

# Federal Trade Commission

## KYC Requirements

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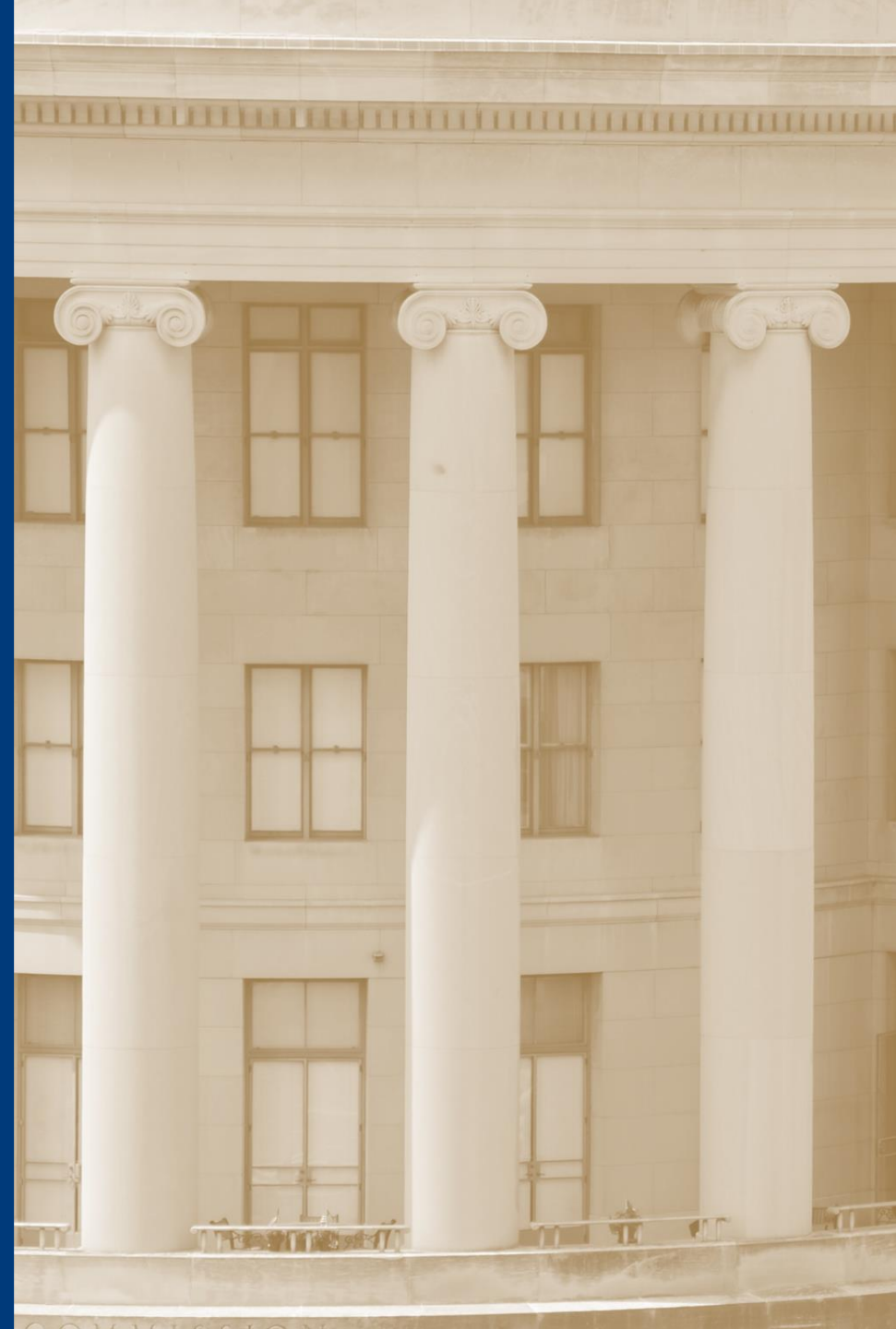
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Prepared for:  
**SIP Forum**

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- The views expressed today are my own and not necessarily those of the Federal Trade Commission or any Commissioner



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# Legal Authority for KYC requirements

# KYC under the FTC Act

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- Section 5 of the FTC Act Prohibits deceptive or unfair acts or practices
- Something is unfair if it:
  - Causes an injury
  - Not reasonably avoidable
  - Not outweighed by Countervailing Benefits
- Failure to have adequate KYC can be an unfair practice
  - Payment processors
  - Lead generators



# KYC under the TSR: Assisting and Facilitating

## § 310.4

- VoIP service
- Payment Processors
- Dialing software

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide **substantial assistance or support** to any seller or telemarketer when that person **knows or consciously avoids knowing** that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

- Failure to know your customer despite warning signs
- Communication from your customer
- Subpoenas
- Tracebacks
- Complaints



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# What Calls Are Covered?

- Calls that are part of a campaign or plan to get consumers to purchase a product or service
- Charitable solicitation calls by for-profit fundraisers
- Hybrid calls, e.g. “survey” calls that include a sales pitch
- Sellers are liable for calls made by their dealers / affiliates

“telemarketing”

# What Calls Are *Not* Covered?

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- Most true business-to-businesses telemarketing (currently)
- Debt collection calls
- Calls where the caller isn't selling something. Customer service calls, market research calls, political polling calls
- Calls made by companies subject to special federal / state regulation (banks, insurance companies)
- Most inbound calls in response to an advertisement or a catalog or that are unsolicited

# Prohibits Deceptive and Abusive Telemarketing Practices

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- Deceptive
  - Misrepresenting any material aspect of the product.
  - Failing to disclose the cost to purchase, material restrictions on the use of the product, or the refund policy
- Abusive
  - Calling numbers on the —National DNC Registry without consent
  - Making “Robocalls”—calls delivering prerecorded messages, regardless of DNC registration without consent
  - Spoofing—using deceptive caller ID numbers
- Other distinctions
  - It doesn’t matter if the call is made to a land line or a cell phone
  - It doesn’t matter if it’s using an autodialer or not.







# Actions against VoIP Providers

# Cases Against VoIP Providers

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- **Globex September 2020**
  - Assisted and facilitated telemarketing and robocalls pitching an interest rate reduction scheme. Globex and the scheme shared a CEO and had a close relationship
- **Alcazar December 2020**
  - Assisted and facilitated telemarketing and robocalls pitching “medical alert devices.” Received multiple complaints but continued providing services. Also transmitted calls displaying 911 as the caller ID
- **VOIP Terminator April 2022**
  - Assisted and facilitated illegal robocalls, including calls pitching an air duct cleaning filter that can stop covid. Received multiple tracebacks and law enforcement subpoenas
- **Xcast May 2023**
  - Complaint alleges Xcast assisted and facilitated illegal robocalls including calls for auto warranties. XCast received dozens of tracebacks as well as inquiries from law enforcement agencies about transmission of suspected illegal traffic on the XCast network. Even after receiving these direct warnings, XCast transmitted illegal robocalls to consumers.



# Cases Against Other Third-Parties

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- ***Christiano and TelWeb* May 2018**

- Christiano created the dialing software that could blast robocalls. Knew that his customers were using it to send illegal robocalls but didn't terminate them. Hundreds of millions of calls, including neighborhood spoofing.

- ***Stratics*, February 2023**

- Complaint alleges Stratics offered an outbound calling service and a ringless voicemail platform service.
- Didn't check whether the numbers being called were on the DNC. One of its customers, Atlas, sent 23 million ringless voicemail calls deceptively advertising a debt relief service.
- Received tracebacks for robocalls using the ringless voicemail service. Stratics sometimes failed to comply with the tracebacks and often kept the customers active.

# KYC provisions from orders

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- **Screening**

- Know who the customer is:

- Name of principles, controlling persons, owners
    - Person responsible for TSR compliance
    - Business and trade names and DBAs
    - Address
    - EIN

# KYC provisions from orders

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- **Screening Continued**

- Know your customers' business:

- What they're selling
    - How they're selling,
      - Review websites
      - If they're telemarketing
        - Caller ID's and callback numbers they'll be using
        - Proof that the customer has authorization to use them.

- Know your customers' history

- Whether they've received subpoenas, CID's
    - Whether they've been the subject of lawsuits related to telemarketing or TSR/TCPA violations

# KYC provisions from orders

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- **Verify the information you've been given**
  - Review the website
  - Review databases of complaints
  - Check the FTC and FCC website
  - Review tracebacks
  - Perform google searches
  - Compare your customer's numbers to the FTC's daily list of DNC and robocall complaints.



# Other Best Practices

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- You don't need a one size fits all approach
  - Are your customers end users or providers?
  - What's their risk profile?
  - Why are they looking for a new provider?
- KYC is an ongoing obligation
  - Screen, monitor, repeat
- Take it seriously
  - Who are the people performing this
  - Who do they report to
  - How often do you train employees
  - How often do you update your policies
  - Do you document everything
- Use call analytics

# Project Point of No Entry

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- April 11, 2023, warning letters to point of entry or gateway VoIP providers
- 24 service providers. 307 campaigns
- 22 of the 24 targets significantly curbed or altogether stopped by the flow of robocalls
- 1,043 tracebacks before receiving letters, and 196 after receiving the letters, and 147 of those are linked to two particular companies



# Consent for DNC and Prerecorded Calls

# DNC and Robocall Exceptions

## National Do Not Call

- Established business relationship
  - Transactional within the last 18 months
  - Inquiry or application within the last 3 months
- “Express agreement in writing:
  - that “**clearly evidence such person’s authorization** that calls made by or on behalf of a specific party may be placed to the person.”
  - Includes the telephone number and the signature (can be electronic)
  - 16 CFR 310.4(b)(1)(iii)(B)

## Robocalls

- Express written agreement that “***the seller has obtained from the recipient of the call***”
  - “only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize ... prerecorded calls”
  - “obtained without requiring ... that the agreement be executed as a condition of purchasing”
  - “evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller”
  - “includes such person’s telephone number and signature” (can be electronic)
  - 16 CFR 310.4(b)(1)(v)



# Business Center Guidance

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- Complying with the Telemarketing Sales Rule

May a seller obtain a consumer's written permission to receive prerecorded messages from a third-party, such as a lead generator? No. The TSR requires the seller to obtain permission directly from the recipient of the call. The seller cannot rely on third-parties to obtain permission.

- Q&A for Telemarketers & Sellers About DNC Provisions in the TSR

a good or service. Third, the seller must have obtained express consent directly from the consumer to place the calls. This means that a seller cannot place calls with prerecorded messages to consumers whose information the seller obtained from third-parties. For more information, please see the [Exemptions to the National Do Not Call Registry Provisions](#) section and the [Telemarketing Calls that Deliver Prerecorded Messages](#) section of [Complying with the Telemarketing Sales Rule](#).



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# Complaint Data

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- Sentinel Network – 5.2 million reports in 2022
- Our Tableau is a wonderful tool for analyzing the data
  - <https://public.tableau.com/app/profile/federal.trade.commission#!/>



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Maps Robocalls Topic Registrations & Access



**National Do Not Call Registry**  
**All DNC Complaints**  
**April 2022 to March 2023**

Select State

to view county level data

United States

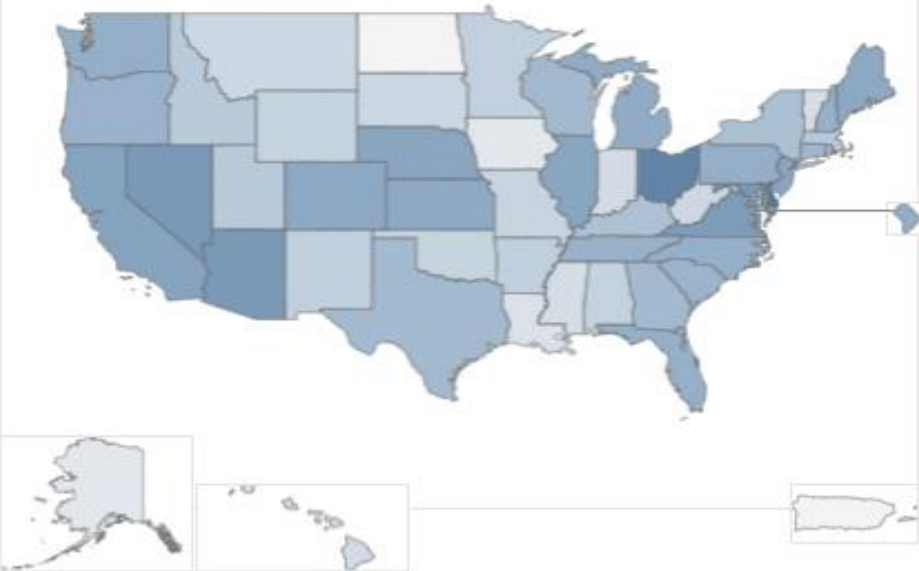
Select Start Date

April 2022

Select End Date

March 2023

Low High

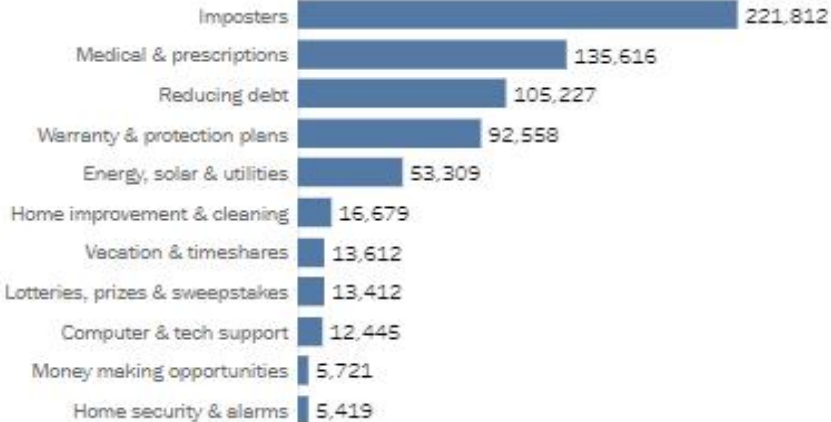


**All DNC Complaints**

2,529,634 Total Complaints

775 Complaints per 100K

**Complaints By Topic:**



**Complaints Over Time:**



**Complaints By Call Type:**



[Top Reports](#)[State by State](#)[Trends Over Time](#)[Categories Ranked](#)[Subcategories Over Time](#)[Military Top Reports](#)[Military Stats](#)

## FTC CONSUMER SENTINEL NETWORK

Published April 25, 2023  
(data as of March 31, 2023)

## Report Types

Year: 2023 YTD



Year

2023

Quarter

1

## Report Type



## Top 10 Fraud Categories

Rank	Category	# of Reports	% Reporting \$ Loss	Total \$ Loss	Median \$ Loss
1	Imposter Scams	178,040	20%	\$532.6M	\$965
2	Online Shopping and Negative Reviews	76,519	50%	\$95.0M	\$142
3	Prizes, Sweepstakes and Lotteries	21,090	15%	\$59.0M	\$580
4	Telephone and Mobile Services	20,161	11%	\$4.6M	\$200
5	Investment Related	19,605	72%	\$749.7M	\$6,200
6	Business and Job Opportunities	19,317	31%	\$88.2M	\$2,000
7	Internet Services	19,081	7%	\$8.1M	\$200
8	Health Care	15,257	6%	\$1.4M	\$291
9	Foreign Money Offers and Fake Check Scams	10,771	33%	\$35.5M	\$1,965
10	Travel, Vacations and Timeshare Plans	10,358	20%	\$19.9M	\$1,237

## Identity Theft Types

Rank	Theft Type	# of Reports
1	Credit Card Fraud	115,809
2	Other Identity Theft	75,687
3	Loan or Lease Fraud	38,799
4	Bank Fraud	33,580
5	Employment or Tax-Related Fraud	28,102
6	Phone or Utilities Fraud	20,791
7	Government Documents or Benefits Fraud	15,098

## Top 10 Other Categories

Rank	Category	# of Reports
1	Credit Bureaus, Info. Furnishers and Report Users	257,017
2	Banks and Lenders	58,674
3	Auto Related	35,138
4	Debt Collection	24,620
5	Credit Cards	22,699
6	Home Repair, Improvement and Products	14,663
7	Television and Electronic Media	8,341
8	Privacy, Data Security, and Cyber Threats	5,182
9	Computer Equipment and Software	3,906
10	Education	3,849

## FTC CONSUMER SENTINEL NETWORK

Published April 25, 2023  
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### All Fraud Reports by Contact Method

Year: 2022

- ☒ All  
☐ FTC  
☐ Data Contributor

- ☒ Contact Method  
☐ Payment Method

Year

2022

Quarter

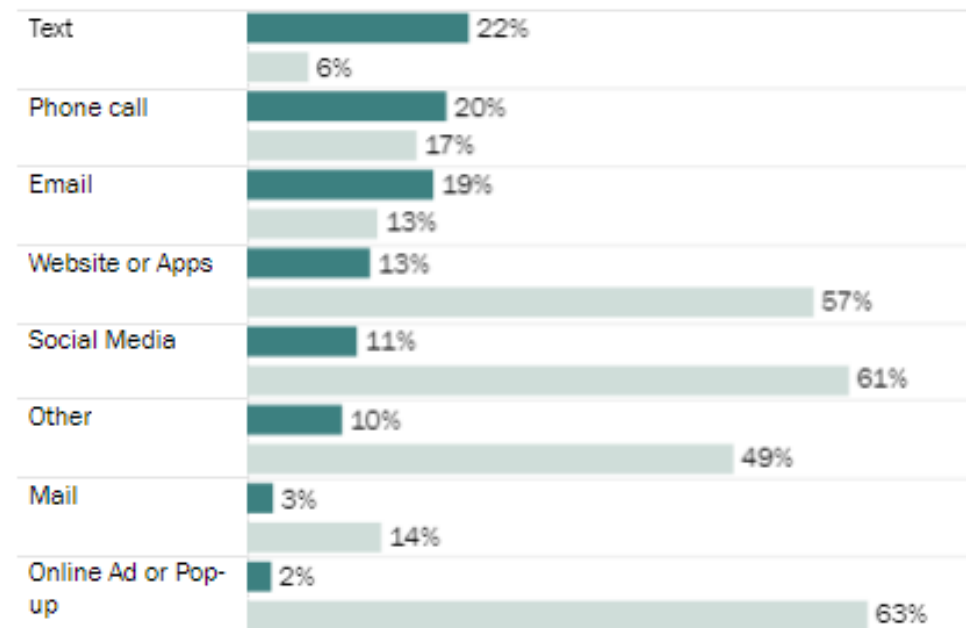
(All)

2,518,319

Number of Fraud Reports

1,467,971 (58%)

# of Reports with Contact Method



### Reports and Amount Lost by Contact Method

Contact Method	# of Reports	Total \$ Lost	Median \$ Lost
Text	329,603	\$330M	\$1,000
Phone call	297,109	\$802M	\$1,400
Email	277,002	\$420M	\$819
Website or Apps	184,106	\$940M	\$345
Social Media	162,698	\$1,228M	\$528
Other	141,291	\$1,146M	\$800
Mail	40,083	\$77M	\$800
Online Ad or Pop-up	36,079	\$181M	\$229



# Thank You!

**Ben Davidson**

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