



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Remarks of Chair Lina M. Khan
Regarding the Advance Notice of Proposed Rulemaking
on Government & Business Impersonation
Commission File No. R207000**

December 16, 2021

Government and business impersonation schemes cheat American consumers and small businesses out of billions of dollars every year. These scammers often pretend to be working for government institutions—like the Social Security Administration, the IRS, or law enforcement—and tell targets that if they don't hand over money or submit sensitive personal information, they could lose a government benefit, face a tax liability—or even be arrested. Sometimes these fraudsters pull off these schemes instead by pretending to be working for a well-known brand or company.

Both our enforcement work and consumer data suggest that government and business impersonation scams appear highly prevalent and increasingly harmful. These scams have been the top category of fraud reports and the largest source of total reported consumer financial losses for several years.¹ Impersonation fraud in general has skyrocketed during the pandemic—with impersonation fraudsters scamming Americans out of around \$2 billion between October of last year and September of this year, an 85% increase year-over-year.² Government and business impersonators have shamelessly capitalized on the health, safety, and financial worries catalyzed by the COVID-19 crisis—not only tricking Americans into handing over their money or sensitive personal information, but also impeding access to needed goods, services, and benefits. While these scams affect consumers from all walks of life, our data show that scammers often specifically target the most vulnerable, including senior citizens, communities of color, and small businesses.³

The FTC routinely prosecutes these scams and has returned millions of dollars to defrauded consumers. In the last fiscal year alone, FTC's law enforcement work delivered more

¹ Fed. Trade Comm'n, *Fraud Reports: Top Reports*, TABLEAU PUBLIC (Nov. 23, 2021), <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TopReports>; *see also*, Fed. Trade Comm'n, *Consumer Sentinel Network Data Book 2020*, 4–8 (2021), https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-databook-2020/csn_annual_data_book_2020.pdf.

² Fed. Trade Comm'n, *Fraud Reports: Trends Over Time*, TABLEAU PUBLIC (November 22, 2021), <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts>.

³ Fed. Trade Comm'n, *SERVING COMMUNITIES OF COLOR: A STAFF REPORT ON THE FEDERAL TRADE COMMISSION'S EFFORTS TO ADDRESS FRAUD AND CONSUMER ISSUES AFFECTING COMMUNITIES OF COLOR* (Oct. 2021) (noting that impersonator fraud is the highest complaint category for Latino communities and the second highest for Black communities).

than \$403 million back to consumers.⁴ However, the recent Supreme Court decision in *AMG Capital Management, LLC v. FTC* has significantly curbed our ability to recover money for the victims of these schemes.⁵

To ensure that we can continue to protect Americans from these fraudsters, our staff has recommended that we initiate a rulemaking proceeding to codify a prohibition on impersonator fraud. I strongly support the issuance of this Advance Notice of Proposed Rulemaking. It is critical that our 13(b) authority be restored. It is also incumbent on the Commission to use the full range of tools that Congress has given us to ensure that Americans are protected from these fraudsters.

A rulemaking in this area could likely have a market-wide impact and serve as a deterrent for bad actors, given that a rule here would subject first-time violators to civil penalties.⁶ It could also enable the Commission to obtain redress for the people who lose money to these impersonation scams. This effort is particularly critical post-*AMG* and would represent one of the most significant anti-fraud initiatives at the agency in decades.

I urge my colleagues to support this ANPR and broader efforts to use our full authority to protect Americans from government and business impersonation scams. I will look forward to public comments and engagement during our rulemaking proceeding to inform this effort.

⁴ Fed. Trade Comm'n, PROTECTING OLDER CONSUMERS 2020-2021: A REPORT OF THE FEDERAL TRADE COMMISSION (Oct. 18, 2021) at 17, <https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2020-2021-report-federal-trade-commission/protecting-older-consumers-report-508.pdf>.

⁵ *AMG Capital Management, LLC v. FTC*, 141 S.Ct. 1341 (Apr. 2021). For government and impersonation cases that involve violations of current FTC rules, such as the Telemarketing Sale Rule, the Commission can still file actions in federal district court seeking either consumer redress under Section 19 or civil penalties under Section 5(m)(1)(A) of the FTC Act. But numerous types of impersonation schemes are not captured by these existing FTC rules. For example, numerous enforcement actions in which the FTC returned money to victims of impersonation fraud—such as *FTC v. Forms Direct*, which returned \$2.2 million to individuals, or *FTC v. Corporate Compliance Services*, which returned over \$1 million to small businesses—do not fall under existing FTC rules. *See, e.g., FTC v. Forms Direct, Inc. (American Immigration Center)*, No. 3:18-cv-06294 (N.D. Cal. filed Oct. 16, 2018); *FTC v. Corp. Compliance Servs.*, Case No. 4:18-cv-02368 (S.D. Tex. Filed July 10, 2018); *FTC v. DOTAuthority.com, Inc.*, No. 16-cv-62186 (S.D. Fla. filed Sept. 13, 2016); *FTC v. Springtech 77376, LLC, also d/b/a Cedarcide.com*, No. 4:12-cv-04631-PJH (N.D. Cal. filed Sept. 5, 2012); *see also, FTC v. Gerber Products Co.*, No. 2:14-cv-06771-SRC-CLW (D.N.J. filed Oct. 30, 2014) (despite no consumer redress, case illustrates how businesses can make false claims of affiliation or endorsement outside of current FTC rules).

⁶ *See* 15 U.S.C. 45(m)(1)(A); *see also* COVID-19 Consumer Protection Act of the 2021 Consolidated Appropriations Act § 1401, Pub. L. No. 116-260, 134 Stat. 1182 (permitting the Commission to seek civil penalties for violations of Section 5 of the FTC Act that are associated with “the treatment, cure, prevention, mitigation, or diagnosis of COVID–19” or “a government benefit related to COVID-19”).