Reimbursed at Lower Rates Than Older Consumers on Zelle and Have Fewer Protections.....	48
a. Younger Consumers Are a Growing but Vulnerable Population on Zelle.....	48
b. The Three Banks Reimbursed Consumer Under 35 at Lower Rates than Older Consumers 2019-2022	52
c. The Three Banks Lack Specific Protocols Focused on Protecting Minors on Zelle	54
RECOMMENDATIONS	56
1. Amending EFTA to Require Reimbursement for Scams	56
2. Creating Greater Transparency in The Dispute Process.....	58
3. Expanding Purchase Protection for P2P Payments.....	58
4. Threat Information Sharing	59
5. Safeguarding Consumer Financial Data	60
6. Protecting Children on Zelle.....	60
7. Filling Regulatory Gaps to Cover New Technologies.....	61

EXECUTIVE SUMMARY

Introduction

Millions of Americans moved their lives online during the COVID-19 pandemic, leading to a surge in the use of digital finance services such as online banking and peer-to-peer (“P2P”) payments.¹ P2P platforms, which largely operate on mobile phones, allow consumers to transfer money instantly to another person or business.² Zelle, a P2P platform owned and operated by Early Warning Services, LLC (“EWS”), which is itself owned by a consortium of large banks, has outpaced competitors like Cash App and Venmo in recent years to become the dominant P2P platform in the United States, making the company an industry leader in digital finance and instant payments.³ The CEO of EWS has described Zelle as “the digital payments growth engine for the U.S. financial services industry.”⁴

Zelle payments are generally instant and irreversible. The speed of P2P payments make them particularly attractive to bad actors.⁵ In most cases, by the time a consumer realizes they have been targeted, their money is already gone.⁶ Instances in which consumers have been victimized by scams and fraud on Zelle generally fall in two categories: unauthorized transactions, in which a consumer loses control of their account (such as through hacking), and authorized transactions, in which the consumer is somehow tricked into authorizing a payment under false pretenses.⁷ Both scams and fraud proliferated on the Zelle Network

¹ Polo Rocha, *P2P payments surged during pandemic. So did the complaints about them.*, AMERICAN BANKER (June 22, 2021), <https://www.americanbanker.com/news/p2p-payments-surged-during-pandemic-so-did-the-complaints-about-them>.

² Amber Murakami-Fester and Ruth Sarreal, *What Are Peer-to-Peer Payments?*, NERDWALLET (Feb. 1, 2024), <https://www.nerdwallet.com/article/banking/p2p-payment-systems>.

³ Emily Mason, *Despite a Late Start, Bank-Owned Zelle Moves More Money than Venmo and Cash App Combined*, FORBES (Sept. 8, 2022), <https://www.forbes.com/sites/emilymason/2022/09/08/despite-a-late-start-bank-owned-zelle-moves-more-money-than-venmo-and-cash-app-combined>.

⁴ *Zelle Soars with \$806 Billion Transaction Volume, up 28% from Prior Year*, ZELLE (Mar. 4, 2024), <https://www.zellepay.com/press-releases/zelle-soars-806-billion-transaction-volume-28-prior-year>.

⁵ *Fraud and instant payments: The basics*, U.S. FED. RESERVE <https://www.frbservices.org/financial-services/fednow/instant-payments-education/fraud-and-instant-payments-the-basics.html>; *Avoid Scams with Peer-to-Peer Payments*, EQUIFAX <https://www.equifax.com/personal/education/cybersecurity/articles/-/learn/how-to-avoid-scams-with-payment-apps> (last visited July 11, 2024).

⁶ *Id.*

⁷ *Fraud & Scams Overview*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/safety-education/fraud-scams-overview>.

during the pandemic.⁸ Federal law requires platforms such as Zelle to reimburse consumers who lose money in unauthorized transactions, what Zelle calls “fraud,” but not authorized transactions, what Zelle calls “scams.”⁹

Summary of Findings

On June 16, 2023, the Permanent Subcommittee on Investigations (“PSI” or “the Subcommittee”) launched an inquiry into EWS, which operates the Zelle Network, and the three largest banks that offer Zelle and co-own EWS: JPMorgan Chase (“JPMorgan”), Bank of America, and Wells Fargo (collectively, the “Three Banks”). Collectively, these banks facilitated 73% of all Zelle payments in 2023.¹⁰ PSI reviewed data and documents related to scams and fraud on the Zelle Network between 2019 to 2023. PSI’s inquiry found:

- Despite a legal mandate in the Electronic Fund Transfer Act to reimburse fraud, JPMorgan, Bank of America, and Wells Fargo collectively reimbursed consumers for approximately 38%, or \$64 million, of the \$166 million worth of fraud disputes at these banks in 2023, leaving over \$100 million worth of fraud disputes unreimbursed that year.¹¹
 - Consumers who reported scams were infrequently reimbursed by their financial institutions. In 2020, JPMorgan reimbursed three transactions out of 41,390 scam disputes that year, Wells Fargo did not reimburse any of the 25,061 scam disputes, and Bank of America did not track scam data as a separate dispute category until the second half of 2020.¹² In total, these banks rejected scam disputes worth a combined total of approximately \$560 million from 2021-2023.¹³

⁸ Polo Rocha, *P2P payments surged during pandemic. So did the complaints about them.*, AMERICAN BANKER (June 22, 2021), <https://www.americanbanker.com/news/p2p-payments-surged-during-pandemic-so-did-the-complaints-about-them>.

⁹ 15 U.S.C. § 1693f(b); 15 U.S.C. § 1693f(f)(1); *see also*, 12 C.F.R. § 1005. The Electronic Fund Transfer Act is silent regarding authorized payments, but courts have taken the position that financial institutions are not obligated by the statute to reimburse a consumer that took part in authorizing a payment. *See* Background Section IV for further discussion of financial institutions’ reimbursement obligations.

¹⁰ Early Warning Services - PSI - Zelle Transaction Percentages, app. C. (on file with EWS) EWS-RR-006-0000001.

¹¹ These figures were calculated using data produced to PSI by JPMorgan, Wells Fargo, and Bank of America.

¹² *See* Finding 1, Subsection b, for further discussion of these numbers.

¹³ These figures were calculated using data produced to PSI by JPMorgan, Wells Fargo, and Bank of America.

- JPMorgan, Bank of America, and Wells Fargo reimbursed claims made by consumers on credit and debit cards at much higher rates than Zelle. From 2019 through 2022, these banks reimbursed 26% of the total dollar value of all Zelle payments disputed for any reason.¹⁴ In contrast, they reimbursed an average of 47% of all credit card disputes and 36% of all debit card disputes during the same period.¹⁵
- PSI’s review of the policies and procedures that JPMorgan, Bank of America, and Wells Fargo use for investigating claims made by consumers disputing Zelle payments found that the policies and procedures allow broad discretion to bank employees reviewing disputes. These policies and procedures allow employees to deny claims based solely on internal documentation in certain instances and offer little transparency to consumers.¹⁶
- Despite stating on its website that Zelle is intended as a way to send and receive money between “friends, family, and others you trust,” commercial usage of Zelle payments has grown significantly, with the number of profiles on Zelle associated with a business growing over 18 times from 2019 to 2023.¹⁷ By comparison, the total processed value of all payments on the Zelle Network grew just over four times in the same time frame.¹⁸
 - EWS markets Zelle to businesses as a way to accept payments. For example, Zelle introduced integrated QR codes to make it easier for small businesses to accept payment through Zelle and partnered with a national property management company to make it easier for landlords to accept rent payments through Zelle. Despite their apparent efforts to attract commercial payments, EWS, JPMorgan, Bank of America, and Wells Fargo do not offer purchase protections for Zelle payments similar to those available to consumers who use other payment methods, such as credit cards.¹⁹

¹⁴ *Supra*, note 13.

¹⁵ See Finding 1, Subsection b, for further discussion of this number.

¹⁶ PSI reviewed policies and procedures related to investigating disputed transactions at JPMorgan, Bank of America, and Wells Fargo.

¹⁷ Letter from Counsel for EWS to the Subcommittee (Feb. 15, 2024); *Zelle Safety 101*, ZELLE, <https://www.zellepay.com/pay-it-safe/zeller-safety-101> (last visited Apr. 11, 2024). (“Only send money to those you trust: Zelle® should only be used with friends, family and others you trust”). Note: all letters from respective counsel for EWS, JPMorgan, Bank of America, and Wells Fargo are on file with the Subcommittee.

¹⁸ *Zelle Soars with \$806 Billion Transaction Volume, Up 28% From Prior Year*, ZELLE (Mar. 4, 2024), <https://www.zellepay.com/press-releases/zelle-soars-806-billion-transaction-volume-28-prior-year>; *Gift Giving Helps Zelle® Wrap Up 2019 with Double Digit Growth*, ZELLE (Jan. 28, 2024), <https://www.zellepay.com/press-releases/gift-giving-helps-zelle-wrap-2019-double-digit-growth>.

¹⁹ See Finding 2 for further discussion of the use of Zelle for commercial payments.

- Zelle expanded its reimbursement policy in June 2023, describing the expansion of reimbursement rules as “well above existing legal and regulatory requirements,”²⁰ but the new policy covers only a small percentage of all scam disputes on the Zelle Network.²¹ The policy change resulted in \$18.3 million in reimbursed scam claims in the six months following its implementation, amounting to approximately 15-20% of all scam disputes on the Zelle Network within that timeframe.²²
- EWS oversees governance of the Zelle Network and monitors it for noncompliance with network policies. Six out of seven of the banks that co-own EWS were in violation of Zelle Network policies at least once in the 26-month period reviewed by PSI for having elevated rates of scams and fraud at their institution.²³
 - In October 2022, Wells Fargo paid a one-time noncompliance fee of \$25,000 to EWS and in September 2023, EWS assessed Bank of America a one-time noncompliance fee of \$30,000.²⁴
- EWS collects voluminous real-time data on the consumers who use Zelle, directly and through the banks that participate in the Zelle Network.²⁵ EWS uses the data it collects on consumers to develop risk management tools that it sells to financial services companies.²⁶ EWS operates Zelle at a loss but told PSI that the data-based products it sells are its “profit driver.”²⁷
 - While banks’ obligations to report data to EWS and bank regulators are not the same, JPMorgan, Bank of America, and Wells Fargo appear to share more data on scams and fraud with EWS than with their regulators.²⁸ The banks told PSI that their meetings with regulators *may* include a discussion of scams and fraud, but the Zelle Network Participation Rules state that banks *must* provide granular data on scams and fraud to EWS on a daily basis.

²⁰ Hannah Lang, *Payments App Zelle Begins Refunds for Imposter Scams After Washington Pressure*, REUTERS (Nov. 13, 2023), <https://www.reuters.com/technology/cybersecurity/payments-app-zelle-begins-refunds-imposter-scams-after-washington-pressure-2023-11-13/>.

²¹ Letter from Counsel for EWS to the Subcommittee (Feb. 15, 2024).

²² *Id.*

²³ See Finding 3, Subsection b, for further discussion of the self-regulation measures of the Zelle Network.

²⁴ Letter from Counsel for Wells Fargo to the Subcommittee (Jan. 23, 2024); Letter from Counsel for Bank of America to the Subcommittee (Jan. 12, 2024).

²⁵ See Finding 4 for further discussion of EWS’s data collection practices.

²⁶ *Products*, EARLY WARNING (2024), <https://www.earlywarning.com/products> (last visited July 17, 2024).

²⁷ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

²⁸ See Finding 4 for further discussion of EWS’s data collection practices.

- Between 2019 and 2022, JPMorgan, Bank of America, and Wells Fargo on average reimbursed consumers under 35 at lower rates than older consumers.²⁹ In 2022, consumers over 65 at these banks were almost twice as likely to be reimbursed for fraud disputes than consumers under 18, with an average of 35% of consumers under 18 reimbursed versus 68% of consumers over 65. Zelle and the banks that offer it provide few controls that could empower parents to protect their minor children, such as the ability to disable Zelle in their child’s banking app. These banks appear to have fewer safety protocols in place for minors than for their older customers.³⁰

Recommendations

Over the course of PSI’s 13-month investigation, the Subcommittee identified multiple opportunities that Congress, regulators, and the companies that participate in the Zelle Network could take to improve consumer protection. Accordingly, this report includes the following recommendations:

1. Congress should amend the Electronic Fund Transfer Act to require financial institutions to reimburse consumers for “fraudulently induced” authorized transactions. Amidst a surge in increasingly sophisticated scams and fraud, such an amendment would offer consumers more robust protection should they fall victim to a scam.
2. The Consumer Financial Protection Bureau (“CFPB”) should update Regulation E to require financial institutions to provide greater transparency when responding to disputed transactions by providing further clarity on what constitutes a “reasonable” investigation. This would create a higher standard for dispute investigations, giving banks a minimum set of requirements that they must meet as part of a thorough investigation of disputed claims.
3. Where P2P payments are intended for commercial purposes, payment platforms should be required to provide purchase protections that they provide for other payment methods, such as for credit cards. By extending purchase protections to P2P payments, consumers could engage with small businesses knowing that they are protected by the reimbursement standards offered by other payment methods in commercial transactions.

²⁹ See Finding 5 for further discussion of reimbursement rates for various age demographics.

³⁰ See Finding 5, Subsection c, for further discussion of the safety protocols used by the JPMorgan, Bank of America, and Wells Fargo.

4. EWS and banks that offer Zelle should implement a robust framework to share specific and real time information regarding scams and fraud with law enforcement and other financial institutions. This framework would strengthen those institutions' collective defenses to scams and fraud and empower law enforcement to apprehend bad actors.
5. In the face of growing digitization of finance, Congress and the CFPB should further limit the use of consumer financial data collected by payment platforms. Better disclosures and more meaningful limitations on the use of financial data would help protect consumers from unwanted harvesting of their data.
6. EWS should require banks that offer Zelle to allow parents to disable Zelle in their child's online banking app and to notify parents of large transactions initiated by their child. Developing such capabilities would empower parents to monitor the safety of their child's financial decision making.
7. Congress should amend the Electronic Fund Transfer Act to clarify that EWS, and any other financial services companies that play a central role in facilitating electronic fund transfers, are considered a "financial institution" under the statute. Expanding the definition to include these entities would make it more difficult for EWS to avoid responsibility to protect consumers.

BACKGROUND

I. The Rise of P2P Payments, Fraud, and Scams

P2P platforms allow consumers to send payments directly to others electronically, typically within a few seconds.³¹ P2P payments were first introduced in the late 1990s and steadily grew over the following decades.³² Both the number of users and transaction volume on P2P platforms has grown exponentially in recent years, particularly following changes in consumer behavior driven by the COVID-19 pandemic.³³ A 2022 survey from Pew Research Center found that more than three quarters of American adults have used one of the four largest P2P platforms: PayPal, Venmo, Zelle, or Cash App.³⁴ The global value of all P2P payments was approximately \$2.7 trillion in 2023 and is projected to rise to over \$8 trillion by 2030.³⁵

The prevalence of fraud and scams on P2P platforms has grown along with the popularity of these services.³⁶ Near instantaneous payment systems give consumers less time to correct or stop transactions, which means that faster P2P payment services have proven to be vulnerable to scams and fraud.³⁷ In 2023, payment apps or services were the third most common payment method on which consumers reported being defrauded to the Federal

³¹ Amber Murakami-Fester and Ruth Sarreal, *What Are Peer-to-Peer Payments?*, NERDWALLET (Feb. 1, 2024), <https://www.nerdwallet.com/article/banking/p2p-payment-systems>.

³² Andrea J. Caceres-Santamaria, *Peer-To-Peer (P2P) Payment Services*, Economic Research, FEDERAL RESERVE BANK OF ST. LOUIS (Apr. 2020), <https://research.stlouisfed.org/publications/page1-econ/2020/04/01/peer-to-peer-p2p-payment-services>; Brian O'Connell, *History of PayPal: Timeline and Facts*, THESTREET (Jan. 2, 2020, 12:48 PM), <https://www.thestreet.com/technology/history-of-paypal-15062744>.

³³ Claire Greene, Ellen Merry and Joanna Stavins, *Has COVID Changed Consumer Payment Behavior?* FEDERAL RESERVE BANK OF BOSTON. (Oct. 2021), <https://www.bostonfed.org/publications/research-department-working-paper/2021/has-covid-changed-consumer-payment-behavior.aspx>.

³⁴ Monica Anderson, *Payment Apps Like Venmo and Cash App Bring Convenience – and Security Concerns – to Some Users*, PEW RESEARCH. CTR. (Sept. 8, 2022), <https://www.pewresearch.org/short-reads/2022/09/08/payment-apps-like-venmo-and-cash-app-bring-convenience-and-security-concerns-to-some-users/>.

³⁵ *P2P Payment Market*, BEYOND MARKET INSIGHTS (Apr. 16, 2024), <https://beyondmarketinsights.com/report/p2p-payment-market/>.

³⁶ See CFPB, *Person-to-Person (P2P) Payment Fraud Conversation* (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_person-to-person-p2p-payment-fraud-conversation_presentation_2022-11.pdf. (In 2020, half of all consumer complaints to the CFPB about P2P were fraud related).

³⁷ *Avoid Scams with Peer-to-Peer Payments*, Equifax <https://www.equifax.com/personal/education/cybersecurity/articles/-/learn/how-to-avoid-scams-with-payment-apps> (last visited June 14, 2024).

Trade Commission, after credit and debit cards.³⁸ The 2022 Pew Research Center survey found that approximately 13% of P2P platform users reported sending money to someone and later realizing it was a scam.³⁹

II. How Zelle Works

Zelle is a P2P payment platform that allows consumers to send money directly from one U.S. bank account to another.⁴⁰ Early Warning Services, which operates Zelle, is an Arizona-based company owned by seven large US Banks: Bank of America, Capital One, JPMorgan, PNC Bank, Truist, U.S. Bank, and Wells Fargo (collectively, the “Owner Banks”).⁴¹ In addition to these seven banks, Zelle has more than 2,100 financial institutions that participate in the Zelle Network (hereinafter “Member Banks”).⁴² Since its launch in 2017, Zelle has grown to become the most widely used P2P payment service in the United States in terms of value transacted.⁴³

Much of Zelle’s growth is attributable to its partnership with large financial institutions.⁴⁴ With 2,100 banks and credit unions in the Zelle Network, 80% of U.S. deposit accounts have the ability to utilize Zelle.⁴⁵ The total number of transactions on Zelle increased over ten times in the five years between 2018 and 2023—from \$75 billion to \$806 billion total

³⁸ U.S. FED. TRADE COMM’N, CONSUMER SENTINEL NETWORK: DATA BOOK 2023, at 11 (Feb. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf.

³⁹ Monica Anderson, *Payment Apps like Venmo and Cash App Bring Convenience – and Security Concerns – to Some Users*, PEW RESEARCH. CTR. (Sept. 8, 2022), <https://www.pewresearch.org/short-reads/2022/09/08/payment-apps-like-venmo-and-cash-app-bring-convenience-and-security-concerns-to-some-users/>.

⁴⁰ Briefing from EWS to the Subcommittee (Nov. 14, 2023) (The Zelle Network is technically an information messaging service that allows financial institutions to provide payments to their consumers).

⁴¹ Emily Mason, *Despite a Late Start, Bank-Owned Zelle Moves More Money Than Venmo and Cash App Combined*, FORBES (Sept. 8, 2022), <https://www.forbes.com/sites/emilymason/2022/09/08/despite-a-late-start-bank-owned-zelle-moves-more-money-than-venmo-and-cash-app-combined>.

⁴² *Zelle® Announces Q2 Customer Growth and New Safety Measures*, ZELLE (Aug. 23, 2023) <https://www.zellepay.com/press-releases/zeller-announces-q2-customer-growth-and-new-safety-measures>; For convenience, this Report uses the terms “financial institution” and “bank” interchangeably. Financial institutions that participate in the Zelle network include banks and credit unions. *See Partners*, ZELLE (last visited July 11, 2024), <https://www.zellepay.com/join-zelle-network/partners>.

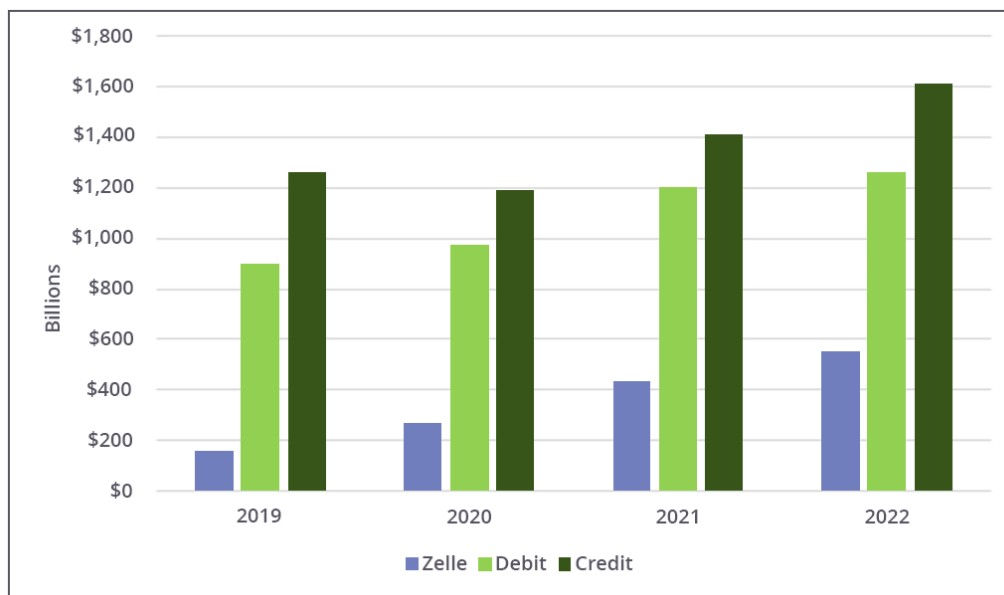
⁴³ Emily Mason, *Despite a Late Start, Bank-Owned Zelle Moves More Money Than Venmo and Cash App Combined*, FORBES (Sept. 8, 2022), <https://www.forbes.com/sites/emilymason/2022/09/08/despite-a-late-start-bank-owned-zelle-moves-more-money-than-venmo-and-cash-app-combined/?sh=158cfe0b9d3f>.

⁴⁴ *Id.*

⁴⁵ Adriana Nunez, *Zelle Carries Momentum Thanks to Network and Capability Expansions*, EMARKETER (Sept. 09, 2022), <https://www.emarketer.com/content/zelle-carries-momentum-thanks-network-capability-expansions>; *Zelle® Announces Q2 Customer Growth and New Safety Measures*, ZELLE (Aug. 23, 2023) <https://www.zellepay.com/press-releases/zeller-announces-q2-customer-growth-and-new-safety-measures>.

processed value.⁴⁶ In recent years, the value of all Zelle payments has grown to approximately the same amount of total ATM withdrawals nationwide.⁴⁷

Figure 1: Total Payment Volume per Payment Method Each Year at the JPMorgan, Bank of America, and Wells Fargo⁴⁸



Zelle payments grew at a faster rate at JPMorgan, Bank of America, and Wells Fargo year over year from 2019 to 2022, relative to other, more established, payment methods.⁴⁹ The total processed value of all credit card payments at these banks grew by 29%, from approximately \$1.23 trillion in 2019 to \$1.6 trillion in 2022.⁵⁰ Total debit card payments grew from \$0.9

⁴⁶ Zelle® Moves Record \$75 Billion in 2017, ZELLE (Jan. 29, 2018), <https://www.zellepay.com/press-releases/zelle-moves-record-75-billion-in-2017>; *Zelle Soars with \$806 Billion Transaction Volume, Up 28% From Prior Year*, ZELLE (Mar. 4, 2024), <https://www.zellepay.com/press-releases/zelle-soars-806-billion-transaction-volume-28-prior-year>.

⁴⁷ According to the Federal Reserve, total U.S. ATM withdrawals equaled \$730 billion in 2021, while total Zelle transactions in 2023 equaled \$803 billion. The Federal Reserve conducts a comprehensive analysis of all payment methods in the United States once every three years, and 2021 is the most recent year for which combined ATM numbers are available. \$730 billion for total ATM withdrawals is consistent across the past decade, with the same estimate showing \$800 billion in 2018 and \$760 billion in 2015. See FEDERAL RESERVE SYSTEM, *The Federal Payments Study: 2022 Triennial Initial Data Release* (July 27, 2023), <https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm>.

⁴⁸ These figures were calculated using data produced to PSI by JPMorgan, Wells Fargo, and Bank of America. Figures representing aggregate data for debit and credit cards do not reflect certain supplemental data provided by Wells Fargo due to logistical constraints.

⁴⁹ *Supra*, note 48.

⁵⁰ *Supra*, note 48.

trillion to \$1.2 trillion in the same time frame.⁵¹ By comparison, total Zelle payments grew by 250%, from \$158 billion in 2019 to \$554 billion in 2022.⁵²

To use Zelle, consumers must have a U.S. checking or savings account.⁵³ There are two ways to enroll in Zelle.⁵⁴ If a consumer is among approximately 100 million people who have Zelle associated with their bank, they can enroll by accepting the Zelle Terms of Service on the bank's website or within the bank's mobile app.⁵⁵ If the consumer's financial institution does not offer Zelle, the consumer can use Zelle by downloading the standalone Zelle app and linking it to their bank account.⁵⁶

The vast majority of Zelle payments—approximately 98%—are made by consumers who access Zelle through their banks' web pages or mobile apps, while the remaining 2% of payments are executed through the Zelle app.⁵⁷ Zelle is integrated into the mobile banking app interface for over 100 million consumers, appearing alongside other payment methods, such as credit cards and checking accounts.⁵⁸ EWS permits banks to use the logo and name for Zelle in association with Zelle functionality, but does not require it.⁵⁹

⁵¹ *Supra*, note 48.

⁵² These figures were calculated using data produced to PSI by JPMorgan, Wells Fargo, and Bank of America. To calculate the total payment volume for each payment method, the Subcommittee summed the dollar value of payments across these banks. JPMorgan wrote to the Subcommittee that "the growth in payment volume on Zelle—a product introduced in 2017—cannot be easily compared to the recent growth in the use of cards, which customers at the Three Banks have used for decades." Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024)

⁵³ ZELLE (Apr. 16, 2024), <https://www.zellepay.com/> (Footnote 1 states "U.S. checking or savings account required to use Zelle®").

⁵⁴ Ben Gran, *What is Zelle and How Does It Work?*, FORBES (July 6, 2022) <https://www.forbes.com/advisor/money-transfer/what-is-zelle-how-does-it-work/>.

⁵⁵ *About the Zelle Network*®, ZELLE <https://www.zellepay.com/safety-education/about-zelle-networkr> (last visited June 1, 2024); see e.g., *What is Zelle*®, WELLS FARGO (Apr. 16, 2024), <https://www.wellsfargo.com/financial-education/basic-finances/manage-money/payments/what-is-zelle/>; *Zelle*®, BANK OF AMERICA (Apr. 16, 2024), <https://promotions.bankofamerica.com/digitalbanking/mobilebanking/zelle>; *Zelle*®, CHASE (Apr. 16, 2024), <https://www.chase.com/personal/zelle>; *Zelle*® *Announces Q2 Customer Growth and New Safety Measures*, ZELLE (Aug. 23, 2023) <https://www.zellepay.com/press-releases/zeller-announces-q2-customer-growth-and-new-safety-measures>.

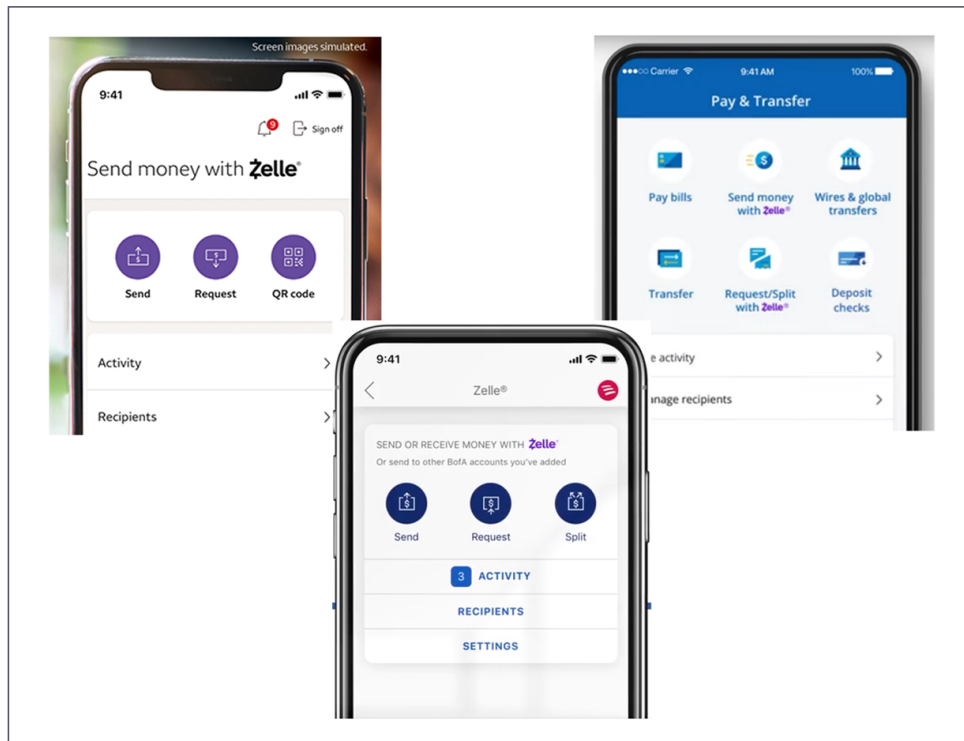
⁵⁶ *What if My Bank or Credit Union Doesn't Offer Zelle*®, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/faq/what-if-my-bank-or-credit-union-doesnt-offer-zelle>.

⁵⁷ Letter from Counsel for EWS to the Subcommittee (July 10, 2023).

⁵⁸ *About the Zelle Network*®, ZELLE <https://www.zellepay.com/safety-education/about-zelle-networkr> (last visited June 1, 2024).

⁵⁹ Early Warning Services LLC., *Zelle Network Participation Rules*, 66-67 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000066-67.

Figure 2: Sample Screenshots of Zelle Feature at Wells Fargo, Bank of America, and JPMorgan⁶⁰



Some banks may charge fees to businesses that use Zelle, but transactions are generally free for both the sender and recipient when money is sent between individual consumers.⁶¹ To initiate a transaction, a consumer navigates to Zelle through their banking app, enters the recipient's email address or phone number, the dollar amount of money to be transferred, and sends.⁶² The recipient typically receives the money in their bank account within minutes.⁶³ With few exceptions, once a Zelle payment is sent, it cannot be cancelled or reversed.⁶⁴

⁶⁰ *Send & Receive Money with Zelle*, BANK OF AMERICA, <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/send-receive-money/>; *How to Use Zelle® | Chase Mobile® App*, YOUTUBE (May 31, 2022), <https://www.youtube.com/watch?app=desktop&v=SP8mScEx0X8>; *Zelle – money sent right to your account*, WELLS FARGO, <https://sites.wf.com/enroll-in-zelle/> (last visited June 14, 2024).

⁶¹ Briefing with EWS to the Subcommittee (Nov. 14, 2023); see also, *Are There Any Fees to Send Money Using Zelle®?*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/faq/are-there-any-fees-send-money-using-zelle>.

⁶² Briefing with EWS to the Subcommittee (Nov. 14, 2023).

⁶³ *Id.*; see also *How Long Does It Take to Receive Money with Zelle?*, ZELLE <https://www.zellepay.com/faq/how-long-does-it-take-receive-money-zelle> (last visited June 18, 2024).

⁶⁴ *Can I Cancel a payment?*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/faq/can-i-cancel-payment>.

Making a payment on Zelle is different from other payment methods in several respects. Primarily, Zelle payments cannot be reversed, and in most instances, cannot be cancelled.⁶⁵ For example, the Automated Clearing House (“ACH”) is a network for electronic fund transfers that typically handles transactions like direct deposits and online bill payments.⁶⁶ ACH transactions are typically completed over the course of a few days, and unlike most Zelle payments, financial institutions can often intercept potential fraudulent activity by stopping payment on suspicious ACH transactions.⁶⁷ Similarly, check transactions, which also take several days to complete, allow consumers to request that their banks stop payment.⁶⁸ Additionally, unlike Zelle, debit and credit card transactions require merchants to be approved by the card network before being able to receive payments.⁶⁹ In addition, card processors typically maintain a chargeback mechanism whereby a sending bank can recall or reverse a payment.⁷⁰

III. Development of the Zelle Network by Early Warning Services and the Owner Banks

PayPal innovated electronic payments in the late 1990s and early 2000s, revolutionizing ecommerce.⁷¹ In 2012, Venmo pioneered a new form of mobile P2P payment apps, enabling consumers to send payments to each other quickly and easily from their mobile phones.⁷²

⁶⁵ *Can I Reverse a Zelle® payment?*, ZELLE (last visited July 8, 2024) <https://www.zellepay.com/faq/can-i-reverse-zeller-payment>; *Can I cancel a payment?*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/faq/can-i-cancel-payment> (last visited July 8, 2024).

⁶⁶ *What Is an ACH?*, CONSUMER FINANCIAL PROTECTION BUREAU (Apr. 30, 2024), <https://www.consumerfinance.gov/ask-cfpb/what-is-an-ach-en-1065/>.

⁶⁷ *Id.*; Kevin Payne, *What Is a Stop Payment and How Does It Work?*, FORBES (Updated: June 14, 2022), <https://www.forbes.com/advisor/banking/stop-payment/>.

⁶⁸ Kevin Payne, *What Is a Stop Payment and How Does It Work?*, FORBES (last updated June 14, 2022), <https://www.forbes.com/advisor/banking/stop-payment/>; Theresa Stevens, *How Long Does It Take for a Check to Clear?*, FORBES (last updated July 11, 2024), <https://www.forbes.com/advisor/banking/checking/how-long-does-it-take-for-a-check-to-clear/>.

⁶⁹ Dana Miranda, Rob Watts, *How to Accept Credit Card Payments*, FORBES ADVISOR (May 1, 2024), <https://www.forbes.com/advisor/business/how-to-accept-credit-card-payments/>; Mary Caldiero, *How Credit Card Processing Works “Infographic,”* PAYWAY, <https://www.payway.com/blog/how-credit-card-processing-works-infographic> (last visited July 17, 2024).

⁷⁰ *What Is a Chargeback?*, MASTERCARD, <https://b2b.mastercard.com/news-and-insights/blog/what-is-a-chargeback/> (last visited July 17, 2024); VISA, *DISPUTE MANAGEMENT GUIDELINES FOR VISA MERCHANTS 37, 40* (2023), <https://usa.visa.com/dam/VCOM/global/support-legal/documents/merchants-dispute-management-guidelines.pdf>.

⁷¹ See Brian O’Connell, *History of PayPal: Timeline and Facts*, THE STREET (Jan. 2, 2020), <https://www.thestreet.com/technology/history-of-paypal-15062744>.

⁷² Lydia Dallett, *Here’s Why Mobile Payments App Venmo Is Crushing the Competition Among College-Age Users*, BUSINESS INSIDER (Jan. 23, 2014), <https://www.businessinsider.com/venmo-splitting-a-group-check-easy-2014-1>.

The year before, JPMorgan, Bank of America, and Wells Fargo had created a P2P platform named “clearXchange,” to facilitate instant money transfers.⁷³ Public reporting described clearXchange as “clunky,” with different features at different banks.⁷⁴ EWS acquired clearXchange in 2016.⁷⁵ EWS representatives told PSI in a November 2023 briefing that EWS acquired clearXchange to create a ubiquitous P2P service offered through consumers’ banks with a consistent consumer experience.⁷⁶ In 2017, EWS launched Zelle with 30 participating financial institutions, including EWS’s seven Owner Banks.⁷⁷ In 2022, clearXchange consumers were transitioned to Zelle, and clearXchange ceased operation.⁷⁸

Zelle is governed by EWS’s Management Committee, which supervises the company much like a board of directors.⁷⁹ The Management Committee includes a representative from EWS and each of the seven Owner Banks.⁸⁰ Each financial institution that participates in the Zelle Network, whether one of the seven Owner Banks or otherwise, pays maintenance and transaction fees to EWS and must abide by contractual obligations it makes with EWS by agreeing to the Zelle Network Participation Rules (“Network Rules”) that form the basis of “governance and participation” in the Zelle Network.⁸¹ Additionally, EWS provides the “core

⁷³ Aaron Smith and Blake Ellis, *New cash transfer service rivals PayPal*, CNN MONEY, May 25, 2011, https://money.cnn.com/2011/05/25/news/companies/banks_paypal_clearxchange/index.htm; Tara Siegel Bernard, *Person-to-Person Payments Get Easier at Big Banks*, N.Y. TIMES (May 25, 2011), <https://archive.nytimes.com/bucks.blogs.nytimes.com/2011/05/25/person-to-person-payments-get-easier-at-big-banks/>.

⁷⁴ Stacy Cowley, *Cash Faces a New Challenger in Zelle, a Mobile Banking Service*, N.Y. TIMES (June 12, 2017), <https://www.nytimes.com/2017/06/12/business/dealbook/mobile-banking-zelle-venmo-apple-pay.html>.

⁷⁵ *Early Warning Completes Acquisition of clearXchange*, EARLY WARNING SERVICES (Jan. 12, 2016), <https://www.earlywarning.com/press-release/early-warning-completes-acquisition-clearxchange>; Stacy Cowley, *Cash Faces a New Challenger in Zelle, a Mobile Banking Service*, N.Y. TIMES (June 12, 2017), <https://www.nytimes.com/2017/06/12/business/dealbook/mobile-banking-zelle-venmo-apple-pay.html>.

⁷⁶ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

⁷⁷ *ZelleSM Now Live! In Mobile Banking Apps Today, a New Way to Pay*, EARLY WARNING (June 12, 2017), <https://www.earlywarning.com/press-release/zellesm-now-live-mobile-banking-apps-today-new-way-pay>; Briefing with EWS to the Subcommittee (Nov. 14, 2023).

⁷⁸ *The Zelle[®] App is Live!*, CLEARXCHANGE (Sept. 12, 2017), <https://web.archive.org/web/20171006194604/https://www.clearxchange.com/public/clearxchange-is-becoming-zelle>; *clearXchange[®] Shut Down*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/faq/clearxchange-shut-down> (“clearXchange[®] will be shut down on June 30, 2022”).

⁷⁹ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

⁸⁰ *Id.*

⁸¹ Generally, larger participating financial institutions pay relatively higher maintenance and transaction fees than smaller institutions, which effectively subsidizes membership for smaller banks. Many of the smallest participant community banks and credit unions offer Zelle through an agreement between their co-op financial services contractor and EWS. FIS, Jack Henry & Associates, Inc., and Fiserv are the largest

infrastructure components connecting and enabling the exchange of Messages” that facilitates the movement of information that guides the bank-to-bank transfer of funds on the Zelle Network.⁸²

EWS operates the Zelle Network on a cost recovery model, whereby both EWS and its Member banks do not realize a direct profit, and any revenue generated by the Zelle Network is returned to EWS rather than distributed as profit.⁸³ Zelle operates at a fraction of the cost of credit card processors.⁸⁴ According to documents reviewed by the Subcommittee, EWS estimated that the total cost for the Zelle Network for its first three years of operation (2017 through 2020), was \$135 million.⁸⁵ Comparatively, Visa and Mastercard had \$11.7 billion and \$11.1 billion in operating expenses, respectively, in fiscal year 2023.⁸⁶

Activity on Zelle is heavily concentrated among the largest banks that participate in the Zelle Network.⁸⁷ JPMorgan, Bank of America, and Wells Fargo facilitated 73% of all transaction volume in 2023.⁸⁸ The other four Owner Banks—Capital One, PNC Bank, Truist, and U.S. Bank—facilitated approximately 9% of total Zelle payments by volume, and the other

financial services co-op providers in the U.S. These companies provide small banks and credit unions with technology services like websites and mobile applications. All three co-op financial services contractors have agreements with EWS to offer Zelle to their bank clients. Briefing with EWS, to the Subcommittee (Nov. 14, 2024); *see also FIS Expands its Real-time P2P Payment Solutions Offering*, EARLY WARNING (Nov. 29, 2016), <https://www.earlywarning.com/press-release/fis-expands-its-real-time-p2p-payment-solutions-offering>; *Jack Henry & Associates, Inc.® and Early Warning® Unveil Strategic Partnership*, EARLY WARNING (Nov. 29, 2016), <https://www.earlywarning.com/press-release/jack-henry-associates-incr-and-early-warningr-unveil-strategic-partnership>; *Fiserv and Early Warning P2P Payments Alliance Gets Quick Start with Multiple Financial Institutions Committing to Early Warning’s ZelleSM Network*, EARLY WARNING (Oct. 24, 2016), <https://www.earlywarning.com/press-release/fiserv-and-early-warning-p2p-payments-alliance-gets-quick-start-multiple-financial>; Early Warning Services LLC., *Zelle Network Participation Rules*, 15 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000015.

⁸² Early Warning Services LLC., *Zelle Network Participation Rules*, 15 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000015.

⁸³ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

⁸⁴ Early Warning Services, LLC Third Amended and Restated Limited Liability Company Agreement, Schedule II, Funding Estimates for 2017-20 (Sept. 27, 2017) (on file with EWS), EWS-PSI-002-0000077.

⁸⁵ *Id.*

⁸⁶ *Annual Report 2023*, VISA (Apr. 16, 2024), <https://annualreport.visa.com/financials/default.aspx>; *Annual Reports & Proxy*, MASTERCARD (Apr. 16, 2024), <https://investor.mastercard.com/financials-and-sec-filings/annual-reports-and-proxy/default.aspx>.

⁸⁷ Briefing with EWS to the Subcommittee (Nov. 14, 2023); Early Warning Services - PSI - Zelle Transaction Percentages, app. C. (on file with EWS), EWS-RR-006-0000001.

⁸⁸ Early Warning Services - PSI - Zelle Transaction Percentages, app. C. (on file with EWS), EWS-RR-006-0000001.

approximately 2,100 Member Banks combined represented 18% of all Zelle payment volume in 2023.⁸⁹

IV. The Electronic Fund Transfer Act and Regulation E

Fraud and other problems arising from P2P transactions are governed by the Electronic Fund Transfer Act (“EFTA”) and Regulation E.⁹⁰ The CFPB enforces both EFTA and Regulation E in the P2P payment market and provides a portal where consumers can submit complaints of alleged fraud and scams on P2P platforms.⁹¹ EFTA and Regulation E require financial institutions to correct errors that occur in electronic fund transfers, including unauthorized transfers.⁹² Electronic fund transfers include money sent via most P2P platforms, as well as debit card transactions and other types of electronic transfers of funds.⁹³ Regulation E requires financial institutions that receive a timely claim of an error for an electronic funds transfer to investigate that allegation within ten days and report the result of the investigation to the consumer within three days of completing it.⁹⁴

Banks and P2P platforms, including Zelle, typically distinguish between unauthorized payments, or what is referred to as “fraud” in this report, and authorized payments, which are referred to as “scams.”⁹⁵ EFTA requires financial institutions to reimburse fraud, but makes no reference to authorized transactions induced by bad actors.⁹⁶ Courts have held that the

⁸⁹*Id.*; *Zelle® Announces Q2 Customer Growth and New Safety Measures*, ZELLE (Aug. 23, 2023), <https://www.zellepay.com/press-releases/zeller-announces-q2-customer-growth-and-new-safety-measures>.

⁹⁰ Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r (1978); *see also*, 12 C.F.R. § 1005.

⁹¹ *Submit a Complaint About a Financial Product or Service*, CONSUMER FINANCIAL PROTECTION BUREAU <https://www.consumerfinance.gov/complaint/> (last visited Mar. 14, 2024); Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r (1978) (Prior to the Dodd-Frank Act, the Board of Governors of the Federal Reserve bore primary responsibility for implementing EFTA).

⁹² 15 U.S.C. § 1693f(b); 15 U.S.C. § 1693f(f)(1).

⁹³ 12 C.F.R. § 1005.3(b)(1)(v); *see Electronic Fund Transfers FAQs*, CONSUMER FINANCIAL PROTECTION BUREAU (Updated December 13, 2021), <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/> (Comment 3(b)(1)-1.ii.

“Regulation E applies to any person-to-person (P2P) or mobile payment transactions that meet the definition of EFT, including debit card, ACH, prepaid account, and other electronic transfers to or from a consumer account.”).

⁹⁴ 12 C.F.R. § 1005.11(c)(1).

⁹⁵ *Fraud & Scams Overview*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/safety-education/fraud-scams-overview>.

⁹⁶ *See* 15 U.S.C. § 1693f(b); 15 U.S.C. § 1693f(f)(1); 12 C.F.R. § 1005.

statute does not require banks to reimburse consumers for scams.⁹⁷ Even so, Zelle Member Banks voluntarily reimburse certain categories of scams in some instances.⁹⁸

Figure 3: EFTA Definitions of Authorized and Unauthorized Payments

	Unauthorized a/k/a “Fraud” or Other ⁹⁹	Authorized a/k/a “Scam”
Definition	“[A]n electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit.” ¹⁰⁰	EFTA does not define “authorized” electronic fund transfer, however, instances in which a consumer initiates an electronic fund transfer for a good or service, even if they do not receive the value they paid for, are considered authorized. ¹⁰¹
Example	Unauthorized user hacks into a consumer’s bank account and transfers money out of the account without consumer’s knowledge.	Bad actor impersonates a landlord offering to rent an apartment and a prospective tenant transfers what they believe is a security deposit.
Reimbursement Obligation	EFTA generally requires the financial institution to reimburse the consumer. ¹⁰²	EFTA does not address authorized payments. Courts have interpreted the statute to provide that financial institutions are not required to reimburse the consumer. ¹⁰³

⁹⁷ See e.g., *Wilkins v. Navy Fed. Credit Union*, 2023 WL 239976, at *19 (D.N.J. Jan. 18, 2023) (dismissing the Plaintiff’s case where she alleged that she was “scammed” into initiating Zelle transactions in part because the complaint alleged that “she, in every sense of the word, *authorized* the transaction. Unfortunately for Plaintiff, the person on the other side of the Zelle transactions was not who they claimed to be.”) (emphasis in original); *Cook v. USAA Fed. Sav. Bank*, 2023 WL 3949735, at *2 (D. Md. June 12, 2023); *Sanchez v. Navy Fed. Credit Union*, 2023 WL 6370235, at *23 (C.D. Cal. Aug. 14, 2023).

⁹⁸ See Finding 3, Subsection a.

⁹⁹ 12 C.F.R. § 205.11; EFTA provides for resolution of errors in the transfer of electronic funds. In addition to unauthorized payments, referred to throughout this report as fraud, EFTA requires resolution for other errors such as bookkeeping issues or funds sent incorrectly by a financial institution.

¹⁰⁰ 12 C.F.R. § 1005.2(m).

¹⁰¹ See e.g., *Holmes v. Cap. One, N.A.*, 2023 WL 6318883, at *7-8 (N.D.N.Y. Sept. 28, 2023) (finding that, where the Plaintiff “intentionally transferred” money through Zelle to purchase an item she never received was not “unauthorized” under EFTA).

¹⁰² As written, EFTA requires a consumer to report an unauthorized transfer within 60 calendar days of receiving their bank statement that contains the error. Otherwise, they are liable for the unauthorized transfer. For unauthorized transfers that involve an access device, e.g., a stolen debit card, other limitations may apply in addition to the 60-day reporting requirement, such as capping the bank’s liability to \$500 if the consumer does not report the fraud within two business days. In practice, these limitations do not impact consumers as many payment methods employ a zero-liability fraud policy, in which they pay all of a transaction they determine to be unauthorized beyond the 60-day time window. See 12 C.F.R. § 1005.6.

¹⁰³ See e.g., *Wilkins v. Navy Fed. Credit Union*, 2023 WL 239976, at *19 (D.N.J. Jan. 18, 2023).

Under Regulation E, if a transaction is initiated without the consumer's knowledge or approval, the consumer may not be held liable for the loss of those funds.¹⁰⁴ However, Regulation E does not require reimbursement of a claim where a consumer is tricked into making a payment.¹⁰⁵ These "scam" transactions are considered "authorized," and the consumer can be liable.¹⁰⁶

The Zelle website similarly differentiates between authorized and unauthorized transactions, making a distinction between transactions it categorizes as "fraud" and those that it categorizes as "scams" in its approach to reimbursement.¹⁰⁷ According to the Zelle website:

- A "scam" is when a consumer is knowingly involved in the transaction and authorizes a payment to be sent.¹⁰⁸ Scams include instances when a consumer is tricked or persuaded into authorizing a payment for a good or service that is never provided.¹⁰⁹
- "Fraud" is when someone gains access to a consumer's account and makes a Zelle payment without the consumer's permission, and the consumer is not involved with the transaction.¹¹⁰ For example, this would include instances when someone gains access to a consumer's account and steals or sends money without the consumer's permission.¹¹¹

¹⁰⁴ *Electronic Fund Transfers FAQs*, CONSUMER FIN. PROT. BUREAU (Updated June 4, 2021), <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/> ("When a consumer's account access information is obtained from a third party through fraudulent means such as computer hacking, and a hacker uses that information to make an EFT [electronic fund transfer] from the consumer's account, the transfer is an unauthorized EFT under Regulation E.")

¹⁰⁵ See e.g., *Wilkins v. Navy Fed. Credit Union*, 2023 WL 239976, at *19 (D.N.J. Jan. 18, 2023).

¹⁰⁶ *Id.*

¹⁰⁷ *Fraud & Scams Overview*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/safety-education/fraud-scams-overview>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

Figure 4: Examples of Common Scams and Fraud

Scams
<p>Me-to-Me Scams: Bad actors, claiming to be bank employees, successfully change settings on a consumer’s bank account, and then instruct victims to transfer money to themselves with Zelle, which sends the money to a separate bank account.¹¹²</p> <p>A San Francisco woman received a text message that seemed to come from Wells Fargo’s fraud department, asking her to verify recent payments she did not make on Zelle.¹¹³ The bad actor then told her that she had to Zelle the \$3,500 back to herself. The money was routed to the bad actor’s account.¹¹⁴</p> <p>AI Voice Cloning Scams: Bad actors search for potential victims through social media and learn about their family. Then, using artificial intelligence, the bad actors clone a loved one’s voice, call the consumer using the artificial voice, and contrive a crisis that persuades the consumer to transfer money out of a sense of urgency.¹¹⁵</p> <p>A senior couple in Pittsboro, North Carolina, wired \$5,000 to a bad actor impersonating their grandson with voice cloning technology.¹¹⁶ The “grandson” claimed that he had just been in a car accident and needed bail money to get out of jail.¹¹⁷</p> <p>Romance Scams: Bad actors initiate contact with a consumer through an online dating site or elsewhere and impersonate a potential love interest. Over the course of a fake relationship, the bad actor requests money for gifts or contrived needs.¹¹⁸</p> <p>An 82-year-old man from Houston was scammed by a woman he met on a dating site.¹¹⁹ The woman sent him photos and requested that he send her money through Zelle. The man was scammed out of more than \$100,000 as a result.¹²⁰</p>

¹¹² Jon Healey, *Do you use Zelle? Here’s how to spot increasingly common scams*, LOS ANGELES TIMES (Oct 7, 2022), <https://www.latimes.com/business/technology/story/2022-10-07/zelle-banks-may-not-cover-the-losses-from-scams>.

¹¹³ Michael Finney & Renee Koury, *Bank of America Imposters Renew Zelle Scam, Telling Victims “Ignore Fraud Warnings”*, ABC7 NEWS (Aug. 5, 2023), <https://abc7news.com/zelle-wells-fargo-scam-sf-woman-scammed/14480411/>.

¹¹⁴ *Id.*

¹¹⁵ Charles Bethea, *The Terrifying A.I. Scam That Uses Your Loved One’s Voice*, THE NEW YORKER (Mar. 7, 2024), <https://www.newyorker.com/science/annals-of-artificial-intelligence/the-terrifying-ai-scam-that-uses-your-loved-ones-voice>.

¹¹⁶ Rodney Overton, *Pittsboro Couple Out \$5000 in ‘Grandparent Scam’ as New Twist on Ripoff Emerges*, CBS17 NEWS (Sept. 25, 2023), <https://www.cbs17.com/news/local-news/pittsboro-couple-lose-5000-in-grandparent-scam-as-new-twist-on-ripoff-emerges-officials-warn/>.

¹¹⁷ *Id.*

¹¹⁸ *Romance Scams, ScamWatch*, NATIONAL ANTI-SCAM CENTRE (May 1, 2024), <https://www.scamwatch.gov.au/types-of-scams/romance-scams>.

¹¹⁹ Heather Sullivan, *Investigation Exposes Romance Scam Links After Man Loses \$100,000*, FOX26 NEWS (Feb. 13, 2023), <https://www.fox26houston.com/news/investigation-exposes-romance-scam-links-after-man-loses-100000>.

¹²⁰ *Id.*

Employment Scams: Bad actors find a consumer in the process of a job search. The bad actor conducts a fake virtual job interview and extends a fraudulent job offer. As part of the fake onboarding, the bad actor sends a forged check to the consumer and instructs them to use the “funds” to Zelle money to various accounts to buy supplies for the job.¹²¹

A college graduate received a fake job offer via LinkedIn.¹²² As a part of the onboarding process, they were sent a fraudulent \$2,400 check and instructed to Zelle the amount to the office’s equipment employee for her work laptop, phone, and printer.¹²³ However, the check bounced, and the college graduate was scammed out of \$2,400.¹²⁴

Puppy Scams: A bad actor places a fake item on an online forum or marketplace such as Facebook Marketplace or Craigslist. A consumer pays money for an item they never receive.¹²⁵

A Florida woman responded to a Facebook listing for mini-Goldendoodles.¹²⁶ She paid the breeder a \$300 deposit through Zelle. The breeder then asked for an additional \$660 for “puppy insurance.”¹²⁷ The consumer never received a puppy.¹²⁸

Fraud

Employment Scams: Hacking: A bad actor gains access to a consumer’s bank account without any form of authorization, through deception or otherwise, provided by the consumer.

A Houston woman receives a notice from her bank notifying her that a new user had been added to her account.¹²⁹ The new user immediately withdrew \$1,000. Over the next three days, the hacker continuously attacked her account, ultimately withdrawing \$8,000.

¹²¹ Ray A. Smith, *New Job Scams Are Flourishing. Young Workers Are Especially Susceptible.*, THE WALL STREET JOURNAL (May 1, 2024), <https://www.wsj.com/lifestyle/careers/new-job-scams-targeting-young-professionals-are-flourishing-70e1aba1?mod=djem10point>.

¹²² Olivia Herbert, *College Graduate Issues Warning About ‘Fake Job Offers’ on LinkedIn After She was ‘Scammed’ Out of \$2400*, THE INDEPENDENT (Aug. 7, 2023), <https://www.independent.co.uk/life-style/linkedin-scam-fake-job-offer-tiktok-b2389070.html>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Miranda Carney, *How to Spot a Puppy Scam Online*, AMERICAN KENNEL CLUB (May 30, 2023), <https://www.akc.org/expert-advice/advice/spot-puppy-scam/>.

¹²⁶ Ben Becker, *Local Woman Says Dog Breeder Used Catfishing Zelle Scam to Reel in Her Money*, YAHOO NEWS (Feb. 12, 2023), <https://news.yahoo.com/investigates-local-woman-says-dog-043000254.html>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Bill Spencer, *Single Houston-area mom falls victim to Zelle scam, loses nearly \$8,000*, CLICK2HOUSTON (Mar. 21, 2024), <https://www.click2houston.com/news/local/2024/03/13/single-mom-in-spring-branch-loses-almost-8000-in-zelle-scam/>.

Hacking: A bad actor gains access to a consumer’s bank account without any form of authorization, through deception or otherwise, provided by the consumer.

A Houston woman receives a notice from her bank notifying her that a new user had been added to her The new user immediately withdrew \$1,000. Over the next three days, the hacker continuously attacked her account, ultimately withdrawing \$8,000.

Robbery or Threat of Force: A bad actor obtains a user’s phone through theft or threat of violence. After gaining access to the consumer’s mobile device, the bad actor transfers funds away.

In January 2024, Manhattan District Attorney Alvin Bragg sent letters to Zelle and other P2P platforms relating to a wave of robberies in New York, in which bad actors used theft or force to obtain access to consumer’s P2P account and transferred money to themselves.¹³⁰

EWS takes the legal position that it is not technically a “financial institution” under EFTA and Regulation E.¹³¹ As such, EWS maintains that it is not liable to consumers who are victims of scams or fraud on the Zelle Network under the statute.¹³² While EWS requires Member Banks to reimburse consumers who experience fraud on the Zelle Network, PSI’s analysis of the dispute data from JPMorgan, Bank of America, and Wells Fargo found they do not reimburse most types of scams.¹³³

JPMorgan, Bank of America, and Wells Fargo told the Subcommittee that they have addressed scams through technology-based prevention methods, such as data analytics, warning messages about potentially suspicious transactions, and consumer education campaigns.¹³⁴ Acknowledging that Zelle scams pose a problem for the network, EWS told the Subcommittee in a November 2023 briefing that “the weakest link now is the actual consumer.”¹³⁵ EWS’s and the Three Banks’ scam mitigation efforts appear to focus on using data analytics to block

¹³⁰ *Manhattan DA calls on Venmo, Zelle, Cash App to protect users*, ABC NEWS (Jan. 24, 2024), <https://abcnews.go.com/GMA/News/video/manhattan-da-calls-venmo-zelle-cash-app-protect-106629380>.

¹³¹ *See e.g.*, Mot. of Def. Early Warning Services, LLC to Dismiss Second Am. Class Action Compl. at 5, *Tristan v. Bank of America, N.A.*, (No. 8:22-CV-01183-DOC-ADS), 2023 WL 8945714 (C.D. Cal. Dec. 5, 2023) (“EWS is not a ‘financial institution’ under EFTA or Regulation E”).

¹³² *See id.*

¹³³ *Early Warning Services LLC., Zelle Network Participation Rules*, 208 (Apr. 30, 2024) (on file with EWS), EWS-RR-004-0000208; *see Finding 1, Subsection b; see also, Fraud & Scams Overview, ZELLE* (Apr. 16, 2024), <https://www.zellepay.com/safety-education/fraud-scams-overview>.

¹³⁴ Briefing with Bank of America to the Subcommittee (Nov. 16, 2023); Letter from Counsel for JPMorgan to the Subcommittee (Nov. 6, 2023); Letter from Counsel for Wells Fargo to the Subcommittee (Oct. 27, 2023).

¹³⁵ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

potentially fraudulent transactions and creating friction points and educational resources to influence consumer behavior.¹³⁶ However, in 2023, EWS and its Owner Banks implemented a policy change that requires Member Banks to reimburse consumers for certain claims arising from transactions involving “scammers claiming to be from a government agency, bank, or existing service provider.”¹³⁷

Beyond EFTA’s requirements for banks, the statute also provides for a private right of action that allows consumers to bring a civil claim to enforce the statute’s reimbursement requirements for transactions it defines as fraud.¹³⁸ In theory, this means that an individual consumer has the right to sue their bank and collect damages if the bank improperly denied reimbursement of a fraud claim under EFTA.¹³⁹ This private right of action does not extend to claims arising from authorized transactions where the consumer is tricked into initiating the transaction.¹⁴⁰

V. The Subcommittee’s Investigation

On June 16, 2023, the Subcommittee requested documents and information from EWS and the largest three banks that own EWS and participate in the Zelle Network: JPMorgan, Bank of America, and Wells Fargo.¹⁴¹ PSI thereafter obtained enterprise-wide data from EWS and

¹³⁶ Briefing with Bank of America to the Subcommittee (Nov. 16, 2023); Briefing with JPMorgan to the Subcommittee (Nov. 20, 2023); Briefing with Wells Fargo to the Subcommittee (Nov. 14, 2023); A Wells Fargo representative told the Subcommittee that adding friction to the Zelle payment process is a balancing act—efforts to slow Zelle transactions risk undermining the network’s speed, the very feature that distinguishes Zelle from other P2P platforms. EWS and the Banks have intentionally slowed down the payment process by creating friction points, e.g. requiring consumers to certify that they understand scam warning and submitting transactions for manual review within the bank before approving them.

¹³⁷ Hannah Lang, *Payments App Zelle Begins Refunds for Imposter Scams After Washington Pressure*, REUTERS (Nov. 13, 2023), <https://www.reuters.com/technology/cybersecurity/payments-app-zelle-begins-refunds-imposter-scams-after-washington-pressure-2023-11-13/>.

¹³⁸ See 15 U.S.C. § 1693(m).

¹³⁹ Jonathan L. Pompan and Andrew E. Bigart, *CFPB Bulletin on Preauthorized Electronic Fund Transfers*, VENABLE LLP (Nov. 24, 2015).

¹⁴⁰ See e.g., Holmes, 2023 WL 6318883, at *7 (dismissing a claim brought under EFTA because Plaintiff authorized the transaction.); see generally Polo Rocha, *Extra arbitration hurdles at Zelle, Klarna draw criticism*, AM. BANKER (Dec. 21, 2023, 5:20 PM), <https://www.americanbanker.com/news/extra-arbitration-hurdles-at-zelle-klarna-draw-criticism> (EWS and its Member Banks broadly include arbitration agreements in consumers’ bank agreements or Zelle agreements, which limits the legal recourse consumers have available when they are victim to scams or fraud).

¹⁴¹ See Letter from Chairman Richard Blumenthal, and Ranking Member Ron Johnson, Permanent Subcomm. on Investigations of the S. Comm on Homeland Sec. and Gov. Aff’s, to Tracy Cheney, General Counsel and Secretary, Early Warning Services LLC (June 16, 2023); Letter from Chairman Richard Blumenthal, and Ranking Member Ron Johnson, Permanent Subcomm. on Investigations of the S. Comm on Homeland Sec. and

the Three Banks, including four years of payment, reimbursement, and associated demographic data for payments made via Zelle, debit card, credit card, and other methods - as well as relevant documents from the Three Banks.¹⁴²

PSI received and reviewed thousands of pages of documents from EWS and the Three Banks related to scams and fraud, including documents related to monitoring, mitigation, reporting to EWS, and more. PSI also reviewed numerous agreements and governing rules that the Three Banks entered into with EWS as part of joining the Zelle Network, including the Zelle Network Operating Rules, the Zelle Fraud Risk Manual, and formal contracts and agreements spanning back to the formation of EWS.¹⁴³ PSI also reviewed documents related to the prevention of scams and fraud from all seven Owner Banks of the Zelle Network and received briefings from EWS, JPMorgan, Bank of America, Wells Fargo, and the CFPB as part of its investigation.¹⁴⁴ On May 21, 2024, PSI held a hearing entitled “Fraud Alert: Shedding Light on Zelle,” during which the Subcommittee received testimony from victims of scams and subject matter experts on consumer protection.¹⁴⁵

Gov. Aff’s, to Brian Moynihan, Chair of the Board and Chief Executive Officer, Bank of America (June 16, 2023); Letter from Chairman Richard Blumenthal, and Ranking Member Ron Johnson, Permanent Subcomm. on Investigations of the S. Comm on Homeland Sec. and Gov. Aff’s, to Jamie Dimon, Chairman of the Board and Chief Executive Officer, JPMorgan (June 16, 2023); Letter from Chairman Richard Blumenthal, and Ranking Member Ron Johnson, Permanent Subcomm. on Investigations of the S. Comm on Homeland Sec. and Gov. Aff’s, to Charles W. Scharf, Chief Executive Officer and President, Wells Fargo (June 16, 2023).

¹⁴² PSI’s findings were developed using data provided by JPMorgan, Bank of America, and Wells Fargo: Attachment to Letter from Counsel for Bank of America to the Subcommittee (May 17, 2024) (on file with Bank of America), PSI_00000286; Letter and Attachment from Counsel for JPMorgan to the Subcommittee (Nov. 6, 2023) (on file with JPMorgan), JPMC-PSI-000818; Email and Document from Counsel for JPMorgan to the Subcommittee (April 24, 2024) (on file with JPMorgan), JPMC-PSI-000826; Email and Document from Counsel for JPMorgan to the Subcommittee (May 3, 2024) (on file with JPMorgan), JPMC-PSI-000825; Attachment to Letter from Counsel for Wells Fargo to the Subcommittee (May 20, 2024) (on file with Wells Fargo), WF-PSI-00000866.

¹⁴³ Early Warning Services LLC., *Zelle Network Participation Rules* (Apr. 30, 2023) (on file with EWS), EWS-RR-004-0000001; Early Warning Services, LLC., *Zelle Fraud Risk Manual* (May 2023) (on file with EWS), EWS-RR-001-0000189.

¹⁴⁴ Briefing with the CFPB to the Subcommittee (Oct. 27, 2023); Briefing with EWS to the Subcommittee (Nov. 14, 2023); Briefing with Wells Fargo to the Subcommittee (Nov. 14, 2024); Briefing with Bank of America to the Subcommittee (Nov. 16, 2023); Briefing with JPMorgan to the Subcommittee (Nov. 20, 2024).

¹⁴⁵ *Fraud Alert!: Shedding Light on Zelle: Hearing Before the Subcomm. On Investigations of the S Comm. on Homeland Sec. and Gov. Aff’s*, 118th Cong. (May 21, 2024), <https://www.hsgac.senate.gov/subcommittees/investigations/hearings/fraud-alert-shedding-light-on-zelle/>.

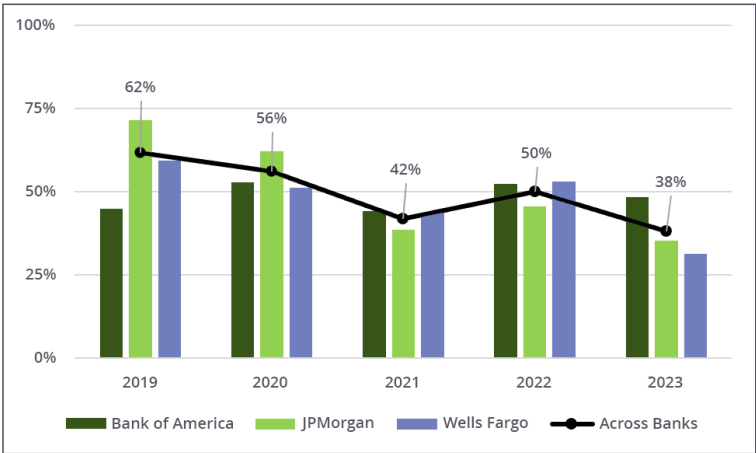
FINDINGS

Finding 1: The Percentage of Consumers Reimbursed for Transactions Disputed as Fraud at the Three Banks Declined from 62% in 2019 to 38% in 2023

a. *Nearly Two-Thirds of Consumers Who Disputed a Transaction as Fraud at the Three Banks in 2023 Were Not Reimbursed*

The Zelle website tells consumers that “if someone gained access to your account... without your permission,” the consumer would “typically (be) able to get your money back.”¹⁴⁶ However, PSI’s analysis shows that, since 2021, more than half of consumers at the Three Banks who disputed a transaction as fraud were not reimbursed.¹⁴⁷

Figure 5: Average Percent of Zelle Payments Disputed as Fraud Reimbursed by the Three Banks 2019-2023¹⁴⁸



¹⁴⁶ *Fraud & Scams Overview*, ZELLE (Apr. 16, 2024), <https://www.zellepay.com/safety-education/fraud-scams-overview>.

¹⁴⁷ The Three Banks provided totals and dollar amounts for disputed Zelle transactions that were fully reimbursed and did not provide totals or dollars amounts for disputed Zelle transactions that were partially reimbursed because these institutions typically either deny or reimburse a transaction in full. Therefore, in this Report, when the Subcommittee refers to Zelle transactions that were “reimbursed,” it means those transactions were fully reimbursed.

¹⁴⁸ These figures were calculated using data produced to PSI by the Three Banks. For each of the Three Banks, the average percent reimbursed was calculated for each year by dividing the total number of

PSI analyzed data provided by the Three Banks on the number of Zelle payments consumers disputed as fraud from 2019 to 2023 and compared it to the number of Zelle payments disputed as fraud that the Three Banks reimbursed.¹⁴⁹ This analysis showed that the average percentage of consumers reimbursed by the Three Banks for Zelle payments disputed as fraud trended downward from 2019 to 2023, decreasing between 2019 and 2021, (62% in 2019 to 56 % in 2020, then 42 % in 2021.); increasing between 2021 and 2022 (42% in 2021 to 50% in 2022); and decreasing between 2022 to 2023 (50% in 2022 to 38% in 2023).¹⁵⁰ In

unauthorized transactions that were fully reimbursed by the total number of disputed unauthorized transactions. The average percent reimbursed across all Three Banks was calculated for each year by dividing the total number of unauthorized transactions that were fully reimbursed for each year for all Three Banks by the total number of disputed unauthorized transactions for each year for all Three Banks. Regarding the total number of disputed unauthorized transactions for JPMorgan, according to JPMorgan, there is no searchable data field reflecting JPMorgan opened an investigation in response to a consumer's dispute. To estimate the total number of disputed unauthorized transactions investigated by JPMorgan, the Subcommittee summed the total number of transactions where JPMorgan did not reimburse a consumer with the total number of transactions where JPMorgan reimbursed a consumer. Letter from Counsel for JPMorgan to the Subcommittee, at Appendix 2 (Nov. 6, 2023); Counsel for JPMorgan wrote to the Subcommittee that "Chase claims specialists must accept and investigate all claims from a customer" Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024) (*quoting* JPMC-PSI-000004).

¹⁴⁹ Attachment to Letter from Counsel for Bank of America to the Subcommittee (May 17, 2024) (on file with Bank of America), PSI_00000286; Letter and Attachment from Counsel for JPMorgan to the Subcommittee (Nov. 6, 2023) (on file with JPMorgan), JPMC-PSI-000818; Email from Counsel for JPMorgan to the Subcommittee (Apr. 24, 2024) (on file with JPMorgan), JPMC-PSI-000826. Although requested, JPMorgan did not provide data for transactions that were not eligible for repayment. Instead, JPMorgan provided data for the number of transactions for which JPMorgan did not reimburse the customer. According to JPMorgan, it "does not keep a record of disputed transactions that are 'not eligible for repayment' because in some instances a customer will receive their money back and be made whole regardless of their eligibility." For example, "if Chase works with other banks to retrieve a customer's Zelle transaction and returns the money to that customer's account." Letter from Counsel for JPMorgan to the Subcommittee (Nov. 6, 2023) (on file with JPMorgan), JPMC-PSI-00079; Email and Document from Counsel for JPMorgan to the Subcommittee (April 24, 2024) (on file with JPMorgan), JPMC-PSI-000826; Email and Document from Counsel for JPMorgan to the Subcommittee (May 3, 2024) (on file with JPMorgan), JPMC-PSI-000825; Attachment to Letter from Counsel for Wells Fargo to the Subcommittee (May 20, 2024) (on file with Wells Fargo), WF-PSI-00000866.

¹⁵⁰ These figures were calculated using data produced to PSI by the Three Banks. The average percent reimbursed across all Three Banks was calculated for each year by dividing the total number of unauthorized transactions that were fully reimbursed for each year for all Three Banks by the total number of disputed unauthorized transactions for each year for all Three Banks. Regarding the total number of disputed unauthorized transactions for JPMorgan, according to JPMorgan, there is no searchable data field reflecting JPMorgan opened an investigation in response to a consumer's dispute. To estimate the total number of disputed unauthorized transactions investigated by JPMorgan, the Subcommittee summed the total number of transactions where JPMorgan did not reimburse a consumer with the total number of transactions where JPMorgan reimbursed a consumer. Letter from Counsel for JPMorgan to the Subcommittee, at Appendix 2 (Nov. 6, 2023); Counsel for JPMorgan wrote to the Subcommittee that "Chase claims specialists must accept and investigate all claims from a customer." Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024) (*quoting* JPMC-PSI-000004).

terms of dollar value, this translates to over \$100 million worth of transactions disputed as fraud not reimbursed by the Three Banks each year from 2021 through 2023.¹⁵¹ Specifically, in 2021 the total dollar value for these transactions not reimbursed was \$102,510,647 compared to \$86,928,146 reimbursed. In 2022, the dollar value reimbursed was \$115,925,588 compared to \$99,285,420 reimbursed; and in 2023, the dollar value for transactions not reimbursed was \$102,296,141 compared to \$63,546,270 reimbursed.¹⁵² As further discussed in Subsection c, below, it is unclear to what extent the Three Banks' low reimbursement rate for fraud results from failure to follow the requirements of Regulation E, or whether customer disputes about situations that actually constitute scams, billing disputes, or other categories that banks rarely reimburse, are being classified as fraud upon intake.¹⁵³

Figure 6: Total Dollar Value of all Zelle Payments Disputed as Fraud at the Three Banks 2019-2023¹⁵⁴

	2019	2020	2021	2022	2023
Total	\$82,235,513	\$127,618,310	\$189,438,794	\$215,211,008	\$165,842,411
Reimbursed	\$53,706,680	\$77,191,918	\$86,928,146	\$99,285,420	\$63,546,270
Unreimbursed	\$28,618,833	\$50,426,393	\$102,510,647	\$115,925,588	\$102,296,141

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Counsel for JPMorgan wrote to the Subcommittee that during the bank's dispute resolution process, "[t]he category to which a claim is assigned during intake cannot be revisited after the claim is investigated and resolved. For that reason, there are claims for which the transaction in question was categorized as 'unauthorized' based on information provided by the customer during intake, but a determination was made not to reimburse the customer based on evidence that the transaction was authorized, including, in some cases, evidence of first party fraud." Email from Counsel for JPMorgan to the Subcommittee (July 12, 2024).

¹⁵⁴ These figures were calculated using data produced to PSI by the Three Banks. To generate the total dollar value of Zelle transactions disputed as fraud, the Subcommittee summed the dollar values for disputed unauthorized transactions for all Three Banks for each year. Similarly, to generate the total dollar value for disputed unauthorized transactions that were reimbursed, the Subcommittee summed the dollar values for disputed unauthorized transactions where the consumer was reimbursed for all Three Banks for each year. To generate the total dollar value for disputed unauthorized transactions that were not reimbursed, the Subcommittee summed the dollar values for disputed unauthorized transactions where a consumer was

b. Almost Nine Out of Ten Consumers Who Disputed a Transaction as a Scam at the Three Banks in 2023 Were Not Reimbursed

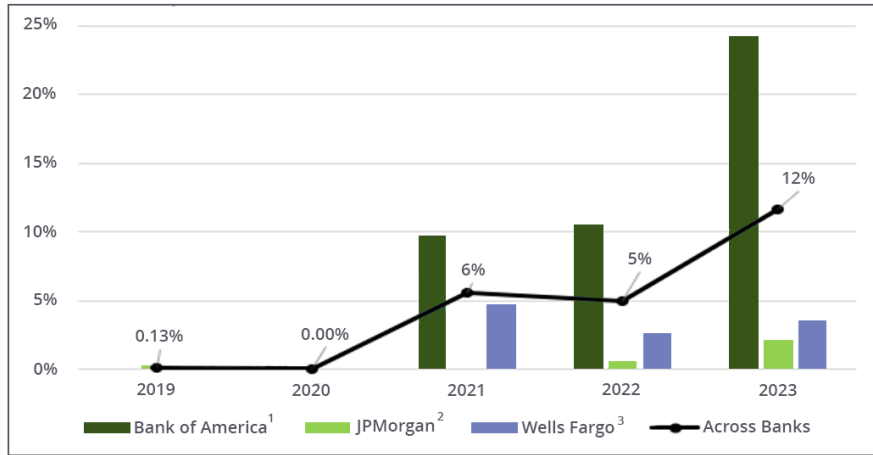
The Zelle website tells consumers that if they were the victim of a scam, they “may not be able to get their money back” because they “gave the ‘ok’ and authorized a payment to be sent.”¹⁵⁵ This position is consistent with the current application of EFTA’s reimbursement requirements.¹⁵⁶

not reimbursed for all Three Banks for each year. Regarding the total number of disputed unauthorized transactions for JPMorgan, according to JPMorgan, there is no searchable data field reflecting JPMorgan opened an investigation in response to a consumer’s dispute. To estimate the total number of disputed unauthorized transactions investigated by JPMorgan, the Subcommittee summed the total number of transactions where JPMorgan did not reimburse a consumer with the total number of transactions where JPMorgan reimbursed a consumer. Letter from Counsel for JPMorgan to the Subcommittee, at Appendix 2 (Nov. 6, 2023); Counsel for JPMorgan wrote to the Subcommittee that “Chase claims specialists must accept and investigate all claims from a customer” Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024) (*quoting* JPMC-PSI-000004).

¹⁵⁵*Fraud & Scams Overview*, ZELLE (June 1, 2024). <https://www.zellepay.com/safety-education/fraud-scams-overview>.

¹⁵⁶ While EFTA requires financial institutions to reimburse unauthorized transactions, like Regulation E, it is silent regarding authorized transactions, except as related to preauthorized electronic fund transfers. See 15 U.S.C. § 1693f(b); 15 U.S.C. § 1693f(f)(1); *see also*, 12 C.F.R. § 1005(a)(1).

Figure 7: Average Percent of Zelle Payments Disputed as Scams Reimbursed by the Three Banks 2019-2023¹⁵⁷



¹ Bank of America is not included in the percentages calculated for 2019 and 2020 because Bank of America did not provide data for 2019 and provided partial year data for 2020. According to Bank of America, data on scams and billing disputes only goes back to the third quarter of 2020. Before that point, scams were not recognized as a category separate from billing disputes, and billing dispute data was maintained in a different system that is now archived.¹⁵⁸

² In 2019, JPMorgan reimbursed .22% of Zelle transactions disputed as scams and reimbursed .01% in 2020, and reimbursed .09% in 2021.

³ In 2019, Wells Fargo reimbursed .01% of Zelle transactions disputed as scams and reimbursed .00% in 2020.

¹⁵⁷ These figures were calculated using data produced to PSI by the Three Banks. For each of the Three Banks, the average percent reimbursed was calculated for each year by dividing the total number of authorized transactions that were fully reimbursed by the total number of disputed authorized transactions. The average percent reimbursed across all Three Banks was calculated for each year by dividing the total number of authorized transactions that were fully reimbursed for each year for all Three Banks by the total number of disputed authorized transactions for each year for all Three Banks. Regarding Bank of America, as noted in the table not above, data were not provided for 2019 and partial year data was provided for 2020. Letter from Bank of America Counsel to the Subcommittee (Oct. 31, 2023). Regarding the total number of disputed authorized transactions for JPMorgan, according to JPMorgan, there is no searchable data field reflecting JPMorgan opened an investigation in response to a consumer's dispute. To estimate the total number of disputed unauthorized transactions investigated by JPMorgan, the Subcommittee summed the total number of transactions where JPMorgan did not reimburse a consumer with the total number of transactions where JPMorgan reimbursed a consumer. Letter from Counsel for JPMorgan to the Subcommittee, at Appendix 2 (Nov. 6, 2023); Counsel for JPMorgan wrote to the Subcommittee that "Chase claims specialists must accept and investigate all claims from a customer" Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024) (*quoting* JPMC-PSI-000004).

¹⁵⁸ Letter from Bank of America Counsel to the Subcommittee (Oct. 31, 2023).

In fact, PSI's analysis shows that consumers who disputed transactions as scams were unlikely to be reimbursed by the Three Banks.¹⁵⁹ As shown in Figure 7, the average percent of consumers reimbursed for Zelle payments disputed as scams was slightly above 0% in 2019, 0% percent in 2020, and increased from 2020 to 2021 (0% to 6% in 2021) dipped slightly in 2022 (5%), then increased in 2023 (12%).¹⁶⁰

In 2019 and 2020, almost no consumers were reimbursed for transactions disputed as scams at JPMorgan or Wells Fargo. While PSI received scam data from Bank of America, the bank told PSI that it did not track scams as a category separate from billing disputes prior to the third quarter of 2020.¹⁶¹ In 2019, JPMorgan reimbursed .22% of transactions disputed as scams, or 33 transactions out of 14,978 disputed.¹⁶² That same year, Wells Fargo reimbursed .01% of transactions disputed as scams, or one transaction out of 10,271 disputed.¹⁶³ In 2020, JPMorgan reimbursed .01% of transactions disputed as scams, or three transactions out of 41,390 disputed.¹⁶⁴ That same year, Wells Fargo did not reimburse any of the 25,061 transactions disputed as scams.¹⁶⁵

Reimbursement rates for transactions disputed as scams rose in 2021 and again in 2023. In 2023, JPMorgan reimbursed 2% of transactions disputed as scams and Wells Fargo

¹⁵⁹ The Three Banks vary in how they have tracked scams. For Bank of America, scams were not recognized as a category separate from billing disputes prior to the third quarter of 2020. It was not until 2023 that Wells Fargo began tracking scams as a separate category. Prior to then, Wells Fargo categorized scams as a "non-fraud" claim which included goods and services. For JPMorgan, scam data provided to the Subcommittee was included in a category with multiple types: "scams, merchandise dispute, services dispute, or similar situation." Letter from Bank of America Counsel to the Subcommittee (Oct. 31, 2023); Letter from Wells Fargo Counsel to the Subcommittee (Nov. 13, 2023); and Letter from JPMorgan Counsel to the Subcommittee at Appendix 2 and Appendix 3 (Feb. 1, 2024) (on file with JPMorgan), JPMC-PSI-000818.

¹⁶⁰ The average percent of transactions disputed as scams that were reimbursed was calculated for each bank by dividing the total number of authorized transactions that were fully reimbursed by the total number of disputed authorized transactions.

¹⁶¹ Letter from Bank of America Counsel to the Subcommittee (Oct. 31, 2023).

¹⁶² The dollar value associated with disputed scams transactions in 2019 for JPMorgan was \$7,595,655. JPMorgan; Attachment to Email from Counsel for JPMorgan to the Subcommittee (Nov. 7, 2023) (on file with committee) JPMC-PSI-000818; Attachment to Email from Counsel for JPMorgan to the Subcommittee (May 17, 2024) (on file with committee) JPMC-PSI-000826.

¹⁶³ The dollar value associated with disputed scams transactions in 2019 for Wells Fargo was \$3,413,451. Wells Fargo; Attachment to Email from Counsel for Wells Fargo to the Subcommittee (May 20, 2024) (on file with committee) WF-PSI-000000866.

¹⁶⁴ The dollar value associated with disputed scams transactions in 2020 for JPMorgan was \$25,857,989. Attachment to Email from Counsel for JPMorgan to the Subcommittee (Nov. 7, 2023) (on file with committee) JPMC-PSI-000818; Attachment to Email from Counsel for JPMorgan to the Subcommittee (May 17, 2024) (on file with committee) JPMC-PSI-000826.

¹⁶⁵ The dollar value associated with disputed scams transactions in 2020 for Wells Fargo was \$9,412,971. Wells Fargo; Attachment to Email from Counsel for Wells Fargo to the Subcommittee (May 20, 2024) (on file with committee) WF-PSI-000000866.

reimbursed 4% of such claims.¹⁶⁶ In 2023, Bank of America was an outlier, having reimbursed 24% of transactions disputed as scams.¹⁶⁷ Based on information available to the Subcommittee, it is unclear why the reimbursement rate for transactions disputed as scams increased notably over the previous year in both 2021 and 2023.

Figure 8: Total Dollar Value of all Zelle Payments Disputed as Scams at the Three Banks 2021-2023¹⁶⁸

	2021	2022	2023
Total	\$194,052,969	\$241,596,948	\$206,783,481
Reimbursed	\$27,745,695	\$16,200,671	\$38,575,254
Unreimbursed	\$166,307,273	\$225,396,277	\$168,208,227

Although not legally required to do so, Member Banks on the Zelle Network have discretion to reimburse scams. However, as the data provided to PSI shows, very few consumers at the Three Banks who disputed transactions as scams have received reimbursement.¹⁶⁹ The Three

¹⁶⁶ These figures were calculated using data produced to PSI by the Three Banks. The average percent of transactions disputed as scams that were reimbursed was calculated for each bank by dividing the total number of authorized transactions that were fully reimbursed by the total number of disputed authorized transactions.

¹⁶⁷ This figure was calculated using data produced to PSI by Bank of America. The average percent of transactions disputed as scams that were reimbursed was calculated for each bank by dividing the total number of authorized transactions that were fully reimbursed by the total number of disputed authorized transactions.

¹⁶⁸ These figures were calculated using data produced to PSI by the Three Banks. The Subcommittee summed the total dollar value of transactions disputed as scams for the Three Banks for 2021 through 2023 and compared them to the total dollar value of all transactions reimbursed by the Three Banks in the same timeframe.

¹⁶⁹ These figures were calculated using data produced to PSI by the Three Banks. For each of the three banks, the average percent reimbursed was calculated for each year by dividing the total number of authorized transactions that were fully reimbursed by the total number of disputed authorized transactions. The average percent reimbursed across all Three Banks was calculated for each year by dividing the total number of authorized transactions that were fully reimbursed for each year for all Three Banks by the total number of disputed authorized transactions for each year for all Three Banks. Regarding Bank of America, as noted in the table note above, data were not provided for 2019 and partial year data was provided for 2020. Letter from Bank of America Counsel to the Subcommittee (Oct. 31, 2023). Regarding the total number of disputed authorized transactions for JPMorgan, according to JPMorgan, there is no searchable data field reflecting JPMorgan opened an investigation in response to a consumer's dispute. To estimate the total

Banks denied disputes arising from transactions involving scams worth a combined total of approximately \$560 million from 2021-2023.¹⁷⁰

Moreover, between 2019 and 2022, the Three Banks reimbursed a lower percentage of disputed Zelle transactions relative to other payment products, as measured by total dollar value of transactions disputed as scams, fraud, billing disputes, or any other reason.¹⁷¹ Across the Three Banks, as measured by total dollar value of all transactions, the average transactions for credit card and debit card products were reimbursed at higher rates (47% and 36% respectively) than Zelle payments (26%) across this four-year period, as shown in Figure 9.¹⁷²

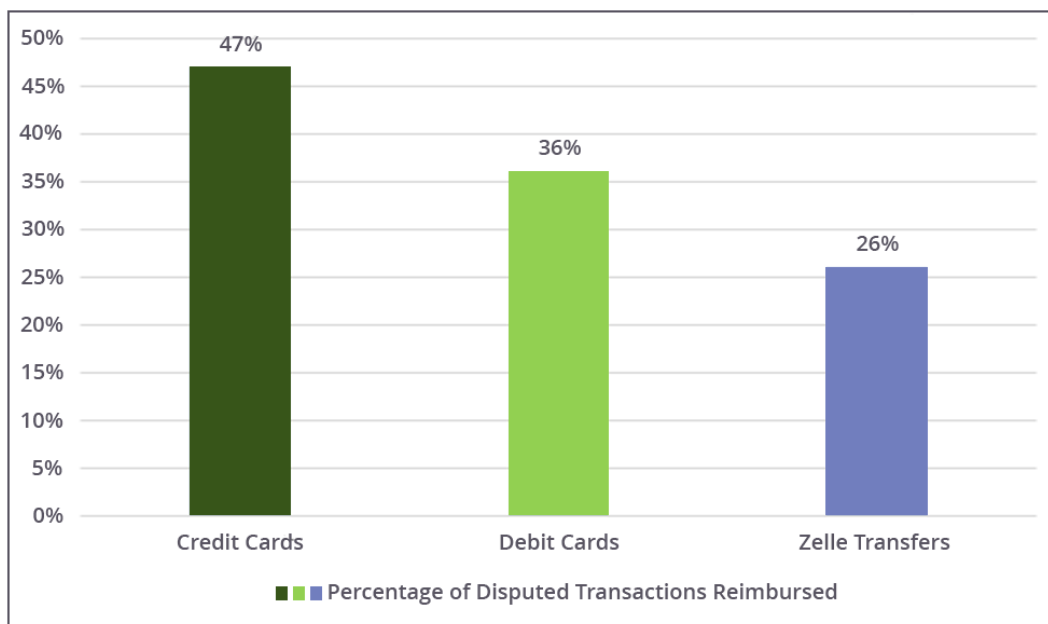
number of disputed unauthorized transactions investigated by JPMorgan, the Subcommittee summed the total number of transactions where JPMorgan did not reimburse a consumer with the total number of transactions where JPMorgan reimbursed a consumer. Letter from Counsel for JPMorgan to the Subcommittee, at Appendix 2 (Nov. 6, 2023); Counsel for JPMorgan wrote to the Subcommittee that “Chase claims specialists must accept and investigate all claims from a customer.” Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024) (*quoting* JPMC-PSI-000004).

¹⁷⁰ These figures were calculated using data produced to PSI by the Three Banks. The Subcommittee calculated the percent of reimbursed disputes for credit cards, debit cards, and Zelle payments, as represented by total dollar value, by summing across the Three Banks the total dollar value of transactions on each payment method that were disputed for any reason and were fully or partially reimbursed, then dividing by the sum of the total dollar value of transactions disputed for any reason.

¹⁷¹ These figures were calculated using data produced to PSI by the Three Banks. The Subcommittee calculated the percent of reimbursed disputes for credit cards, debit cards, and Zelle payments, as represented by total dollar value, by summing across the Three Banks the total dollar value of transactions on each payment method that were disputed for any reason and were fully or partially reimbursed, then dividing by the sum of the total dollar value of transactions disputed for any reason. JPMorgan expressed to the Subcommittee that comparing reimbursement rates across payment methods “ignores each product’s unique use cases, core characteristics, and regulatory environment. Debit Cards, Credit Cards, Wires, and ACH DDA transfers, like Zelle, were designed to meet specific customer needs across the marketplace spectrum—from sending money to friends and family on Zelle, to making purchases from certified merchants with a card, to quickly and securely transferring money to accounts around the world via wires and ACH DDA transfers.” Email from Counsel for JPMorgan to the Subcommittee (July 12, 2024). Similarly, Wells Fargo stated, “As a peer-to-peer platform, Zelle functions very differently from credit and debit cards.” Letter from Counsel for Wells Fargo to the Subcommittee (July 12, 2023).

¹⁷² These numbers represent the total dollar value of all disputed transactions over a four-year period, as reported by the Banks to the Subcommittee, disputed as fraud or billing dispute/any other reason for the Three Banks for credit cards and debit cards, and authorized, unauthorized, or any other reason for Zelle transfers. PSI calculated this figure based on total disputed transactions rather than authorized, unauthorized, or any other subset of disputes as each product is subject to differing legal and regulatory frameworks (e.g., EFTA, Visa and Mastercard network rules, NACHA Operating Rules, etc.). Additionally, idiosyncrasies between the reporting and classification methodologies of each bank may contribute nominal differences in the numbers calculated to formulate these topline numbers, for instance the availability or classification of different categories of disputes for different years. *See also*, Letter from Counsel for Bank of America to the Subcommittee (Nov. 21, 2023); Letter from Counsel for Bank of America to the Subcommittee

Figure 9: Average Reimbursement Rate for Transactions Disputed for Any Reason at the Three Banks Across Various Payment Methods From 2019-2022¹⁷³



c. Banks Have Broad Discretion but Offer Little Transparency When Investigating and Resolving Disputed Transactions

When a consumer notifies their financial institution that they have become the victim of a scam or fraud, Regulation E requires the financial institution to conduct an investigation, and it “must be reasonable.”¹⁷⁴ Regulation E requires a financial institution to conduct such an investigation within ten days, determine whether an unauthorized transaction has

(Oct. 31, 2023); Letter from Counsel for JPMorgan to the Subcommittee (Dec. 22, 2023); Data Collection Methodology, App. 2, Attachment to Email from Counsel for JPMorgan to the Subcommittee (Nov. 7, 2023) (on file with committee) JPMC-PSI-000814. (Appendix 2 Data Collection Methodology); Letter from Counsel for Wells Fargo to the Subcommittee (Dec. 22, 2023).

¹⁷³ These figures were calculated using data produced to PSI by the Three Banks. The Subcommittee calculated the percent of reimbursed disputes for credit cards, debit cards, and Zelle payments, as represented by total dollar value, by summing across the Three Banks the total dollar value of transactions on each payment method that were disputed for any reason and were fully or partially reimbursed, then dividing by the sum of the total dollar value of transactions disputed for any reason. Figures representing aggregate data for debit and credit cards do not reflect certain supplemental data provided by Wells Fargo due to logistical constraints.

¹⁷⁴ See 12 C.F.R. § 1005.11(c)(1); 71 Fed. Reg. 1638, 1654 (Jan. 10, 2006) (“Any investigation conducted under the four walls rule must be reasonable.”); USAA Fed. Sav. Bank, 2019 WL 254072 ¶¶ 28-32 (Jan. 3, 2019) (finding that USAA did not conduct a reasonable investigation because it “fail[ed] to conduct a reasonable review of all relevant records and information in its own records when investigating an error notification”).

occurred, and report the results of the investigation to the consumer within three days of making a determination.¹⁷⁵ If the financial institution determines an unauthorized transaction occurred, EFTA requires it, under most circumstances, to reimburse any funds that were transferred without the consumer’s authorization.¹⁷⁶ Regulation E outlines legal rights and obligations for consumers and financial institutions during an investigation,¹⁷⁷ but provides limited, binding guidance on how financial institutions should conduct investigations.¹⁷⁸ Beyond stating that an “investigation must be reasonable, including a reasonable review of relevant information within the financial institution’s own records,” Regulation E is silent regarding the types of information banks should review as part of an investigation.¹⁷⁹

Alongside this regulatory framework, EWS has adopted a “zero-liability” approach and requires Member Banks “to provide full refunds for Zelle transactions determined to be unauthorized within the meaning of EFTA and Regulation E.”¹⁸⁰ EWS told PSI that it requires Member Banks to “promptly investigate the transactions and determine whether it is an unauthorized electronic fund transfer under Regulation E, and in such case, provide a refund to the affected user.”¹⁸¹ However, neither the Zelle Network Rules nor Zelle Fraud Risk Manual outline specific steps that Member Banks should include in an investigation.¹⁸²

¹⁷⁵ See 15 USC § 1693f(a)-(b); 12 C.F.R. § 1005.11(c).

¹⁷⁶ 15 USC § 1693f(b) (“If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 1693g of this title, including the crediting of interest where applicable.”).

¹⁷⁷ According to Regulation E, financial institutions are to investigate and determine whether an error occurred within 10 business days. Though if a “financial institution is unable to complete its investigation within 10 business days, it may take up to 45 days from receipt of a notice of error to investigate” provided the financial institution takes certain actions, including “provisionally crediting the consumer’s account in the amount of the alleged error.” Consumer Financial Protection Bureau, 12 C.F.R. § 1005.11, <https://www.consumerfinance.gov/rules-policy/regulations/1005/11/#c>.

¹⁷⁸ See 12 C.F.R. § 1005.11 (c)(4); the Subcommittee conducted searches and reviewed pertinent CFPB guidance, reports regarding financial services compliance such as those produced by the Federal Reserve Board’s Consumer Compliance Outlook to understand regulatory requirements and determine if guidance is available regarding investigations under Regulation E.

¹⁷⁹ 12 C.F.R. § 1005.11 (c)(4); Consumer Financial Protection Bureau, “Electronic Funds Transfers FAQs”, <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/>.

¹⁸⁰ Letter from Counsel for EWS to the Subcommittee, Appendix B (July 10, 2023).

¹⁸¹ *Id.*

¹⁸² PSI reviewed policies and procedures related to investigating disputed transactions at the Three Banks. EWS wrote to the Subcommittee, “[i]t would be imprudent for EWS to dictate to regulated, independent financial institutions how they should comply with EFTA and Regulation E and effectively usurp the role of the financial institutions and the bank regulators.” Letter from Counsel for EWS to the Subcommittee (July 15, 2024).

The steps taken by the Three Banks in the process of conducting investigations are not clear based on the policies and procedures produced by the Three Banks to the Subcommittee. What can be gleaned from Subcommittee’s analysis is that all Three Banks use web-based procedures with prescribed steps for bank employees to review disputed transactions.¹⁸³ Bank of America and Wells Fargo procedures require bank employees to research the circumstances surrounding the disputed transaction using bank records, such as checking for activity that does not fit a consumer’s typical pattern,¹⁸⁴ and determine whether to deny a disputed transaction.¹⁸⁵ The policy produced by JPMorgan directs bank employees to review disputed transactions to determine the timeframe in which the consumer provided notice, but does not discuss reviewing the circumstances surrounding the disputed transaction or reviewing bank records.¹⁸⁶

The documents provided by JPMorgan are silent as to what constitutes a reasonable investigation and do not provide examples of evidence that could be reviewed to support a decision of whether a transaction was unauthorized.¹⁸⁷ Bank of America and Wells Fargo provide examples of what a reasonable investigation *could* include, such as a review of documents submitted by the consumer, location data to establish the consumer’s pattern of behavior, or device activity.¹⁸⁸

Based on analysis of policies produced by the Three Banks, it is unclear if there is a consistent definition of “investigation” or consistent approach to conducting investigations of disputed transactions at the Three Banks or across the Zelle Network.¹⁸⁹ Similarly, it is unclear the extent to which bank employees have discretion when reviewing a disputed Zelle payment and determining if it was unauthorized or authorized.¹⁹⁰ It is also unclear the extent to which, if at all, review is performed by the Three Banks to ensure that determinations made by bank employees are consistent with their policies and procedures, and in accordance with the requirements of EFTA and Regulation E.¹⁹¹

¹⁸³ PSI reviewed policies and procedures related to investigating disputed transactions at the Three Banks.

¹⁸⁴ *Supra*, note 166.

¹⁸⁵ *Supra*, note 166.

¹⁸⁶ *Supra*, note 166.

¹⁸⁷ *Supra*, note 166.

¹⁸⁸ *Supra*, note 166.

¹⁸⁹ *Supra*, note 166.

¹⁹⁰ *Supra*, note 166.

¹⁹¹ *Supra*, note 166.

Under current regulation, a bank’s investigation of a disputed payment under EFTA can consist of reviewing the bank’s own records.¹⁹² This means banks can ignore information that they may have access to, including records provided by consumers. Based on PSI’s review of documents, policies and procedures at the Three Banks, they instruct bank personnel to confirm with consumers the basic facts of a transaction, such as the name of the intended recipient.¹⁹³ However, none of the documents reviewed by PSI direct bank employees to proactively ask consumers for records that might inform the investigation of their claim.¹⁹⁴ For example, PSI reviewed a Bank of America policy that instructs bank employees that a review of the bank’s own records is sufficient to deny a claim if a consumer sends a Zelle payment to an account outside of Bank of America.¹⁹⁵ Similarly, a Wells Fargo policy states that disputed transactions are investigated, and that, following the investigation, disputes can be rejected by bank employees based upon “data found by utilizing internal systems.”¹⁹⁶

As a result, it is unclear whether and to what extent disputes reported by consumers as “fraud” are being rejected because they are reclassified during the investigation process as “scams” not subject to reimbursement. Public reporting indicates that improper misclassifications have occurred. For example, in December 2023, a consumer was robbed at gunpoint by assailants who demanded her phone and the password to her JPMorgan bank app.¹⁹⁷ The assailants then transferred nearly \$1,700 out of her bank account using Zelle.¹⁹⁸ JPMorgan reportedly denied the claim as “authorized.”¹⁹⁹ JPMorgan continued to deny the consumer reimbursement even after she submitted a video tape of the robbery and the

¹⁹² See 12 C.F.R. § 1005.11 (c)(4); USAA Fed. Sav. Bank, 2019 WL 254072 ¶ 31 (Jan. 3, 2019) (“When conducting an Error Resolution Investigation, a financial institution must determine whether an error has occurred . . . and in so doing, must conduct, at a minimum, a review of its own records regarding [the] alleged error. . . . This review must include any relevant information within the institution’s own records. . . . and the investigation must be reasonable. . . .”) (internal citations and quotation marks omitted).

¹⁹³ *Supra*, note 166.

¹⁹⁴ *Supra*, note 166.

¹⁹⁵ PSI reviewed policies and procedures related to investigating disputed transactions at the Three Banks. Counsel for Bank of America told the Subcommittee that the bank “accepts the submission of additional documents by a customer in the review of their claim, for example, police reports, proof of malware, and screenshots of text conversations leading to the disputed transactions—however, it also does not require that customers provide any documentation.” Email from Counsel for Bank of America to the Subcommittee (July 12, 2024).

¹⁹⁶ *Supra*, note 166.

¹⁹⁷ Jason Knowles and Ann Pistone, *Robberies in Which Criminals Demand Access to Bank, Payment Apps to Steal Money Are Rising: Police*, ABC7 EYEWITNESS NEWS (Feb. 22, 2024), <https://abc7chicago.com/chicago-crime-armed-robbery-stolen-money-app-chase-bank/14457765/>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

policy report to the bank.²⁰⁰ The consumer was only reimbursed after journalists contacted Chase and Zelle on her behalf.²⁰¹

JPMorgan's initial refusal to reimburse a customer robbed at gunpoint would appear to violate both Regulation E and EWS' understanding of its policies. During a November 2023 briefing, PSI posed this exact hypothetical to EWS, asking if a consumer would be entitled to reimbursement under EWS policies if an assailant held a gun to a consumer's head and forced them to make a Zelle payment.²⁰² EWS representatives said that the legislative history of EFTA says the consumer would be entitled to compensation in that scenario.²⁰³ Yet, as described above, in at least one incident, this appears to not have occurred.

Additional evidence indicates that Zelle Member Banks' refusal to reimburse fraud as required by law may be even more widespread than this single incident. A subject matter expert testified before PSI about the types of fraud on Zelle, including instances in which consumers were alleged to have been the victim of hacking in which funds were drained from their account.²⁰⁴ The expert also described a lack of transparency in banks' investigations uncovered through litigation: "[W]e often see banks ignoring evidence that clearly indicates the Zelle transfer was not authorized. For example, evidence often ignored or not considered seriously by banks include the addition of a new recipient whose name is a sequence of random numbers and letters, the sudden addition of new devices, transactions initiated from IP addresses that are not an IP address associated with the consumer, a Zelle transaction pattern that is not similar to how the consumer has used Zelle previously, and multiple transactions in similar amounts occurring over multiple days."²⁰⁵ The expert further stated that bank records produced in litigation showed "in most cases... investigations are conducted in such a cursory manner that they are not considering evidence that just screams fraud."²⁰⁶

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Briefing with EWS to the Subcommittee (Nov. 14, 2023).

²⁰³ *Id.*

²⁰⁴ *Fraud Alert!: Shedding Light on Zelle: Hearing Before the Permanent Subcomm. On Investigations of the S Comm. on Homeland Sec. and Gov. Aff's*, 118th Cong. (May 21, 2024) (Statement of Stephanie R. Tatar), <https://www.hsgac.senate.gov/subcommittees/investigations/hearings/fraud-alert-shedding-light-on-zelle/>.

²⁰⁵ *Id.*

²⁰⁶ Penny Crosman, *What are the tech solutions to Zelle fraud and scam resolution?*, AMERICAN BANKER (June 11, 2024), <https://www.americanbanker.com/news/what-are-the-tech-solutions-to-zelle-fraud-and-scam-resolution>.

Finding 2: EWS and the Banks Promote Zelle for Commercial Payments Without Offering Purchase Protections to Consumers

a. EWS Offers Functionality That Extends Beyond Consumers Using Zelle with “Friends, Family, and Others You Trust,” as the Company Claims the Service is Intended

EWS states on its website that consumers should only use Zelle when paying “friends, family, and others you trust.”²⁰⁷ Yet, between 2019 and 2023, the number of business accounts registered on Zelle grew by approximately 1,728%, from 361,000 in 2019 to 6.6 million in 2023.²⁰⁸ Acknowledging that EWS and its Member Banks offer small business accounts, representatives for EWS told PSI in a November 2023 briefing that Zelle is only intended for a commercial context in specific instances, such as filling gaps for small and micro businesses, like food trucks or gig workers.²⁰⁹ Representatives for JPMorgan similarly told PSI staff in a November 2023 briefing that Zelle should only be used with small businesses that a consumer is well familiar with.²¹⁰ For example, a JPMorgan representative said a consumer should only use Zelle to pay a hairdresser after successive visits to a salon.²¹¹ Moreover, the JPMorgan representatives told PSI that a consumer using Zelle to purchase tickets for a Taylor Swift concert on Facebook Marketplace is not Zelle’s “intended use.”²¹² In a follow up email, JPMorgan stated that Zelle “is intended for customers to use when they send money to people they ‘know and trust,’” and that in the case of an online commercial transaction where a consumer is transacting with someone they “do not know and trust,” “a payment lane with additional protection (e.g., a credit card) is more appropriate.”²¹³

Despite the language stating that Zelle is meant for transactions between “friends, family, and others you trust,” EWS markets Zelle to businesses, offering free advertising resources to help them “encourage their customers or vendors to pay... with Zelle.”²¹⁴ EWS promotes Zelle

²⁰⁷ *Zelle Safety 101*, ZELLE, <https://www.zellepay.com/pay-it-safe/zeller-safety-101> (last visited Apr. 11, 2024). (“Only send money to those you trust: Zelle® should only be used with friends, family and others you trust”).

²⁰⁸ Letter from Counsel for EWS to the Subcommittee (Feb. 15, 2024).

²⁰⁹ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

²¹⁰ Briefing with JPMorgan to the Subcommittee (Nov. 20, 2023).

²¹¹ *Id.*

²¹² *Id.*

²¹³ Email from Counsel for JPMorgan to the Subcommittee (May 19, 2024).

²¹⁴ *Security*, ZELLE <https://www.zellepay.com/security> (last visited July 3, 2024); *see also*, Zelle® Marketing for Small Businesses, ZELLE <https://www.zellepay.com/small-business-payments/smb-marketing-assets> (last visited July 2, 2024); Frequently Asked Questions: I’m a Small Business Using Zelle, ZELLE <https://www.zellepay.com/faq/small-business-using-zelle>; Frequently Asked Questions, I’m a Consumer Using

on its website as a platform that can be used to receive disbursements from large organizations, both private and public, saying, “did you know that you can also receive money from organizations, companies, and even the government with Zelle®?”²¹⁵ Fortune 500 companies, universities, and more have begun to use Zelle to disburse tuition, settlement checks, and insurance payments.²¹⁶ EWS offers solutions for QR code payment capability and other features on small business accounts specifically meant to help businesses accept and make payments via Zelle.²¹⁷ Zelle has also been promoted as a payment method that consumers can use to pay their rent.²¹⁸ In 2020, Wells Fargo raised its daily Zelle payment limits so consumers could use Zelle to pay their rent.²¹⁹ EWS has partnered with a national property management company to streamline the process of landlords collecting rent through Zelle.²²⁰ These features appear to expand Zelle as a payment method for use beyond “friends, family and others you trust,” i.e., a consumer presumably cannot know and trust a large company distributing a Zelle payment in the same way as they might know and trust friends and family.²²¹

Zelle, ZELLE <https://www.zellepay.com/faq/consumer-using-zelle> (last visited July 2, 2024); Early Warning Services LLC., *Zelle Network Participation Rules*, 148-89 (Published Date: Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000148-89; The Zelle Network Participation Rules permits Member Banks to offer three types of services: Person to Person (P2P) Payments Service, enabling consumers to send, receive, and request payments; Disbursement Payment Service, enabling commercial entities to send payments to consumers; and Small Business Payments Service, enabling small businesses to send, receive, and request payments.

²¹⁵ *Frequently Asked Questions, Disbursements with Zelle*, ZELLE (Apr. 3, 2024), <https://www.zellepay.com/faq/disbursements-zelle>; Early Warning Services LLC., *Zelle Network Participation Rules*, 148-49 (Published Date: Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000148.

²¹⁶ US Small Business Disbursements Driving Zelle Growth, Vixio (Sept. 13, 2022), <https://www.vixio.com/insights/pc-us-small-business-disbursements-driving-zelle-growth>.

²¹⁷ *See Zelle for Your Business*, ZELLE (Apr. 03, 2024), <https://promotions.bankofamerica.com/digitalbanking/mobilebanking/zelle/business>; EWS wrote to the Committee that, “[t]he Zelle Network Rules prohibit use of Zelle for point of sale and ecommerce transactions,” specifically that the Zelle Network Participation Rules state: “The Small Business Payments Service must not be integrated into a Small Business Customer’s point of sale system including, but not limited to, on premise or e-commerce systems.” Letter from Counsel for EWS to the Subcommittee (Jul. 18, 2024), *citing*, Early Warning Services LLC, *Zelle Network Participation Rules*, 148 (Published Date: Apr. 26, 2023) (on file with EWS) EWS-RR-004-0000148.

²¹⁸ *Frequently Asked Questions, I see an option to pay my rent with Zelle® on the Schedule My Rent website. Is this legitimate?*, ZELLE (last visited July 12, 2024), <https://www.zellepay.com/faq/i-see-option-pay-my-rent-zelle-schedule-my-rent-website-legitimate>.

²¹⁹ Briefing with Wells Fargo to the Subcommittee (Nov. 14, 2023).

²²⁰ *Id.*

²²¹ EWS wrote to the Subcommittee that “Zelle is intended to be used to send payments to recipient parties that a consumer knows and trusts. This may include small businesses that the consumer knows and trusts.” Letter from Counsel for EWS to the Subcommittee (July 15, 2024); *Security*, ZELLE <https://www.zellepay.com/security> (last visited July 3, 2024); US Small Business Disbursements Driving Zelle Growth, Vixio (Sept. 13, 2022), <https://www.vixio.com/insights/pc-us-small-business-disbursements-driving-zelle-growth>.

b. Zelle Network Rules Explicitly Do Not Provide Purchase Protection for Commercial Transactions

Despite the proliferation of commercial activity on the Zelle Network, EWS has not expanded its policies to offer purchase protection offered by payment methods such as credit and debit cards.²²² Credit cards are not regulated by EFTA, but instead fall under the Fair Credit Billing Act, which requires credit card companies to reimburse consumers when they dispute transactions for incorrect amounts, inaccurate statements, or undelivered or unacceptable goods, such as when a customer purchases an item from a website and never receives it or receives a damaged item.²²³ Debit cards are regulated by EFTA, not the Fair Credit Billing Act.²²⁴ However, debit cards are often subject to network rules.²²⁵ For example, Visa and Mastercard offer a chargeback mechanism that allows customers to dispute charges for service issues such as shipping delays or receiving damaged product.²²⁶

In contrast, EWS does not require Member Banks to offer such protections, and explicitly excluded such protections when it revised its scam reimbursement policies in June 2023, as further discussed in Finding 3.²²⁷ When EWS expanded the categories of disputed transactions that Member Banks must reimburse, it excluded purchase disputes, stating in the Zelle Network Rules:

For the avoidance of doubt, the [disputed] Payment must not be for the purchase of goods or new services; or for Payments where the Customer asserts that the service was not as described.²²⁸

²²² Briefing with EWS to the Subcommittee (Nov. 14, 2023).

²²³ See 15 U.S.C. § 1666.

²²⁴ FDIC, LAWS AND REGULATIONS, ELECTRONIC FUND TRANSFER ACT 6 (Feb. 2019), <https://www.fdic.gov/sites/default/files/2024-03/fil19009b.pdf>.

²²⁵ *Debit Networks 101*, FISERV (Feb. 2024) [debit-networks-101-white-paper-1023.pdf](https://www.fiserv.com/~/media/Debit-Networks-101-White-Paper-1023.pdf).

²²⁶ *What Is a Chargeback?*, MASTERCARD <https://b2b.mastercard.com/news-and-insights/blog/what-is-a-chargeback/>; VISA, DISPUTE MANAGEMENT GUIDELINES FOR VISA MERCHANTS 37, 40 (2023), <https://usa.visa.com/dam/VCOM/global/support-legal/documents/merchants-dispute-management-guidelines.pdf> (last visited July 5, 2024).

²²⁷ Early Warning Services LLC., *Zelle Network Participation Rules*, 228 (Effective Date: June 30, 2023) (on file with EWS), EWS-RR-004-0000228.

²²⁸ *Id.*

Similarly, the Three Banks state on their website that they do not offer purchase protection for Zelle payments made for goods that a consumer does not receive or does not receive as described or expected.²²⁹

Finding 3: Zelle Network Rules Include Self-Regulation Measures Intended to Reduce Scams and Fraud, but They Fall Short of Making All Consumers Whole

a. EWS Implemented an Expanded Scam Reimbursement Policy in 2023, but it Covered a Small Percentage of Scam Claims

On June 30, 2023, EWS expanded the network’s reimbursement policies to cover claims made by consumers who were victims of “scammers claiming to be from a government agency, bank, or existing service provider.”²³⁰ This policy change came largely in response to rising scam rates on the Zelle Network in 2021 and 2022, particularly the rise of so-called “me-to-me” scams.²³¹ This expanded reimbursement policy, which an EWS executive described as

²²⁹ *Send and Receive Money Confidently with Zelle*, ZELLE, <https://www.zellepay.com/zelle-safety>. (“Zelle does not offer purchase protection.”). *Zelle FAQs*, BANK OF AMERICA, <https://www.bankofamerica.com/online-banking/zelle-faqs/>. (“Neither Bank of America nor Zelle ® offers a protection program for any authorized payments using Zelle ®.”). *Zelle Support and FAQs*, JPMORGAN CHASE, <https://www.chase.com/business/support/banking/online-banking/zelle>. (“Neither Chase nor Zelle® offers purchase protection for payments made with Zelle®”). *Zelle ® Questions*, WELLS FARGO, <https://www.wellsfargo.com/help/online-banking/zelle-faqs/>. (“Zelle® is intended to replace instances where cash and checks are being exchanged, you do not have the same protections associated with a credit card or a debit card transaction, such as the ability to dispute purchase transactions.... Neither Wells Fargo nor Zelle® offers a protection program for any authorized payments made with Zelle®”).

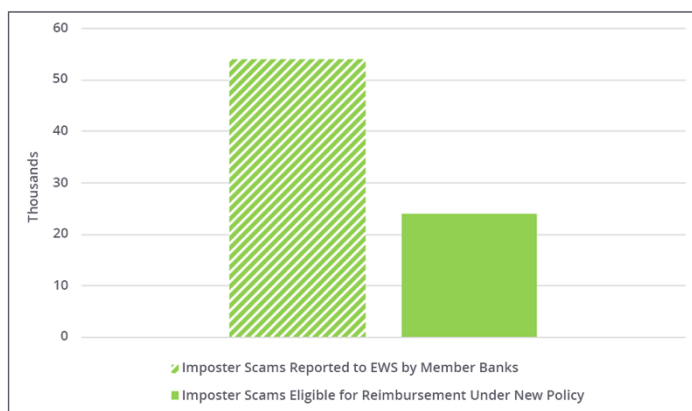
²³⁰ Hannah Lang, *Payments app Zelle begins refunds for imposter scams after Washington pressure*, REUTERS (Nov. 13, 2023), <https://www.reuters.com/technology/cybersecurity/payments-app-zelle-begins-refunds-imposter-scams-after-washington-pressure-2023-11-13/>. Notably, EWS implemented the new reimbursement policy on June 30, 2023, two weeks after the Subcommittee sent its initial June 16, 2023 request letter to EWS and the Three Banks. Furthermore, EWS publicized their new policy change on November 13, 2023, the day before EWS met for its first in-person briefing with PSI.

²³¹ Stacy Cowley & Lananh Nguyen, *Fraud Is Flourishing on Zelle. The Banks Say It’s Not Their Problem*, NYTIMES (Mar. 6, 2022), <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>; Letter from Counsel for Bank of America to the Subcommittee (Jan. 12, 2023); email from Counsel for JPMorgan to the Subcommittee (Dec. 15, 2023); Letter from Counsel for Wells Fargo to the Subcommittee (Jan. 23, 2024); Briefing with EWS to the Subcommittee (Nov. 14, 2023). A common form of imposter scam in recent years are so-called “Me-to-Me” scams in which bad actors impersonate an employee at a consumer’s bank, often cloning the bank’s phone number or using an email address that includes the bank’s name. The bad actor changes settings within the consumer’s online banking profile and then directs the consumer to transfer money to themselves, leading the consumer to unknowingly transfer money out of their account. As “Me-to-Me” scams rose in prevalence in 2021 and 2022, the Three Banks made changes to their policies for reimbursing consumers who had been victims of a “Me-to-Me” scam, but these changes were implemented on

“well above existing legal and regulatory requirements,” was widely publicized at the time.²³² While EWS’s new policy expanded reimbursement on Zelle beyond the requirements of EFTA, it falls far short of reimbursing a majority of scam disputes in 2023.²³³

The new reimbursement policy resulted in \$18.3 million in claims eligible for reimbursement across all Zelle Member Banks in 2023.²³⁴ In contrast, customers disputed approximately \$207 million as scams at the Three Banks alone in 2023.²³⁵ Overall, EWS estimated that 15-20% of all transactions disputed as scams on the Zelle Network in the last six months of 2023 qualified as an imposter scam eligible for reimbursement under the new policy.²³⁶

Figure 10: Imposter Scams Reported Under 2023 EWS Policy From June 30, 2023 Through December 31, 2023²³⁷



The Member Banks rejected more imposter scams than they reimbursed after EWS adopted the new policy in June 30, 2023.²³⁸ Zelle’s 2,100 Member Banks reported approximately 54,000 disputes to EWS as imposter scams from June 30, 2023, through December 31, 2023.²³⁹ Of these, approximately 24,000 disputes, or about 44%, were deemed eligible for

a case-by-case basis at each individual bank rather than being uniformly adopted by the Zelle Network. By August 2022, EWS had begun to explore a network-wide policy change that would require all Zelle Member Banks to reimburse imposter scams.

²³² Hannah Lang, *Payments app Zelle begins refunds for imposter scams after Washington pressure*, REUTERS (Nov. 13, 2023), <https://www.reuters.com/technology/cybersecurity/payments-app-zelle-begins-refunds-imposter-scams-after-washington-pressure-2023-11-13/>.

²³³ These figures were calculated using data produced to PSI by the Three Banks.

²³⁴ Letter from Counsel for EWS to the Subcommittee (Feb. 15, 2024).

²³⁵ These figures were calculated using data produced to PSI by the Three Banks.

²³⁶ Letter from Counsel for EWS to the Subcommittee (Feb. 15, 2024).

²³⁷ Letter from Counsel for EWS to the Subcommittee (Feb. 15, 2024).

²³⁸ *Id.*

²³⁹ *Id.*; *Zelle® Announces Q2 Customer Growth and New Safety Measures*, ZELLE (Aug. 23, 2023) <https://www.zellepay.com/press-releases/zeller-announces-q2-customer-growth-and-new-safety-measures>.

reimbursement under the 2023 EWS Policy, leaving approximately 30,000 disputes, or about 56% of reported imposter scams, ineligible for reimbursement.²⁴⁰ According to EWS, approximately 10,000 of the ineligible scam disputes were determined to either not qualify based on other requirements of their imposter scam reimbursement policy, or were determined to be “invalid or illegitimate claims at the outset.”²⁴¹ The remaining approximately 20,000 scam disputes found to be ineligible for reimbursement under the policy “consist of instances in which the consumer alleged that the criminal impersonated someone other than a government agency, financial institution, or existing servicing provider,” and was therefore not within the scope of the new policy.²⁴²

b. EWS Monitors Scams and Fraud on the Zelle Network but Appears to be Inconsistent in Enforcing Policy Violations

The rules governing the Zelle Network give EWS the final say over reimbursement liability and standards for acceptable levels of scams and fraud at Member Banks.²⁴³ The rules also cement EWS’s authority over the Zelle Network, affording it sole discretion of whether to allow a bank onto the Zelle Network and the right to terminate a Member Bank’s participation.²⁴⁴ Zelle’s Network Rules provide that they create “a contractual framework that establishes the responsibilities and roles of the Network Operator [EWS]” and the Member Banks, including the basis for “governance and participation” in the Zelle Network.²⁴⁵

The Network Rules outline the procedures that Member Banks must follow when a consumer disputes a Zelle payment.²⁴⁶ Banks must first attempt to resolve the dispute internally, but if the bank determines that another bank is ultimately liable to the consumer, it may file a dispute with EWS, which serves as a mediator between the two institutions.²⁴⁷ According to

²⁴⁰ Letter from Counsel for EWS to the Subcommittee (Feb. 15, 2024).

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Early Warning Services LLC., *Zelle Network Participation Rules*, 205-45 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000205-45.

²⁴⁴ *Id.* at 20.

²⁴⁵ *Id.* at 15.

²⁴⁶ Early Warning Services LLC., *Zelle Network Participation Rules*, 205-45 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000204-45.

²⁴⁷ EWS wrote to the Subcommittee, “(f)inancial institutions are independently responsible for complying with any reimbursement obligations under EFTA and Regulation E. The Rules do not affect these legal requirements. Rather, the Rules referenced above have a completely different focus: whether the recipient financial institutions must reimburse the sending financial institution. EWS is not the arbiter of and does not decide whether the consumer is reimbursed by their financial institution. That decision rests only with the financial institution. Rather, EWS merely serves as the arbiter of claims by sending financial institutions seeking reimbursement from receiving financial institutions. However, regardless of the outcome

the Network Rules, when arbitrating between Member Banks, all decisions made by EWS stipulating financial responsibility for a disputed transaction are final.²⁴⁸ These Network Rules and related documents give EWS the authority to require its Member Banks to reimburse certain types of disputed transactions, even above and beyond the regulatory requirements of Regulation E, as it did in June 2023.²⁴⁹

The Network Rules permit EWS to penalize banks for noncompliance with network standards for scams and fraud, including the ability to terminate a financial institution's participation in the Zelle Network.²⁵⁰ Member Banks are required to identify and report "all occurrences of actual or suspected fraud and scams" to EWS.²⁵¹ EWS establishes peer groups of banks based on the total dollar amount of Zelle payments at each institution.²⁵² EWS measures the level of each bank's scams and fraud against other banks of similar size.²⁵³ According to these rules, any Member Bank that is more than two standard deviations above the mean of their peer group may be considered to be in violation of EWS's minimum performance standard and noncompliant with the Network Rules.²⁵⁴

PSI reviewed 26 months of scams and fraud reporting data from EWS's Owner Banks and found that six out of seven Owner Banks spent at least two consecutive months between April 2021 and May 2023 out of compliance with the provisions for scams and fraud in the

of the arbitration between financial institutions, the sending financial institution must still reimburse their customer for unauthorized transactions in accordance with their independent obligation under Regulation E and the Network Rules. Letter from Counsel for EWS to the Subcommittee (July 15, 2024); Early Warning Services LLC., *Zelle Network Participation Rules*, 202, 206-13, 238 (Apr. 30, 2023) (on file with EWS), EWS-RR-004-0000202, 206-13, 238.

²⁴⁸ *Id.*

²⁴⁹ Early Warning Services LLC., *Zelle Network Participation Rules*, 18-71 (Apr. 30, 2023) (on file with EWS), EWS-RR-004-0000005-13.

²⁵⁰ See e.g., Early Warning Services LLC., *Zelle Network Participation Rules*, 202 (Apr. 26, 2023) (on file with EWS), EWS-PSI-002-0000283. ("[EWS] reserves the right to suspend or terminate a Participant [financial institution] at any time. Such suspension or termination may be based on violations [EWS], in its sole discretion, determines to be egregious in nature and/or failure by a Participant to act in good faith to resolve noncompliant requirement(s), which may include implementing actions in its approved Fraud Remediation Plan.").

²⁵¹ Early Warning Services LLC., *Zelle Network Participation Rules*, 194 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000194.

²⁵² *Id.* at 199-200, 281-82.

²⁵³ *Id.* at 200-03, 281-84.

²⁵⁴ Early Warning Services LLC., *Zelle Network Participation Rules*, 201, 282 (Apr. 26, 2023) (on file with EWS), EWS-PSI-004-0000201, 282; EWS wrote to the Subcommittee that, "(t)he peer group monitoring process serves only as a metric to trigger an inquiry to determine whether there is anything more the financial institution can do to mitigate the risk of fraud and scams. It does not necessarily indicate any failure of the financial institution's controls or fraud and scam prevention measures. Indeed, in many cases, the cause of the fraud and scam rates may be outside the direct control of the financial institution, such as an external factor like a coordinated fraud attack." Letter from Counsel for EWS to the Subcommittee (July 15, 2024).

Network Rules.²⁵⁵ According to the Network Rules, when a bank is out of compliance, it must submit a Fraud Monitoring Plan to EWS to propose a way to return to the minimum performance standard.²⁵⁶ There appears to be no standard template for a Fraud Monitoring Plan. Examples of Fraud Monitoring Plans at different Owner Banks reviewed by PSI included one-page memos, a single PowerPoint slide, or in one instance, a short email with bullet points sent several days past the initial deadline.²⁵⁷

The Network Rules provide EWS with discretion in how it enforces noncompliance with the rules applicable to scams and fraud, ranging from assessing fees to terminating a bank's membership in the Zelle Network, or "[a]ny other action [EWS], in its sole discretion, determines is appropriate to resolve the noncompliance."²⁵⁸ PSI's review of the available data suggests that EWS has used this discretion to require Fraud Monitoring Plans in some instances, but not others. For example, two large banks in the Zelle Network submitted multiple Fraud Monitoring Plans for periods of noncompliance between April 2021 and May 2023.²⁵⁹ Meanwhile, despite three consecutive months of noncompliance in 2022, another large bank did not submit a Fraud Monitoring Plan at all.²⁶⁰

²⁵⁵ PNC Zelle FPMEP Update (Jan. 27, 2022); Zelle Fraud Update, Truist (Jan. 28, 2022); Zelle Fraud Volume - Action Plan, Heritage BB&T; Capital One Fraud Action Plan (Feb. 4, 2022); Early Warning Services - PSI - Fraud Performance Report for SEND DATA, Bank of America; Early Warning Services - PSI - Fraud Performance Report for RECEIVE DATA, Capital One; Early Warning Services - PSI - Fraud Performance Report for SEND DATA - PNC; Early Warning Services - PSI - Fraud Performance Report for SEND DATA - Truist; Early Warning Services - PSI - Fraud Performance Report for SEND DATA - U.S. Bank; Early Warning Services - PSI - Fraud Performance Report for SEND DATA - Wells Fargo (on file with EWS), EWS-RR-003-0000001-19.

²⁵⁶ Early Warning Services LLC., *Zelle Network Participation Rules*, 199-204 (Apr. 26, 2023) (on file with EWS), EWS-PSI-002-0000281-85. If EWS determines that a bank's fraud transaction rate is elevated above that of its peer banks by a certain level, it may require the offending bank to comply with a Fraud Monitoring Program (FMP). If EWS places a bank in an FMP, the bank may also be required to provide EWS with a fraud remediation plan and monthly updates on the plan's implementation and pay noncompliance fees to EWS. Noncompliance fees are assessed beginning with the second "noncompliance occurrence," a term that is not defined by the Zelle Network Participation Rules. The Network Rules grant EWS discretion to enforce fraud mitigation rules, up to and including the ability to terminate a financial institution's participation in the Zelle Network. To exit an FMP, a bank must lower its fraud transaction rate such that is more in line with its peer group average and sustain that lower rate for three consecutive months.

²⁵⁷ [Fraud Mitigation Update: PNC Bank] (n.d.) (on file with EWS), EWS-RR-003-0000003; Zelle FPMEP Update: PNC (Jan. 27, 2022) (on file with EWS), EWS-RR-003-0000002; Zelle Fraud Update: Truist (Jan. 28, 2022) (on file with EWS), EWS-RR-003-0000004; Capital One Fraud Action Plan (Feb. 4, 2022) (on file with EWS), EWS-RR-003-0000009.

²⁵⁸ Early Warning Services LLC., *Zelle Network Participation Rules*, 14 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-0000202.

²⁵⁹ PNC Zelle FPMEP Update (Jan. 27, 2022); Truist, Zelle Fraud Update (Jan. 28, 2022); Early Warning Services - PSI - Fraud Performance Report for SEND DATA - PNC; Early Warning Services - PSI - Fraud Performance Report for SEND DATA - Truist (on file with EWS), EWS-RR-003-0000001-5, 14-15, 16-17.

²⁶⁰ Early Warning Services - PSI - Fraud Performance Report for SEND DATA - U.S. Bank (on file with EWS), EWS-RR-003-0000018.

Among the Three Banks, two have been assessed noncompliance fees by EWS in association with elevated levels of scams and fraud.²⁶¹ In October 2022, Wells Fargo paid a noncompliance fee of \$25,000 for noncompliant levels of scams and fraud every month for at least sixteen months in a row.²⁶² In September 2023, EWS assessed Bank of America a \$30,000 noncompliance fee for a “relative increase in scam activity.”²⁶³ Such enforcement may be insufficient to incentivize compliance: Wells Fargo’s \$25,000 fine came in the same year the bank generated \$74 billion in total revenue, and Bank of America’s \$30,000 fine came in the same year the bank generated over \$99 billion in total revenue.²⁶⁴

Finding 4: EWS Generates its Primary Revenue from the Data it Collects from Consumers and Member Banks

EWS operates Zelle at a loss and generates revenue primarily from other data-based services the company offers to financial institutions.²⁶⁵ EWS collects voluminous data on consumers and banks that use Zelle, both as the operator of the Zelle Network and through data that its Member Banks are contractually obligated to share with EWS on a daily basis.²⁶⁶ Every time a consumer opens the Zelle app or initiates a payment, EWS receives a range of data.²⁶⁷ Among the permitted uses of this data in the Zelle Network Rules include “to test and develop or enhance” new fraud and risk products to sell to financial institutions.²⁶⁸ Historically, EWS’s business model has used what the company describes as its “unmatched network intelligence” to sell financial risk tools to financial institutions.²⁶⁹ These tools assess the level of risk an individual consumer may present to a bank, such as the likelihood they

²⁶¹ Letter from Counsel for Wells Fargo to the Subcommittee (Jan. 23, 2024); Early Warning Services - PSI - Fraud Performance Report for SEND DATA - Wells Fargo (on file with EWS), EWS-RR-003-0000020; Letter from Counsel for Bank of America to the Subcommittee (Dec. 14, 2023).

²⁶² Letter from Counsel for Wells Fargo to the Subcommittee (Jan. 23, 2024).

²⁶³ Letter from Counsel for Bank of America to the Subcommittee (Jan. 12, 2024).

²⁶⁴ WELLS FARGO, 2022 ANNUAL REPORT (2023), <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2022-annual-report.pdf>; BANK OF AMERICA, 2023 ANNUAL REPORT (2024), <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2022-annual-report.pdf>.

²⁶⁵ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

²⁶⁶ Early Warning Services, LLC., *Zelle Fraud Risk Manual*, 12-13 (May 2023) (on file with EWS), EWS-RR-001-0000200-01.

²⁶⁷ *Id.*

²⁶⁸ Early Warning Services LLC., *Zelle Network Participation Rules*, 26-7 (Apr. 26, 2023) 2.2.4 Network Operator Use of Network Data and Transaction Data. EWS-RR-004-0000026-7.

²⁶⁹ *Products*, EARLY WARNING (2024), <https://www.earlywarning.com/products>; *About*, EARLY WARNING (2024), <https://www.earlywarning.com/about>.

will commit check fraud or identity theft.²⁷⁰ In a November 2023 briefing, EWS told the Subcommittee that the data based services it sells are its “profit driver.”²⁷¹ EWS also told PSI it has not commercialized its data beyond the financial risk products it sells to other financial services companies.²⁷²

While PSI found no evidence that the Three Banks withheld any information from their regulators, it appears that they share more data on scams and fraud with EWS than they do with their regulators. This is, in part, because the banks have different reporting obligations to EWS than to their regulators.²⁷³ Informed by the daily reporting requirements of scams and fraud data to EWS, PSI asked the Three Banks if they shared “any information related to fraud monitoring with its regulators.”²⁷⁴ In response, Wells Fargo told PSI they met quarterly with their regulator to “discuss a variety of topics, which can include fraud and scam monitoring.”²⁷⁵ Bank of America told PSI it “does not generally share data on its fraud monitoring” in its routine interactions with its primary regulator.²⁷⁶ JPMorgan stated that responding would invoke their regulator’s privilege and refused to answer the question.²⁷⁷ In contrast, EWS requires Member Banks to collect and share extensive data on Zelle scams and fraud with EWS daily.²⁷⁸

Finding 5: Younger Consumers Are Reimbursed at Lower Rates Than Older Consumers on Zelle and Have Fewer Protections

a. Young Consumers Are a Growing but Vulnerable Population on Zelle

²⁷⁰ *Id.*

²⁷¹ Briefing with EWS to the Subcommittee (Nov. 14, 2023).

²⁷² *Id.*

²⁷³ Counsel for Wells Fargo wrote to the Subcommittee that “the Bank readily provides any requested information to its regulators and fully cooperates with regulatory information requests.” Similarly, Counsel for Bank of America stated the bank “provides its primary regulators with any information they request on Zelle scams and fraud, and maintains regular routines at which information related to Zelle scams and fraud is provided proactively.” Email from Counsel for JPMorgan to the Subcommittee (July 12, 2024); Email from Counsel for Bank of America to the Subcommittee (July 12, 2024); Letter from Counsel for Wells Fargo to the Subcommittee (July 12, 2023).

²⁷⁴ Briefing with JPMorgan to the Subcommittee (Nov. 20, 2024); Briefing with Wells Fargo to the Subcommittee (Nov. 14, 2024); Briefing with Bank of America to the Subcommittee (Nov. 16, 2023).

²⁷⁵ Letter from Counsel for Wells Fargo to the Subcommittee (Dec. 20, 2023).

²⁷⁶ Letter from Counsel for Bank of America to the Subcommittee (Dec. 14, 2023).

²⁷⁷ Email from Counsel for JPMorgan to the Subcommittee (Feb. 22, 2024).

²⁷⁸ Meeting with Counsel for EWS to the Subcommittee (Sept. 12, 2023).

As Zelle has grown, the number of consumers 35 and under, including those under 18, using Zelle at the Three Banks has increased rapidly in recent years.²⁷⁹

Figure 11: Number of Zelle Payments Made by Consumers for JPMorgan, Bank of America, and Wells Fargo, 2019 Through 2022, by Age Category²⁸⁰

	Under 18	18 - 35	36 - 50	51 - 65	Over 65
2019	6,260,247	332,351,606	170,110,556	75,641,076	16,755,706
2020	10,805,258	512,070,755	286,881,015	129,508,845	30,758,582
2021	17,704,561	728,900,761	440,660,163	202,200,544	47,552,945
2022	21,773,526	859,352,080	549,097,083	266,046,451	65,664,841

The Three Banks allow consumers as young as 13 to open savings and checking accounts through which they can access Zelle.²⁸¹ As shown in Figure 11, the total number and

²⁷⁹ These figures were calculated using data produced to PSI by the Three Banks. To generate the total number of Zelle transactions, the Subcommittee summed the number of Zelle transactions for consumers for each year by each age category: under 18, 18-35, 36-50, 51-65, and Over 65 provided by the Three Banks.

²⁸⁰ These figures were calculated using data produced to PSI by the Three Banks. To generate the total number of Zelle transactions, the Subcommittee summed the number of Zelle transactions for consumers for each year by each age category: under 18, 18-35, 36-50, 51-65, and Over 65 provided by the Three Banks.

²⁸¹ The banks have varying requirements for children to open a bank account, including the types of accounts available to minors and whether an adult co-owner is required. For example, JPMorgan offers a checking account for consumers 13- to 17-years old that requires a parent as a co-owner. This account allows 13- to 17-year-olds to use Zelle. Wells Fargo offers a bank account to 13-to 24-year-olds. 13- to 16-year-olds are required to have an adult as a co-signer, 17-year-olds are not required to have a co-signer. It is unclear from Bank of America websites what banking services are offered to consumers under 18 and if a co-signer is required. The Subcommittee did identify that Bank of America offers SafeBalance Banking for accounts with an owner under 25, however no age ranges are specified on the Bank of America website. *Chase Student Banking Accounts*, JPMORGAN (Apr. 16, 2024), <https://personal.chase.com/personal/first-banking/comparison>. WELLS FARGO, [HTTPS://WWW.WELLSFARGO.COM/CHECKING/STUDENT/](https://www.wellsfargo.com/checking/student/) (last visited July 3, 2024), *See Bank of America Advantage SafeBalance Banking*, BANK OF AMERICA, <https://promotions.bankofamerica.com/student-banking/products-services/safebalance> (last visited July 3, 2024).

associated dollar value of payments made by consumers under 18 grew by nearly 250% from 2019 to 2022.²⁸²

Figure 12: Number and Dollar Value of Zelle Payments Made by Consumers Under 18 for JPMorgan, Bank of America, and Wells Fargo, 2019 Through 2022 ²⁸³

Year	Total Number of Transactions	Dollar Amount Associated with Transactions
2019	6,260,247	\$414,680,316
2020	10,805,258	\$836,094,541
2021	17,704,561	\$1,354,861,185
2022	21,773,526	\$1,526,710,558

²⁸² These figures were calculated using data produced to PSI by the Three Banks. To generate the total number of Zelle transactions, the Subcommittee summed the number of Zelle transactions for consumers under 18 provided by the Three Banks. To generate the dollar amount associated with transactions the Subcommittee summed the dollar value for Zelle transactions for consumers under 18 provided by the Three Banks. The Subcommittee then calculated the percent increase for 2019 to 2022 for the total number and associated dollar value of transactions executed by consumers under 18. Bank of America and JPMorgan classified some transactions as age “Unknown”. For Bank of America, in 2019, there were 24,247 transactions where age was “Unknown”; 35,489 in 2020; 59,963 in 2021; and 73,247 in 2022. For JPMorgan, in 2019 there were 4,186,518 transactions where age was “Unknown”; 5,720,069 in 2020; 8,085,235 in 2021; and 8,923,515 in 2022. For Wells Fargo, there were transactions in the data provided to the Subcommittee that were not assigned to an age category. According to Wells Fargo, “[t]he customer record containing the demographic information (i.e. age, personhood, and state of residence) and the claims information are stored in two different systems.” In terms of providing data to the Subcommittee “it would be a significant burden and require manual review to match these missing fields for individual claims across systems.” Letter from Counsel for Wells Fargo to the Subcommittee, at App. A (Dec. 13, 2023). In 2019, there were 63,745 transactions in the data provided to the Subcommittee not assigned to an age category; 194,237 in 2020; 4,594,523 in 2021 and 13,396,054. The Subcommittee identified the number of transactions not assigned to an age category by Wells Fargo by summing the total number of transactions across age categories and subtracting from the total number of Zelle transactions.

²⁸³ These figures were calculated using data produced to PSI by the Three Banks. To generate the total number of Zelle transactions, the Subcommittee summed the number of Zelle transactions for consumers under 18 provided by the Three Banks. To generate the dollar amount associated with transactions the Subcommittee summed the dollar value for Zelle transactions for under 18 provided by the Three Banks.

The growth in Zelle usage among younger consumers is in line with national trends.²⁸⁴ According to Consumer Reports, younger Americans are more likely to use P2P payment services on a regular basis, with 74% of consumers aged 18-29 saying they used P2P services compared to 39% of consumers aged 60 or above.²⁸⁵

As younger consumers engage with P2P payments more frequently, there are indications they are being increasingly targeted by scams and fraud than older groups.²⁸⁶ The Federal Trade Commission collects data on “fraud, identity theft, and other consumer protection topics,” through the Consumer Sentinel Network.²⁸⁷ According to this data, when people made a report regarding financial crime, younger people were more likely to report having lost money, with 50% of consumers aged 20-29 reporting they had lost money compared to 25% of consumers aged 70-79.²⁸⁸ Furthermore, the rate at which consumers 19 and under have reported frauds has more than tripled in the last five years, from \$15 million in 2018 to \$56 million in 2023, while the amount reported lost by consumers aged 20-29 grew more than five times from \$83 million in 2018 to \$450 million in 2023.²⁸⁹

Teenagers in particular present several factors that contribute to their vulnerability, including lack of experience and discernment needed to spot potential scams, impulsive behavior making them more likely to click on suspicious links or engage with strangers online, and limited financial knowledge.²⁹⁰ Additionally, teens are increasingly sharing more information

²⁸⁴ CONSUMER REPORTS, *Peer-to-Peer Payment Services Surveys on this Topic from Four Months of the Nationally Representative American Experiences Survey Across 2022* (Jan. 10, 2023), <https://advocacy.consumerreports.org/wp-content/uploads/2023/01/P2P-Report-4-Surveys-2022.pdf>; FTC *Consumer Sentinel Network, Reported Frauds and Losses by Age (2024)*, FEDERAL TRADE COMMISSION (May 1, 2024), <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts>; A.W. Ohlheiser, *Gen Z falls for online scams more than their boomer grandparents do*, Vox (Sept. 21, 2023), <https://www.vox.com/technology/23882304/gen-z-vs-boomers-scams-hacks>.

²⁸⁵ CONSUMER REPORTS, *Peer-to-Peer Payment Services Surveys on this Topic from Four Months of the Nationally Representative American Experiences Survey Across 2022* (Jan. 10, 2023), <https://advocacy.consumerreports.org/wp-content/uploads/2023/01/P2P-Report-4-Surveys-2022.pdf>.

²⁸⁶ *Id.*; U.S. FED. TRADE COMM’N, *CONSUMER SENTINEL NETWORK: DATA BOOK 2022*, at 5 (Feb. 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf.

²⁸⁷ U.S. FED. TRADE COMM’N, *CONSUMER SENTINEL NETWORK: DATA BOOK 2023*, at 2 (Feb. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf.

²⁸⁸ *Id.*; while reports from younger consumers more commonly indicated the consumer had lost money, when older consumers reported losing money, they generally lost greater amounts of money.

²⁸⁹ *Id.*; U.S. FED. TRADE COMM’N, *CONSUMER SENTINEL NETWORK: DATA BOOK 2018*, at 13 (Feb. 2019), https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf.

²⁹⁰ Stacey J. Drubner, *Teens and Young Adults are at High-Risk for Online Scams*, MASS GEN. BRIGHAM, (Jan. 1, 2024), https://eap.partners.org/news_posts/young-people-at-high-risk-for-online-scams/; Heather Kelly, *Scams are Targeting Teenagers. Here’s How to Keep Your Kids Safe*, THE WASHINGTON POST (Oct. 30, 2023),

about themselves on social media, such as the city or town where they live, their date of birth, and their email addresses.²⁹¹ This information can be used by bad actors to target them.²⁹² While teens generally have more limited financial resources than adults, bad actors can manipulate them to gain access to accounts to which they have access.²⁹³ In the context of Zelle, this has implications for parents whose teens have banks accounts linked to their parents' accounts. In 2022, a Boston high school senior's phone was hacked, scammers deposited faked checks totaling around \$3,000 into the teen's account, and then transferred the money out using Zelle.²⁹⁴ Because the teen's account was linked to his parents' account, bad actors were able to withdraw more than the teen had in his account.²⁹⁵ Bank of America did not reimburse the teen or his parents.²⁹⁶

b. The Three Banks Reimbursed Consumer 35 and Under at Lower Rates than Older Consumers 2019-2022

Even as younger consumers engaged with Zelle more frequently year over year, the Subcommittee's analysis found that the average reimbursement rate for this population trended downwards. Specifically, reimbursement for transactions disputed as fraud by consumers under 18 and under at the Three Banks declined from 56% in 2019 to 35% in 2022, and the reimbursement for transactions disputed as fraud by consumers 18 to 35 declined from 56% in 2019 to 34% in 2022.²⁹⁷

<https://www.washingtonpost.com/technology/2023/10/30/teens-scams-parents/>; Karthik Pandiyan, *Teens Get Scammed Online More than the Elderly, Says New Study 2023*, LINKEDIN (Nov. 7, 2023),

<https://www.linkedin.com/pulse/teens-get-scammed-online-more-than-elderly-says-new-study2023-p-sypyc>.

²⁹¹ Mary Madden, Amanda Lenhart, Sandra Cortesi, Urs Gasser, Maeve Duggan, Aaron Smith, Meredith Beaton, *Teens, Social Media, and Privacy*, PEW RESEARCH CENTER (May 21, 2023),

<https://www.pewresearch.org/internet/2013/05/21/teens-social-media-and-privacy/>.

²⁹² Janet Fowler, *10 Common Scams Targeted at Teens*, INVESTOPEDIA (Nov. 27, 2022), <https://www.investopedia.com/financial-edge/1012/common-scams-targeted-at-teens.aspx>.

²⁹³ Heather Kelly, *Scams Are Targeting Teenagers. Here's How to Keep Your Kids Safe*, THE WASHINGTON POST (Oct. 30, 2023), <https://www.washingtonpost.com/technology/2023/10/30/teens-scams-parents/>.

²⁹⁴ Cheryl Fiandaca, *I-Team: Zelle Blamed After Lexington Teen's Bank Account Cleaned out by Money Transfer Hackers*, CBS NEWS (May 10, 2022), <https://www.cbsnews.com/boston/news/zelle-hackers-scammers-theft-bank-of-america-cogan-lawler/>.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ These figures were calculated using data produced to PSI by the Three Banks.

Figure 13: Average Percent of Zelle Payments Disputed as Fraud Reimbursed to Consumers by JPMorgan, Bank of America, and Wells Fargo to Consumers, by Age ²⁹⁸

2019	Under 18	18 - 35	36 - 50	51 - 65	Over 65
All Three Banks	56%	56%	67%	66%	66%
2020	Under 18	18 - 35	36 - 50	51 - 65	Over 65
All Three Banks	47%	45%	59%	65%	70%
2021	Under 18	18 - 35	36 - 50	51 - 65	Over 65
All Three Banks	34%	30%	45%	56%	62%
2022	Under 18	18 - 35	36 - 50	51 - 65	Over 65
All Three Banks	35%	34%	55%	66%	68%

As shown in Figure 13, reimbursement percentages for transactions disputed as fraud by consumers 35 and under were lower than for consumers 36 and older for all years analyzed.²⁹⁹ For example, in 2022, an average of 35% of transactions disputed as fraud by consumers 18 and under were reimbursed, compared to an average of 55% for consumers 36 to 50, 66% for consumers 51 to 65, and 68% for consumers over 65.³⁰⁰

²⁹⁸ These figures were calculated using data produced to PSI by the Three Banks. Average percent reimbursed was calculated by summing for each year the total number of unauthorized transactions for the Three Banks that were fully reimbursed and dividing by the sum for each year the total number of disputed unauthorized transactions for the Three Banks. According to JPMorgan, there is no searchable data field reflecting JPMorgan opened an investigation in response to a consumer’s dispute. To estimate the total number of disputed unauthorized transactions investigated by JPMorgan by age group, the Subcommittee summed the total number of transactions where JPMorgan did not reimburse a consumer with the total number of transactions where JPMorgan reimbursed a consumer. JPMorgan, Bank of America, and Wells Fargo classified “age” by the age of the primary account holder. Bank of America and Wells Fargo included businesses in the “age” category if information on the age of the primary account holder was available; Email from Counsel for Bank of America to the Subcommittee (Dec. 14, 2023), Letter from Counsel for JPMorgan to the Subcommittee, at Appendix 2 (Nov. 6, 2023); Letter from Counsel for Wells Fargo to the Subcommittee, at App. A (Dec. 13, 2023); Counsel for JPMorgan wrote to the Subcommittee that “Chase claims specialists must accept and investigate all claims from a customer.” Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024) (*quoting* JPMC-PSI-000004).

²⁹⁹ *Id.*

³⁰⁰ *Id.*

c. The Three Banks Lack Specific Protocols Focused on Protecting Minors on Zelle

There are few statutory protections specific to minors in the banking industry, regardless of which payment method is used. The primary federal statute that applies in the context of digital banking is the Children’s Online Privacy Act, which focuses on advertising and disclosure on websites used by children.³⁰¹ This suggests greater need for protections for children across all financial services, yet the instantaneous and irreversible nature of Zelle payments warrants special focus.

PSI asked EWS if there are enhanced protocols at the network level for consumers under 18.³⁰² According to EWS, whether to implement protocols would be up to the banks, but the banks would likely implement protocols similar to those they use when deciding whether to approve minors for bank accounts.³⁰³ Similarly, representatives for the Three Banks indicated that they focused their child protection efforts on how minors were able to access online banking.³⁰⁴ A representative for Wells Fargo stated that children 13 to 17 could only enroll in online banking with access to Zelle if an adult co-owner had joint access to the account.³⁰⁵ Similarly, a representative from JPMorgan noted that “Chase High School checking accounts that include Zelle... can only be opened in person, at a Chase branch, with a parent or guardian present, and that parents have full visibility into all account activity.”³⁰⁶ JPMorgan also offers a product called “First Banking” for minors aged 6-17, which does not provide the ability to access or use Zelle.³⁰⁷ When PSI asked if there were categories of transfers where a consumer under 18 would need prior parental approval, Bank of America representatives responded that they put the responsibility on the parent to monitor their child.³⁰⁸ However, because Zelle payments are instantaneous, and there are no additional protocols attached to transactions initiated by minors, it appears that any monitoring that could occur would likely take place after a Zelle payment has been completed.

³⁰¹ Children’s Online Privacy Protection Act, 15 U.S.C. § 6501 (2024) (imposing certain requirements on operators of websites and online services meant for children under the age of 13 and on operators of websites or online services that have actual knowledge that they are collecting personal information online from children under the age of 13).

³⁰² Briefing with EWS to the Subcommittee (Nov. 14, 2023).

³⁰³ *Id.*

³⁰⁴ Briefing with JPMorgan to the Subcommittee (Nov. 20, 2023); Briefing with Bank of America to the Subcommittee (Nov. 16, 2023); Letter from Counsel for Wells Fargo to the Subcommittee (Dec. 20, 2024).

³⁰⁵ Counsel for Wells Fargo told the Subcommittee that “Zelle is not automatically available for Wells Fargo account holders, i.e., all users, including minors, must opt-in and appropriately enroll themselves to use Zelle.” Email from Counsel for Wells Fargo to the Subcommittee (July 16, 2024); Letter from Counsel for Wells Fargo to the Subcommittee (Dec. 20, 2024).

³⁰⁶ Briefing with JPMorgan to the Subcommittee (Nov. 20, 2023); Email from Counsel for JPMorgan to the Subcommittee (July 12, 2024).

³⁰⁷ Email from Counsel for JPMorgan to the Subcommittee (July 16, 2024).

³⁰⁸ Briefing with Bank of America to the Subcommittee (Nov. 16, 2023).

None of the Banks included in the Subcommittee’s inquiry allow adults to turn Zelle off in a minor’s online banking profile.³⁰⁹ Representatives from Bank of America told PSI they do not “currently provide functionality for parents to enable online banking for their children, while disabling Zelle” but that “the Bank is always looking to update and develop its products to better protect consumers.”³¹⁰ Similarly, a representative for JPMorgan noted that parents have visibility into their child’s banking activity, but could not limit their access to Zelle apart from shutting off all online banking access.³¹¹ Wells Fargo reiterated that minors could only access Zelle through a bank account with online banking that required an adult’s permission.³¹²

PSI found specific protocols the Three Banks have in place for seniors, another vulnerable population, in the policies and procedures reviewed in this investigation.³¹³ For example, Bank of America’s claims processes note that additional review may be required with seniors, such as requiring a second reviewer to deny a claim for reimbursement.³¹⁴ A Bank of America representative told PSI in a November 2023 briefing they have a gerontologist working fulltime to assist with consumer education and prevention of scams and fraud, and have specific monitoring rules that are designed to safeguard the senior population.³¹⁵ JPMorgan considers age as a risk profile of a transaction and implements additional safeguards for seniors.³¹⁶ Similarly, Wells Fargo has transaction review protocols for elderly consumers and other vulnerable adults.³¹⁷ The Subcommittee did not find similar policies and procedures focused on consumers under 18 in the body of policies and procedures produced by the Three Banks.

³⁰⁹ Briefing with JPMorgan to the Subcommittee (Nov. 20, 2023); Letter from Counsel for Bank of America to the Subcommittee (Dec. 14, 2023); Letter from Counsel for Wells Fargo to the Subcommittee (Dec. 20, 2024).

³¹⁰ Letter from Counsel for Bank of America to the Subcommittee (Dec. 14, 2023).

³¹¹ Email from Counsel for JPMorgan to the Subcommittee (Dec. 15, 2023); Email from Counsel for JPMorgan to the Subcommittee (Feb 8, 2024).

³¹² Letter from Counsel for Wells Fargo to the Subcommittee (Dec. 20, 2024).

³¹³ PSI reviewed policies and procedures related to investigating disputed transactions at the Three Banks.

³¹⁴ *Id.*

³¹⁵ Briefing with Bank of America to the Subcommittee (Nov. 16, 2023).

³¹⁶ Letter from Counsel for JPMorgan to the Subcommittee (Nov. 6, 2023).

³¹⁷ PSI reviewed policies and procedures related to investigating disputed transactions at the Three Banks. Counsel for Wells Fargo told the Subcommittee that it offers data analytics tools that may take age into consideration, i.e. “[r]isk algorithms utilized by Wells Fargo to identify fraud and scams account for customer ages and, depending on the circumstances of the transaction (e.g., if the transaction includes new payees), will generate additional warnings and friction points for younger users.” Letter from Counsel for Wells Fargo to the Subcommittee (July 12, 2024).

RECOMMENDATIONS

PSI's investigation found gaps in the current regulatory and statutory framework that apply to Zelle and other P2P payment applications. With the growth of digital finance and instant payments, Congress and regulators should proactively engage with new technologies and payment trends to ensure robust protections are in place for consumers. The impact of fraud or scams can be devastating. The average dollar amount for scam disputes at the Three Banks was \$496 and fraud disputes was \$388 in 2023.³¹⁸ According to the Federal Reserve, as of 2023, roughly 30% of American households could not cover a \$400 emergency expense using cash or its equivalent.³¹⁹ Given the potentially devastating impact to consumers, greater consumer protection is needed. With this in mind, the Subcommittee makes the following recommendations.

1. Amending EFTA to Require Reimbursement for Scams

Congress should update EFTA to require reimbursement for scams, i.e. “fraudulently induced” authorized transactions. EFTA was signed into law by President Jimmy Carter in 1978 when electronic banking was a novel concept.³²⁰ Congress passed EFTA due to a concern that electronic banking was “much more vulnerable to fraud, embezzlement, and unauthorized use than... traditional payment methods.”³²¹ Since then, electronic banking has grown faster and the tactics for tricking consumers into authorizing a payment under false pretenses have grown more sophisticated.³²² Determining whether a transaction is authorized or unauthorized can be challenging in cases of coercion and manipulation. Such issues have been addressed before, but never in a wholesale manner.³²³ As originally drafted, EFTA covers transfers where a consumer's device is obtained through fraud or a payment is induced by

³¹⁸ These figures were calculated using data produced to PSI by the Three Banks.

³¹⁹ BOARD OF GOVERNORS OF THE FEDERAL RESERVE BANK, *Report on the Economic Well-Being of U.S. Households in 2022 – May 2023* (June 2, 2023), <https://www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-expenses.htm>.

³²⁰ Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r (1978); *see also*, 12 C.F.R. § 1005.

³²¹ H.R. Rep. No. 95-1315, at 2 (1978).

³²² *Fraud Alert!: Shedding Light on Zelle: Hearing Before the Subcomm. On Investigations of the S Comm. on Homeland Sec. and Gov. Aff's*, 118th Cong. (May 21, 2024) (statement of Delicia Reynolds Hand, Senior Director, Digital Marketplace, Consumer Reports), <https://www.hsgac.senate.gov/wp-content/uploads/Hand-Testimony.pdf>; Sam Sabin, *Social-Engineering Scams Get More Sophisticated*, AXIOS (June 8, 2023) <https://www.axios.com/2023/06/09/social-engineering-scams-pretexting>.

³²³ *Fraud Alert!: Shedding Light on Zelle: Hearing Before the Subcomm. On Investigations of the S Comm. on Homeland Sec. and Gov. Aff's*, 118th Cong. (May 21, 2024) (statement of Delicia Reynolds Hand, Senior Director, Digital Marketplace, Consumer Reports), <https://www.hsgac.senate.gov/wp-content/uploads/Hand-Testimony.pdf>.

force.³²⁴ Similarly, recent guidance from the CFPB requires financial institutions to reimburse consumers under Regulation E where an unauthorized party tricks a consumer into sharing account access information that the unauthorized party uses to perpetrate fraud.³²⁵ But such guidance stops short of requiring reimbursement when a bad actor induces a consumer to authorize a transaction, no matter how sophisticated the ruse.³²⁶

Comparative regulatory frameworks are instructive. In October 2024, a rule promulgated by regulators in the United Kingdom will go into effect requiring mandatory reimbursement to consumers who have been victims of scams on P2P platforms in most instances (the requirement to reimburse would not apply if a transaction is disputed improperly or if a consumer acted with gross negligence).³²⁷ Under the rule, a consumer's financial institution and the receiving financial institution must split the cost of the consumer's reimbursement.³²⁸

The United Kingdom's rule followed the failure of a voluntary system to adequately reimburse consumers.³²⁹ Specifically, prior to this rule, a voluntary system led by the banking industry in the United Kingdom, the Contingent Reimbursement Model Code, required banks that chose to adhere to the code to reimburse consumers who were victims of P2P scams in certain circumstances.³³⁰ But under the Contingent Reimbursement Model Code, banks reimbursed a small percentage of consumers and made incorrect decisions about reimbursement.³³¹ The Financial Ombudsmen Service, which handled appeals of denied claims, reversed bank denials of claims and ruled in favor of consumers in 73% of appeals.³³²

³²⁴ 12 C.F.R. § 1005.2 (Suppl. I), 2(m)(3)-(4).

³²⁵ *Electronic Fund Transfers FAQs*, CONSUMER FIN. PROT. BUREAU (June 4, 2021), <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs>.

³²⁶ See e.g., *Wilkins v. Navy Fed. Credit Union*, 2023 WL 239976, at *19 (D.N.J. Jan. 18, 2023) (dismissing the Plaintiff's case where she alleged that she was "scammed" into initiating Zelle transactions in part because the complaint alleged that "she, in every sense of the word, *authorized* the four separate transaction. Unfortunately for Plaintiff, the person on the other side of the Zelle transactions was not who they claimed to be.") (emphasis supplied).

³²⁷ Robert A. Chapli et al., *New Rules to Tackle Authorised Push Payment Fraud*, SKADDEN (Apr. 4, 2024), <https://www.skadden.com/insights/publications/2024/04/new-rules-to-tackle-authorised-push-payment-fraud>.

³²⁸ PAYMENT SYSTEMS REGULATOR, *Fighting authorised push payment scams: final decision* (Dec. 2023), <https://www.psr.org.uk/media/kwlgzti/ps23-4-app-scams-policy-statement-dec-2023.pdf>.

³²⁹ Emma Lovell, *International Perspective – Scams: Looking forward: Priorities and opportunities – speech*, LENDING STANDARDS BOARD LIMITED (March 15, 2022), <https://www.lendingstandardsboard.org.uk/scams-looking-forward-priorities-and-opportunities-international-perspective-speech/>.

³³⁰ *Id.*

³³¹ Chiara Cavaglieri, *Banks Wrongly Denying Fraud Victims Compensation in up to 8 of 10 Cases*, WHICH? (Nov. 10, 2021), <https://www.which.co.uk/news/article/banks-wrongly-denying-fraud-victims-compensation-in-up-to-8-in-10-cases-aFck94J4TjEX>.

³³² *Id.*

With these alternative models in mind, EFTA should be amended to protect consumers who have become the victim of scams perpetrated via electronic fund transfers.

2. Creating Greater Transparency in The Dispute Process

The CFPB should update Regulation E to provide more extensive guidance on what qualifies as a “reasonable” investigation.³³³ Consumers who have become victims of scams and fraud on Zelle allege that Member Banks do not adequately investigate their disputes.³³⁴ The policies reviewed by the Subcommittee for the Three Bank’s do not direct bank personnel to proactively ask if consumer’s have information such as police reports or other data that might challenge their decision to reject a claim.³³⁵

The Zelle Network Rules give EWS contractual authority to require Member Banks in the Zelle Network to follow specific dispute resolution procedures.³³⁶ However, EWS has not required Member Banks to use a more specific investigation process, and this gap could potentially leave banks free to tailor their dispute investigation process to deny as many claims as possible.³³⁷ Accordingly, the CFPB and bank regulators, i.e., the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve, and the Office of the Comptroller of the Currency, should carefully examine the dispute resolution processes at Member Banks to ensure full compliance with EFTA.

3. Expanding Purchase Protection for P2P Payments

Congress should update EFTA to provide purchase protections for commercial P2P transactions similar to the reimbursement standards in place for credit card transactions under the Fair Credit Billing Act.³³⁸ EWS and Member Banks have actively worked to increase Zelle’s use in commercial transactions.³³⁹ Other payment methods are required, by statute or network rules, to protect consumers in instances when a merchant sells a deficient product

³³³ 15 U.S.C. § 1693f.

³³⁴ See e.g., Pls.’ Resp. in Opp’n To Bank of American, N.A.’s Mot. To Dismiss The Third Am. Compl., at 12-17, *Tristan v. Bank of America, N.A.*, (No. 8:22-cv-01183-DOC-ADS) 2024 WL 1067483 (C.D. Cal. Feb. 29, 2024).

³³⁵ For further discussion of this topic see Finding 1, subsection c.

³³⁶ *Id.*; EWS wrote to the Subcommittee, “[i]t would be imprudent for EWS to dictate to regulated, independent financial institutions how they should comply with EFTA and Regulation E and effectively usurp the role of the financial institutions and the bank regulators.” Letter from Counsel for EWS to the Subcommittee (July 15, 2024).

³³⁷ For further discussion of PSI’s review of policies and procedures at the Three Banks, see, Finding 1 (Subsection, c).

³³⁸ See 15 U.S.C. § 1666.

³³⁹ Emily Mason, *Zelle Volume Heads Towards 1 Trillion as Banks Cash App Spreads to Small Business Payments*, FORBES (Mar. 4, 2024), <https://www.forbes.com/sites/emilymason/2024/03/04/zelle-volume-heads-towards-1-trillion-as-banks-cash-app-spreads-to-small-business-payments/>.

to a consumer or fails to deliver the product.³⁴⁰ In contrast, Zelle’s Network Rules explicitly do not require Member Banks to provide reimbursement for such commercial transactions.³⁴¹ Additionally, at present, Zelle payments cannot be reversed.³⁴² EWS should create functionality across the Zelle Network that allows for a period of time in which a consumer can reverse or cancel pending payments, especially for a large commercial transaction, as is possible with other payment methods.³⁴³

4. Threat Information Sharing

Early Warning Services and the Zelle Member Banks should develop a robust framework for sharing information regarding scams and fraud with law enforcement and other financial institutions, including those outside the Zelle Network.³⁴⁴ Zelle Network Rules require Member Banks to share certain data regarding scams and fraud with EWS on a daily basis, however, expanding this information sharing to other financial services institutions would strengthen the perimeter of the network by providing specific, real-time information to the banks, through which 98% of accounts interact with Zelle.³⁴⁵

In March 2024, the U.S. Treasury Department found limited sharing of fraud information among financial institutions, and stated that “a clearinghouse for fraud data that allows rapid sharing of data and can support financial institutions of all sizes is currently not available.”³⁴⁶ Centralized data sharing arrangements, such as the Financial Services Information Sharing and Analysis Center (“FS-ISAC”), which shares information on cyberthreats, could serve as a model for providing more robust information sharing on scams and fraud protection information.³⁴⁷ Such a data sharing arrangement could provide particular benefit to smaller financial institutions – such institutions are likely to have a smaller data set with which to

³⁴⁰ For further discussion of payment protections available with other payment methods, see Finding 2, Subsection b.

³⁴¹ Early Warning Services LLC., *Zelle Network Participation Rules*, 228 (Effective Date: June 30, 2023) (on file with EWS), EWS-RR-004-0000228.

³⁴² *Can I reverse a Zelle payment?*, ZELLE <https://www.zellepay.com/faq/can-i-reverse-zeller-payment> (last visited June 18, 2024).

³⁴³ Jessica Velasco, *Authorization & Settlement: The Impact on Chargebacks*, KOUNT (Feb. 15, 2024), <https://kount.com/blog/authorization-settlement-impact-chargebacks>.

³⁴⁴ *Fraud Alert!: Shedding Light on Zelle: Hearing Before the Subcomm. On Investigations of the S Comm. on Homeland Sec. and Gov. Aff’s*, 118th Cong. (May 21, 2024) (statement of Delicia Reynolds Hand, Senior Director, Digital Marketplace, Consumer Reports), <https://www.hsgac.senate.gov/wp-content/uploads/Hand-Testimony.pdf>.

³⁴⁵ Meeting with Counsel for EWS to the Subcommittee (Sept. 12, 2023); Letter from Counsel for EWS to the Subcommittee (July 10, 2023).

³⁴⁶ U.S. DEPT. OF THE TREASURY, *Managing Artificial Intelligence-Specific Cybersecurity Risks in the Financial Services Sector*, at 3 (Mar. 2024), <https://home.treasury.gov/system/files/136/Managing-Artificial-Intelligence-Specific-Cybersecurity-Risks-In-The-Financial-Services-Sector.pdf>.

³⁴⁷ *Id.*

train algorithms dedicated to fighting fraud.³⁴⁸ By collaboratively collecting and sharing granular data on emerging scam tactics, suspicious actors, and successful prevention strategies, financial institutions could strengthen their collective defenses against fraudsters and provide actionable information to empower law enforcement to apprehend bad actors.³⁴⁹

5. Safeguarding Consumer Financial Data

Congress should update the Graham-Leach Bliley Act to provide additional protections for consumer financial data, including an opt-in regime rather than an opt-out, where the consumer's data is not shared by default. Additionally, the CFPB should require payment platforms to provide better disclosure of how consumer data will be used. EWS collects vast amounts of data from consumers through the Zelle Network.³⁵⁰ EWS told PSI that it has not monetized this vast store of consumer financial data beyond the financial risk products that it sells to financial institutions, but as other companies such as Mastercard and JPMorgan have proven, more aggressive use of consumer data could be a lucrative opportunity for EWS or any other payment platform that collects such large amounts of real time financial data on its consumers, particularly amidst the growth of generative artificial intelligence software with data-hungry algorithms.³⁵¹

6. Protecting Children on Zelle

EWS and Zelle Member Banks should develop functionality that allows parents and legal guardians to have more control over the financial lives of their children. At a minimum, such protections should allow parents to 1) disable Zelle in their minor child's online banking app and 2) approve or deny transactions their minor child initiates. Recent public reporting has focused on older Americans who are victims of scams and fraud, but younger Americans are

³⁴⁸ *Id.*

³⁴⁹ *Fraud Alert!: Shedding Light on Zelle: Hearing Before the Subcomm. On Investigations of the S Comm. on Homeland Sec. and Gov. Aff's*, 118th Cong. (May 21, 2024) (statement of Delicia Reynolds Hand, Senior Director, Digital Marketplace, Consumer Reports), <https://www.hsgac.senate.gov/wp-content/uploads/Hand-Testimony.pdf>.

³⁵⁰ Early Warning Services, LLC., *Zelle Fraud Risk Manual*, 12-13 (May 2023) (on file with EWS), EWS-RR-001-0000200-01.

³⁵¹ Christopher J. Brooks, *Consumer Group Says Mastercard is Selling Cardholders' Data Without Their Knowledge*, CBS NEWS, Sept. 21, 2023, <https://www.cbsnews.com/news/mastercard-credit-card-customer-data-sold/>; Jennifer Surane, *JPMorgan Creates Marketing Agency Built on Purchase Data*, BLOOMBERG, Apr. 3, 2024, <https://www.bloomberg.com/news/articles/2024-04-03/jpmorgan-is-creating-an-advertising-agency-based-on-credit-card-data?embedded-checkout=true>; Deepa Seetharaman, *For Data-Guzzling AI Companies, the Internet Is Too Small*, WALL ST. J., Apr. 1, 2024, <https://www.wsj.com/tech/ai/ai-training-data-synthetic-openai-anthropic-9230f8d8>

also vulnerable to scams and fraud.³⁵² EWS and Zelle Member Banks should more proactively protect minors from the risks presented by digital banking and expand the protections in place for elderly and vulnerable adult users to cover minors who are using Zelle through their bank accounts.

7. Filling Regulatory Gaps to Cover New Technologies

Congress should update EFTA to close loopholes that may allow payment platforms to escape liability under the statute. PSI's investigation found that EWS served in a mediating role between banks when determining liability for a dispute, but EWS does not accept any responsibility itself for making consumers whole.³⁵³ EWS would argue they should not be considered a "financial institution" under EFTA such that the statute would obligate them to reimburse consumers.³⁵⁴ Congress and the CFPB should provide further clarity to EFTA that recognizes the role EWS plays in the Zelle Network and define the company as a "financial institution."³⁵⁵ Furthermore, Congress should draft new legislation proactively, taking care to not provide opportunities for financial technology companies to find loopholes that allow them to avoid protecting consumers on their platform. This applies broadly to all payment platforms, including new technologies such as payment stablecoins or any other medium that facilitates the electronic transfer of consumer funds.

³⁵² For further discussion of the risks posed by electronic payments to younger consumers, see Finding 5.

³⁵³ Early Warning Services LLC., *Zelle Network Participation Rules*, 34-35, 205-45 (Apr. 26, 2023) (on file with EWS), EWS-RR-004-000034-35, 205-245; see e.g., Mot. of Def. Early Warning Services, LLC to Dismiss Second Am. Class Action Compl. at 5, *Tristan v. Bank of America, N.A.*, (No. 8:22-CV-01183-DOC-ADS), 2023 WL 8945714 (C.D. Cal. Dec. 5, 2023) ("EWS is not a 'financial institution' under EFTA or Regulation E").

³⁵⁴ See e.g., Mot. of Def. Early Warning Services, LLC to Dismiss Second Am. Class Action Compl. at 5, *Tristan v. Bank of America, N.A.*, (No. 8:22-CV-01183-DOC-ADS), 2023 WL 8945714 (C.D. Cal. Dec. 5, 2023) ("EWS is not a 'financial institution' under EFTA or Regulation E").

³⁵⁵ See, 12 C.F.R. § 1005.2(i). An additional potential source of ambiguity involves what constitutes an "access device" or what it means to "issue an access device" under 12 C.F.R. § 1005.2 (Supp. 1). Congress and the CFPB should revisit this language to more fully anticipate the realities of technological innovation and complexity to close potential loopholes in EFTA.

