



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

COMMENT OF THE FEDERAL TRADE COMMISSION
REGARDING PROPOSED AMENDMENTS TO THE U.S. SENTENCING
GUIDELINES

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2500
Washington, D.C. 20002-8002

The Federal Trade Commission (FTC) submits this comment advocating enhanced sentences for telemarketing fraud offenses. The FTC concurs with the position the U.S. Department of Justice has advocated to the Sentencing Commission on this issue: that telemarketing fraud is a distinctive form of fraud, and that the current sentencing guidelines fail to recognize the seriousness of telemarketing fraud. The FTC therefore encourages the Sentencing Commission to amend the sentencing guidelines to correspond to the statutory enhancements enacted by Congress in the Senior Citizens Against Marketing Scams Act, (SCAMS), 18 U.S.C. §§ 2325-

The FTC is the primary federal consumer protection agency, with wide-ranging responsibilities over all segments of the economy. In pursuing its mandate of protecting consumers, the FTC enforces the Federal Trade Commission Act (1) which broadly prohibits unfair or deceptive acts and practices as well as more than twenty other consumer protection statutes and thirty regulations that address such matters as consumer credit, telemarketing, and the sale of funeral goods and services.

Combating telemarketing fraud has been a top priority for the FTC for the past decade. The FTC has committed significant resources to the war against telemarketing fraud, a type of fraud that frequently victimizes the elderly. Prior to 1994, the FTC brought civil injunctive actions against fraudulent telemarketers alleging they had engaged in unfair and deceptive acts and practices in violation of Section 5 of the FTC Act. In 1994, Congress passed the Telemarketing and Consumer Fraud and Abuse Prevention Act , 15 U.S.C. §§ 601-607 ("Telemarketing Act"), giving the FTC additional authority specifically to attack telemarketing fraud. At Congress' direction, the FTC promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, which became effective on

With the Telemarketing Sales Rule as part of our law enforcement arsenal, the FTC has led twenty cooperative law enforcement efforts focused upon the most prevalent and harmful types of telemarketing fraud, including telemarketing fraud that targets older consumers, since the Rule's promulgation in 1996. These law enforcement sweeps comprised a total of over 730 federal and state actions, including 112 cases brought by the FT

This concerted and aggressive response to deceptive telemarketing has provided the FTC with substantial expertise in this area. The FTC's law enforcement experience has revealed that while telemarketing fraud victimizes consumers of all ages, levels of income, and backgrounds, the elderly are disproportionately represented among victims of telemarketing fraud; and in some scams, 80 percent or more of the victims are (65) Fraudulent telemarketers often deliberately target the elderly and take advantage of the fact that many older people have cash reserves or other assets to spend on deceptively attractive offers. Older Americans seem especially susceptible to fraudulent offers for (49) promotions and lottery clubs, charitable solicitations, and investment offers.

In addition to coordinating with other civil enforcement agencies, as part of its battle against telemarketing fraud

(5) These prosecutions have included not only traditional prosecutions for mail fraud and wire fraud, but also prosecutions for criminal contempt when telemarketers violate the terms of injunctions obtained in FTC civil actions. See, e.g., United States v. Jordan, No. 96-113-LCL (D. Nev. 1996).

(6) In recognition of the FTC's contribution, the U.S. Department of Justice honored the FTC attorneys with its John Marshall Award for interagency cooperation in support of litigation in 1996. This project was cited by Representative Goodlatte, the author of the proposed version of H.R. 1847 (105th Cong., 1st Sess.), The Telemarketing Fraud Prevention Act of 1997, to show the need for enhanced penalties for telemarketing fraud. See, e.g., H.R. 1847 (daily ed. July 8, 1997)(statement of Rep. Goodlatte).

(7) See e.g., FTC v. Thomas E. O Day No. 94-1108-Civ-22 (M.D. Fla. 1994); FTC v. Best Marketing, No. 96-6781-Civ-Zloch (S.D. Fla. 1996); United States v. Brown, Cr. No. 1-56 (E.D. Tenn. 1996).

(8) Proof of this can be found in the words of telemarketers themselves. One professional telemarketer, for example, testified that the name of one victim was found in every boiler room in which she had worked.