

**Comments to the Federal Trade Commission
regarding the
Rule on Impersonation of Government and Businesses
R207000
87 Fed. Reg. 62741 (Oct. 17, 2022)
Notice of Proposed Rulemaking**

**submitted by
Electronic Privacy Information Center,
National Consumer Law Center (on behalf of its low-income clients),
National Consumers League, and
Consumer Action
Consumer Federation of America
National Association of Consumer Advocates
U.S. PIRG**

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Chris Frascella
Law Fellow
Electronic Privacy Information Center
1519 New Hampshire Avenue, NW
Washington, DC 20036

Margot Saunders
Senior Counsel
National Consumer Law Center
1001 Connecticut Avenue, NW
Washington, DC 20036

John Breyault
Vice President, Public Policy, Telecommunications & Fraud
National Consumers League
1701 K St NW, Suite 1200
Washington, DC 20006

I. There is substantial justification for all aspects of the proposed regulation.

A. Introduction

These comments are submitted by the following consumer and privacy advocacy organizations: **Electronic Privacy Information Center (EPIC)**, **National Consumer Law Center** on behalf of its low-income clients, **National Consumers League**, **Consumer Action**, **Consumer Federation of America**, **National Association of Consumer Advocates**, and **U.S. PIRG**. We applaud the Federal Trade Commission (FTC or Commission) for proposing enhanced tools to protect consumers from impersonation scams in this Notice of Proposed Rulemaking (NPRM).¹ The proposed trade regulation rule will more clearly prohibit the impersonation of government, businesses, or their officials, and will provide the Commission with the critically important ability to secure redress from both the scammers responsible for defrauding Americans of billions of dollars each year, and those that equip them.

This proceeding illustrates the dire need for augmented rules to address government and business scams in the United States. However, as explained in **section II**, *infra*, government and business impersonation scams are only a portion of the harm to individuals from scams. The NPRM does not cover the impersonation of specific individuals, with the intent to defraud, in, for example, romance scams and family impersonation scams.² We urge the Commission to include these personal scams in this rulemaking, if possible, or to commence an additional rulemaking to protect potential consumer victims from these expensive and hurtful crimes.

In **section III**, *infra*, we encourage the Commission to work with other federal and state agencies to identify and implement additional mechanisms to reduce the losses suffered by Americans from all of these scams.

B. There is ample evidence to support the promulgation of the proposed regulation.

The information gathered by the FTC in the ANPRM of this proposed rule,³ as detailed in the Background and Summary of Comments, provides extensive evidence of the need for the

¹ Federal Trade Comm'n, Trade Rule on Impersonation of Government and Businesses, Notice of Proposed Rulemaking; Request for Public Comment, 87 Fed. Reg. 62,741 (Oct. 17, 2022), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-10-17/pdf/2022-21289.pdf> [hereinafter NPRM].

² The National Consumer League reports these among their top ten scam categories. National Consumers League, FRAUD.ORG!, Top Scams of 2021 (Feb. 2022), *available at* <https://fraud.org/wp-content/uploads/2022/01/2021-top-scams-report-final.pdf> [hereinafter Top Scams of 2021] (Friendship & Sweetheart Swindles; Family/Friend Imposters). The Commission seems to recognize this shortcoming in Question 8 of its NPRM. *See* NPRM, *supra* note 1, at 62,750 (“Should the proposed rule be expanded to address the impersonation of individuals or entities other than governments and businesses in interstate commerce? For example, should the proposed rule be expanded to prohibit impersonation of individuals for the purpose of seeking monetary payment or contribution, such as in romance or grandparent impersonation scams?”).

³ *See* Federal Trade Comm'n, Trade Regulation Rule on Impersonation of Government and Businesses, Advance Notice of Proposed Rulemaking; Request for Public Comment, 86 Fed. Reg. 72,901 (Dec. 23,

proposed regulation.⁴ In these comments, we add some additional data points, but we believe that the need for the FTC (and other government agencies) to seek additional methods to stop consumer losses from scams should be completely clear and, indeed, noncontroversial.

The proposed rule will provide an essential mechanism to enable the FTC to prosecute scammers and those equipping them. As the FTC notes in the NPRM, imposter practices and the harm they cause are prevalent.⁵ Comments from 164 different commenters substantiated the different aspects of imposter schemes, both those pretending to be the government and those posing as legitimate businesses.⁶ The ANPRM also cited compelling evidence that these scams are widespread and extremely harmful.⁷

NCLC and EPIC recently published a report on the extent to which scams have been facilitated through illegal robocalls.⁸ That report noted:

- Every month, well over one billion scam robocalls—calls to defraud telephone subscribers—are made to American telephones.⁹
- Last year, almost 60 million Americans lost over \$29 billion to these scam callers.¹⁰
- Some telephone service providers make so much income from the transmission of these scam calls that they are incentivized to continue transmitting them, even after multiple warnings.¹¹

2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-23/pdf/2021-27731.pdf> [hereinafter ANPRM].

⁴ See NPRM, *supra* note 1, at sections I, II, & III.

⁵ See *id.* at section II.

⁶ See *id.* at sections IIA and IIB (discussing and citing consumer comments regarding impersonation).

⁷ See ANPRM, *supra* note 3, at 72,901 (“In the first three quarters of 2021, more than 788,000 impersonation scams were reported to the Commission, with a total reported monetary loss of about \$1.6 billion dollars.”), and 72,902 (“Data reported to the FTC and the Commission’s law enforcement experience indicate strongly that government impersonation scams are highly prevalent and increasingly harmful. From January 1, 2017 through September 30, 2021, consumers reported 1,362,996 instances of government impersonation and associated total losses of roughly \$922,739,109. ...From January 1, 2017 through September 30, 2021, consumers reported being defrauded of roughly \$852 million in 753,555 business impersonation incidents.”).

⁸ Margot Saunders (National Consumer Law Center) & Chris Frascella (Electronic Privacy Information Center), Scam Robocalls: Telecom Providers Profit (June 1, 2022), available at https://www.nclc.org/wp-content/uploads/2022/09/Rpt_Scam_Robocalls.pdf.

⁹ See *id.* at 6 n.5 & Table 1.

¹⁰ See *id.* at 9, Table 4. One report suggests these numbers have since increased to 68 million Americans losing nearly \$40 billion dollars annually. See TrueCaller Insights 2022 U.S. Spam and Scam Report (May 24, 2022), <https://www.truecaller.com/blog/insights/truecaller-insights-2022-us-spam-scam-report>.

¹¹ See *id.* at 18.

- To date, the efforts of the Federal Communications Commission (FCC) have been largely unsuccessful in eliminating these dangerous calls to American telephone lines.¹²

The NCLC/EPIC report also noted that there are strategies that the FCC, along with the FTC, can take to shut down the complicit providers and protect many Americans from these telephone-facilitated scams. While the strategies recommended are outside the scope of this rulemaking, the problems identified in the report provide additional support for the need for the proposed regulation in this NPRM.

II. Romance and other scams on individuals should be included in the proposed regulation.

The FTC asks, in Question 8, whether the regulation should be expanded “to prohibit impersonation of individuals for the purpose of seeking monetary payment or contribution, such as in romance or grandparent impersonation scams?”¹³

We answer a resounding “Yes.”

While the actual number of *reported* losses from romance and other familial scams are not as high as those reported to be caused by the government and business imposters, there are still substantial reported losses caused by these scams.¹⁴ Indeed, in an informal survey of the individuals participating in writing and signing these comments, almost every person had personal knowledge of such a scam that was either successful—or almost successful—in this category.

The National Consumers League publishes an annual FRAUD.ORG! Report detailing the explosion of scams and the losses they cause to individuals.¹⁵ According to this report, the median loss from romance scams (which they call “Friendship & Sweetheart Swindles”) was \$925, and the median loss from “Family/Friend Imposters” was \$775.¹⁶ These numbers are lower when limited solely to internet-based scams.¹⁷

The fact that these personal scams are prevalent--and in need of being addressed by the FTC--is proven by these statistics:

¹² *See id.* at 24.

¹³ NPRM, *supra* note 1, at 62,750

¹⁴ *See, e.g.*, Emma Fletcher, Federal Trade Comm’n, Consumer Protection Data Spotlight, Reports of romance scams hit record highs in 2021 (Feb. 10, 2022), *available at* [https:// www.ftc.gov/news-events/data-visualizations/dataspotlight/2022/02/reports-romance-scams-hitrecord-highs-2021](https://www.ftc.gov/news-events/data-visualizations/dataspotlight/2022/02/reports-romance-scams-hitrecord-highs-2021).

¹⁵ Top Scams of 2021, *supra* note 2.

¹⁶ *Id.* at 1 (Overall Top Ten Scams).

¹⁷ *Id.* (Top Internet Scams).

- According to the FTC’s [2021 Consumer Sentinel Data Book](#), complaints about romance scams have increased from 39,874 in 2019, to 54,209 in 2020, and to 77,280 in 2021. That is an increase of almost 94% in only three years.¹⁸
- [According to the FTC](#), reported losses to romance scammers were up nearly 80% compared to 2020, and the total reported lost over the past five years has reached \$1.3 billion, with a median loss of \$2,400.¹⁹
- According to that [same FTC report](#), romance scammers are increasingly requesting payment with cryptocurrency. Consumers who paid romance scammers with cryptocurrency reported losing \$139 million in 2021, with the median loss being nearly \$10,000.²⁰
- According to the [FBI’s Internet Crime Complaint Center](#), the FBI received reports from 24,299 victims who lost more than \$956 million to confidence fraud/romance scams in 2021. That type of fraud accounts for the third highest losses reported by victims.²¹
- According to the same IC3 report, 48% of the victims who reported confidence fraud/romance scam complaints to the FBI were aged 50 or more.²²

Due to the personal nature of these particular scams, it is highly likely that many fewer victims of these scams actually make reports to government and other agencies about the devastating losses they have suffered, so these figures are probably significantly underestimated.

The fact that these personal scams are not only still prevalent, but also increasing in number, should be sufficient justification to include these types of scams in the proposed regulation. We urge the FTC to add a subsection to proposed Section 461 to cover “Impersonation of Individuals.”

¹⁸ Federal Trade Comm’n, Consumer Sentinel Network, Data Book 2021, at 86, Appendix B3 (Feb. 2022), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf [hereinafter *FTC Data Book 2021*] (77,280-39,874=37,406; 37,406/39,874=93.81%).

¹⁹ Press Release, Federal Trade Comm’n, FTC Data Show Romance Scams Hit Record High; \$547 Million Reported Lost in 2021 (Feb. 10, 2022), *available at* <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-data-show-romance-scams-hit-record-high-547-million-reported-lost-2021>.

²⁰ *See id.* (“Another trend in 2021 was an increase in reports of romance scammers luring consumers into phony cryptocurrency investment schemes. According to the spotlight, consumers who paid romance scammers with cryptocurrency reported losing \$139 million in total in 2021, more than any other payment amount. The median loss for consumers who reported paying a romance scammer with cryptocurrency was nearly \$10,000.”). *See also* Emma Fletcher, Federal Trade Comm’n, Data Spotlight, Reports show scammers cashing in on crypto craze (June 3, 2022), *available at* <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze> (“These keyboard Casanovas reportedly dazzle people with their supposed wealth and sophistication. Before long, they casually offer tips on getting started with crypto investing and help with making investments. People who take them up on the offer report that what they really got was a tutorial on sending crypto to a scammer.”).

²¹ Federal Bureau of Investigation, Internet Crime Complaint Ctr., Internet Crime Report 2021, at 12 *available at* https://www.ic3.gov/Media/PDF/AnnualReport/2021_IC3Report.pdf.

²² *Id.*

III. The Commission should work with other agencies to determine the systemic changes that will better protect consumers from all scams.

The FTC should not be the only agency working to solve these kinds of problems. The persistence and severity of consumer harm resulting from scams more generally—no less than \$1.4 billion each year according to the FTC’s annual Consumer Sentinel Data Books,²³ and no fewer than one million complaints each year according to its Fraud Reports Data Explorer²⁴—demand a shift in perspective from remedying the harm to preventing it from occurring in the first place. We urge the FTC to form a task force with its sister agencies, including the Federal Communications Commission, the Federal Reserve Board, and Comptroller of the Currency, and federal and state law enforcement, with consultation from consumer advocates, regarding the role(s) private entities like banks and telecom providers might play in better protecting American consumers from scams. If the current statutory regime is not sufficient to allow agencies to adequately protect Americans from billions in losses every year, then these federal agencies should come together to figure out how to create a sufficient scheme—including requesting additional authority from Congress if necessary.

We do not prescribe specific solutions, but note that methods of payment such as gift cards, cryptocurrency, and peer-to-peer (P2P) payment platforms have been popular tools of scammers.²⁵ We also note that phone calls and texts have been used as the primary contact

²³ Federal Trade Comm’n, Consumer Sentinel Network, Data Book 2018, at 10 (Feb. 2019), *available at* https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf (\$1.48B lost); Federal Trade Comm’n, Consumer Sentinel Network, Data Book 2019, at 10 (Feb. 2020), *available at* https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2019/consumer_sentinel_network_data_book_2019.pdf (\$1.9B lost); Federal Trade Comm’n, Consumer Sentinel Network, Data Book 2020, at 10 (Feb. 2021), *available at* https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf (\$3.3B lost); FTC Data Book 2021, *supra* note 18, at 10 (\$5.89B lost).

²⁴ *See* FTC Consumer Sentinel Network, Fraud Reports, Imposter Scams, Number of Fraud, Identity Theft and Other Reports (updated Nov. 3, 2022), *available at* <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts> (Report Over Time tab checked; no fewer than 300,000 fraud complaints per quarter since Q1 2018 and no fewer than 400,000 fraud complaints since Q1 2019).

²⁵ *See* FTC Data Book 2021, *supra* note 18, at 11 (noting that, among reported complaints, the most prevalent payment methods, from most-reported to least-reported, included: credit cards, payment apps, debit cards, gift cards, wire transfers, cryptocurrency, and bank transfer or payment). The amount lost to cryptocurrency was second only to bank transfers or payments. *Id.*

method by scammers in 44% or more of reported scams since 2018.²⁶ The FTC should take the lead in helping to design systems that will heavily reduce the prevalence of these scams.

CONCLUSION

We congratulate and thank the Commission for its important progress in protecting Americans from imposter scams, but we urge the Commission not to stop here, nor to be expected to solve such a pernicious problem on its own.

Respectfully submitted, this the 16th day of December 2022, by:

Chris Frascella
Law Fellow
Electronic Privacy Information Center
1519 New Hampshire Avenue, NW
Washington, DC 20036

Margot Saunders
Senior Counsel
National Consumer Law Center
1001 Connecticut Avenue, NW
Washington, DC 20036

John Breyault
Vice President, Public Policy, Telecommunications & Fraud
National Consumers League
1701 K St NW, Suite 1200
Washington, DC 20006

²⁶ For complaints that included a reported contact method by which the scam was initiated. *See* FTC Consumer Sentinel Network, Imposter Scams, Fraud Reports by Contact Method, Report and Amounts by Contact Method (updated Nov. 3, 2022), *available at* <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts> (Losses & Contact Method tab checked for years 2018 through 2021; 44% Q1-3 2022, 56% Q1-4 2021, 56% Q1-4 2020, 73% Q1-4 2019, 68% Q1-4 2018).