



Office of Inspector General

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

September 30, 2024

MEMORANDUM

FROM: Andrew Katsaros
Inspector General

TO: Lina M. Khan, Chair

SUBJECT: FY 2024 Report on the FTC's Top Management and Performance Challenges

The *Reports Consolidation Act of 2000* requires that each agency's inspector general provide an annual summary perspective on the most serious management and performance challenges facing the agency, as well as a brief assessment of the agency's progress in addressing those challenges. The challenges summarized in this document are based either on work conducted by the Office of Inspector General (OIG) or separate observations and discussions with senior leaders at the Federal Trade Commission (FTC).

In section I, the OIG has identified the following issues as the top management and performance challenges currently facing the FTC:

- 1. Addressing Challenges to FTC Litigation**
- 2. Successfully Managing Merger Transactions**
- 3. Combating Sophisticated Scams and Enhancing the Public's Awareness of Them**
- 4. Securing Information Systems and Networks from Destruction, Data Loss, Compromise, or Other Disruptions**

The OIG has further identified records management as a "watch list" item—an issue that does not rise to the level of a serious management and performance challenge but, nonetheless, requires management's continued attention. In FY 2023, management reported completing several initiatives aimed at modernizing recordkeeping and making records management progressively more integral to agency operations. The agency implemented a records management training program that ensures all staff receives onboarding, offboarding, and annual records management training. The National Archives and Records Administration (NARA) has approved nine of the agency's records schedules, including implementing NARA's Capstone approach to managing its email. Progress in FY 2024 has stalled, however, as the FTC has been unable to contract for records schedule services necessary to complete the remaining records schedules to meet NARA requirements.

We provided a draft of this report to officials from multiple bureaus and offices, whose comments on the FTC's progress in each challenge area were summarized and incorporated into this final version. We thank these officials for the thoughtful consideration they provided in comments on this report.

I. The FTC's Top Management and Performance Challenges

1. Addressing Challenges to FTC Litigation

Recent Supreme Court decisions, lack of funds for the expert witness program, and unauthorized disclosures of nonpublic information (NPI) have made it increasingly challenging for the FTC to effectively bring cases in support of its consumer protection and competition enforcement missions.

Increasing Complexity Due to Recent Supreme Court Decisions. It has become increasingly difficult for the FTC to obtain monetary relief for consumers in federal court and via the FTC's administrative process. In 2021, the Supreme Court, in *AMG Capital Management, LLC v. FTC*¹ stripped federal courts of the authority—which they had been exercising for more than 4 decades—to award equitable monetary relief to consumers when the FTC obtains a permanent injunction in federal court pursuant to FTC Act Section 13(b).²

After the Supreme Court stripped the FTC of the ability to obtain redress via Section 13(b), the FTC turned to FTC Act Section 19³ to obtain monetary relief for consumers.⁴ Under Section 19, in cases that involve conduct that violates an existing FTC consumer protection rule, the FTC can seek monetary relief directly in federal court. However, for cases that involve deceptive or unfair conduct that does not violate an existing FTC rule, the FTC must engage in a time consuming and resource intensive two-step process: (1) conducting an administrative proceeding (and all appeals); and (2) then initiating a federal court proceeding under Section 19(a)(2) to obtain monetary relief. To add to the burden of pursuing this two-step process, the Supreme Court held in its 2023 decision, *Axon Enterprise, Inc. v. FTC*,⁵ that respondents in administrative cases may not have to wait for the administrative proceeding to conclude before filing a federal court action challenging the constitutionality of certain aspects of the administrative proceeding. Since federal courts may stay administrative proceedings during the pendency of a constitutional challenge, *Axon* provided respondents an avenue to significantly delay FTC administrative proceedings.⁶

Given the difficulty in pursuing unfair and deceptive practices cases via the administrative process, the FTC has devoted significant resources to promulgate additional consumer protection rules, many of which address conduct that existing case law already considered deceptive or unfair under Section 5. These rules allow the FTC to seek monetary relief directly in federal court under Section 19(a)(1). However, the

¹ 593 U.S. 67, 141 S. Ct. 1341 (2021).

² 15 U.S.C. § 53(b).

³ 15 U.S.C. § 57b.

⁴ Notably, unlike Section 13(b), Section 19 does not provide an avenue to seek monetary relief in anti-competitive conduct cases.

⁵ 598 U.S. 175, 143 S. Ct. 890 (2023).

⁶ For a more in-depth analysis of how *AMG* and *Axon* affected FTC litigation, see the [FTC OIG 2023 Top Management Challenges Report](#).

Supreme Court’s decision earlier this year in *Loper Bright Enterprises v. Ramondo*⁷—which struck down four decades of *Chevron*⁸ deference, whereby a federal court would defer to a federal agency’s reasonable interpretation of an ambiguous statute—may have the potential to limit some aspects of the FTC’s rulemaking.⁹

While the FTC has grappled with how to bring cases successfully and efficiently in the current landscape, the amount of money returned to consumers as a result of FTC cases has dropped from \$403.4 million in 2021 to \$292.1 million in 2023.¹⁰ The FTC expects this downward trend to steepen once the FTC completes the distribution of funds obtained in cases resolved prior to *AMG*.¹¹

Underfunded Expert Witness Needs. By June 30, 2024—9 months into the fiscal year—the FTC had nearly exhausted its \$18 million budget for expert witnesses, requiring an additional \$15 million to cover expected shortfalls for the remainder of the fiscal year. This occurred similarly in FY 2023, when the FTC also obligated nearly its entire \$18 million base budget by June 30 and needed an additional \$23.4 million for the remainder of that fiscal year. Budget austerity in FY 2025 could make additional funding requests impossible, putting pressure on the FTC to change its litigation strategy with respect to the use of experts.

In our FY 2022 *Top Management and Performance Challenges (TMC)* report,¹² we discussed controlling expert witness costs at length. At that time, the FTC reported that it had begun (1) leveraging internal expertise when possible and (2) requiring bureaus to document in their requests to hire outside expert witnesses why internal staff could not be used as expert witnesses. The FTC reports that these practices remain in place.

While using internal experts may not be possible in most cases, the FTC has found some success in utilizing Bureau of Economics staff as financial and economic experts. However, this practice does not come without downside—as it increases the risks that both opposing parties will be able to obtain privileged information and internal experts will be viewed as biased by opposing parties and the court. Additionally, using internal staff as experts diverts those staff from other important work they are doing for the FTC.

Unauthorized Releases of NPI. The volume of unauthorized disclosures of FTC leaks of NPI to the media has been steadily increasing. Although it is possible that some of the

⁷ 144 S. Ct. 2244 (June 28, 2024).

⁸ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

⁹ See, e.g., *Ryan LLC v. FTC*, 3:24-CIV-00986-E, 2024 WL 3297524 (July 3, 2024) (citing to *Loper* in granting plaintiff’s motion for a preliminary injunction—only as applied to plaintiff—against the effective date of the FTC’s implementation of its non-compete rule); *Antitrust Updates: The FTC’s Non-Compete Rule and the Impact of Loper Bright on Federal Antitrust Enforcement*, Leon B. Greenfield, et al., Wilmer Hale (July 8, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240708-antitrust-updates-the-ftcs-noncompete-rule-and-the-impact-of-loper-bright-on-federal-antitrust-enforcement>.

¹⁰ See Tableau Public, “Refunds by Federal Trade Commission,” Refunds by Date, at https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyDate.

¹¹ See Federal Trade Commission, “Data on Refunds to Consumers,” at <https://www.ftc.gov/enforcement/ftc-refund-programs/data-refunds-consumers>.

¹² <https://oig.ftc.gov/sites/default/files/reports/2023-08/2022-09-30OIGFY2022FTCTopManagementChallenges.pdf>.

leaks could have originated from outside sources, it appears that the media may be obtaining significant amounts of NPI from sources within the FTC.¹³

The trust of businesses, consumers, and other affected parties that the FTC will not improperly disclose NPI is vital to the FTC's ability to execute on its law enforcement mission. The mere perception that the FTC is leaking such information erodes that trust. Additionally, the previously unknown NPI that parties obtain from leaks has the potential to impact negatively both the FTC's litigation strategy and its ability to secure settlements. Further, these leaks compromise the relationship between FTC staff and agency leadership, as theories fill the vacuum on the identity and motive of the person(s) making the unauthorized disclosures. Despite recent training sessions on handling NPI and written guidance from agency leadership—even warnings—to staff prohibiting leaks, the problem persists.

FTC Progress in Addressing the Challenge

Increasing Complexity Due to Recent Supreme Court Decisions: The FTC reports taking several steps to maximize its ability to bring successful cases and obtain monetary relief for consumers, despite recent Supreme Court decisions:

- continuing to focus on pursuing Section 19(a)(1) cases in federal court and cases involving order violations for which the FTC can obtain compensatory contempt sanctions;
- initiating four administrative cases since the AMG ruling, all of which are still pending; and
- using alternative remedial authorities, such as the Penalty Offense Authority—which allows the FTC to seek civil penalties if an entity engages in conduct that the FTC has previously found unfair or deceptive in a litigated administrative order.

In addition, in the past fiscal year, the FTC finalized rules relating to consumer reviews and testimonials and impersonations of governments and businesses, and continued to advance proposed rulemakings in other areas, such as junk fees and negative options. The FTC also reports continuing to support and provide technical assistance to Congress on proposed legislation that would restore its authority to obtain monetary relief in federal court under 13(b).

With respect to *Loper Bright* overruling *Chevron*, for the past several years, the FTC reports that it has not relied on *Chevron* deference to support its interpretation of any of its statutory authorities, either in a rulemaking context or in an enforcement action. For this reason, the Commission does not anticipate that *Loper Bright* will impact any

¹³ See, e.g., <https://www.bloomberg.com/news/articles/2024-07-11/chevron-hess-decision-delayed-by-ftc-to-after-exxon-arbitration>; see also <https://thecapitolforum.com/tapestry-capri-ftc-leaning-toward-suit-competition/>; <https://news.bloomberglaw.com/environment-and-energy/ftc-eyes-oil-executives-texts-for-signs-of-collusion-with-opec>; <https://thecapitolforum.com/ftc-case-against-jjs-remicade-inches-toward-litigation-as-ftc-considers-consumer-protection-count/>; <https://www.semafor.com/article/05/02/2024/ftc-plans-to-recommend-a-possible-criminal-case-against-ex-pioneer-ceo>.

recently proposed or promulgated rules or any pending or forthcoming enforcement actions.

Underfunded Expert Witness Needs: In its FY 2025 Congressional Budget Justification, the Commission requested an increase of \$15 million to meet the projected costs of the Bureau of Competition’s (BC) expert witness contracts. This request for a significant increase in resources highlights the difficulties that unpredictable case demands present as the FTC decides whether and to which cases to commit its limited resources for expert services. BC asserts that it continues to perform regular expert witness cost projections, which provide greater insight into how to prioritize resources, though budget constraints still limit the number of cases BC can pursue.

Unauthorized Releases of NPI: The FTC reports that it regularly trains Commissioners’ offices and Commission staff on the proper handling of NPI; agency leadership also issues reminders, guidance, and warnings to staff on the importance of not disclosing NPI without authorization. In addition, the FTC has reported implementing security and technical protocols to block unauthorized access to its closed Commission meetings.

2. Successfully Managing Merger Transactions

The FTC’s management of its workload related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act)¹⁴—and the difficulties encountered by Bureau of Competition (BC) attorneys reviewing and investigating mergers—has persisted as one of the agency’s top management and performance challenges.

The volume of FTC merger activity decreased significantly between FY 2022 and FY 2024. In our FY 2023 *TMC* report, the OIG noted that, for the 12-month period through June 2023, merger transaction volume was down by an average of 45% (316 transactions per month through June 2022 versus 173 through June 2023).¹⁵ This downward trend in transaction volume has somewhat steadied in FY 2024, with an average of 160 monthly transactions through June 2024.

The workload challenges become apparent by metrics other than volume. Even as transaction volume has leveled off, BC’s Premerger Notification Office (PNO) reports experiencing a significant increase in document volume per transaction, a 4-fold increase in

¹⁴ The HSR Act, 15 U.S.C. § 18a—together with Section 13(b) of the Federal Trade Commission Act (15 U.S.C. § 53(b)), Section 15 of the Clayton Act (15 U.S.C. § 25), and the FTC’s Pre-Merger Notification Rules (16 C.F.R. Parts 801-803)—require that certain proposed mergers and acquisitions be reported to the FTC and the Department of Justice Antitrust Division (the Agencies) prior to consummation. The parties must then wait a specified period, usually 30 days, before they may complete the transaction. After the parties report a proposed transaction, the Agencies will do a preliminary review to determine whether the transaction raises any antitrust concerns that warrant closer examination. Because the Agencies share jurisdiction over merger review, transactions requiring further review are assigned to one agency on a case-by-case basis, depending on which agency has more expertise with the industry involved. The Agencies do not take action on the vast majority of transactions, and those transactions are allowed to proceed following the specified HSR period (typically 30 days). During the HSR waiting period, the Agencies may issue a “second request” to the parties for more information and documents. Once the parties have certified that they have substantially complied with the request, the investigating agency has 30 additional days (10 days in the case of a cash tender or bankruptcy transaction) to complete its review of the transaction and take action, if necessary.

¹⁵ As regularly reported on the FTC’s *Premerger Notification Program* website, at <https://www.ftc.gov/enforcement/premerger-notification-program>.

many instances. PNO surmises that parties may be taking a more cautious approach to producing documents, due to their fears related to a current federal criminal case against an entity accused of under-circulating premerger documents. Additionally, BC reports that the complexity of transactions has increased significantly.

Relatedly, as we noted in our FY 2023 report, BC's workload reviewing and investigating mergers is also increasing as merging parties take a more adversarial stance in their relationship with the FTC by, for example, refusing to enter into timing agreements with the FTC,¹⁶ using ephemeral messaging,¹⁷ and asserting privilege more liberally. When parties refuse to enter timing agreements, the FTC is put on a 30-day clock to review what are often voluminous document requests, then determine whether to challenge a proposed transaction in court—and, if it moves ahead with its challenge, prepare court filings. Adding to this more adversarial environment, many individuals whom the FTC engages for voluntary interviews in order to more efficiently review merger transactions are prohibited from sitting for the interviews, due to nondisclosure and confidentiality requirements placed on them by the merging parties.¹⁸

To combat these issues and to increase the overall efficiency and effectiveness of the FTC's HSR review process, the FTC issued a proposed rulemaking¹⁹ in June 2023 that would amend the Premerger Notification and Report Form and require additional information critical to the FTC and U.S. Department of Justice's (DOJ's) initial review. In its Notice of Proposed Rulemaking, the FTC highlighted several reasons why additional information is needed from the parties, including the unique challenges of reviewing mergers and acquisitions in sectors of the economy that rely on technology and digital platforms to conduct business and an overall increase in the level of transaction complexity. The FTC reasoned that receiving additional information up-front will allow the agency to use the initial 30-day waiting period more effectively before issuing a second request, potentially narrow the scope of any investigation, and possibly reduce the need to conduct a more in-depth investigation of the proposed transaction. This is especially important, the agency asserts, considering parties' increasing reluctance to enter into timing agreements.

As of September 30, 2024, the proposed rulemaking is still in process; after receiving numerous comments, the FTC is working on a final rule that incorporates stakeholder feedback. Working through changes to the HSR form has been an added burden on FTC staff, even as merger transaction volume has leveled off.

Adding to the challenge of a high workload is the stalled development of a fully digital filing system, the development of which has proven to be more complicated and time-

¹⁶ Timing agreements represent where merging parties voluntarily agree to not close a transaction for a specified number of days after compliance with 2nd requests for information. The FTC's public Model Timing Agreement identifies this as a 60–90-day time period. See https://www.ftc.gov/system/files/attachments/merger-review/ftc_model_timing_agreement_2-27-19_0.pdf.

¹⁷ See <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-doj-update-guidance-reinforces-parties-preservation-obligations-collaboration-tools-ephemeral>.

¹⁸ See <https://www.ftc.gov/enforcement/competition-matters/2023/06/contract-terms-impede-competition-investigations>.

¹⁹ See Notice of Proposed Rulemaking, Premerger Notification; Reporting and Waiting Period Requirements, 88 Fed. Reg. 42,178 (June 29, 2023), <https://www.federalregister.gov/documents/2023/06/29/2023-13511/premerger-notification-reporting-and-waiting-period-requirements>.

consuming than expected. After several years of work, this new e-filing system has been paused until the rule and its new requirements are finalized. In the meantime, the agency continues to accept electronic filings using a PDF-based system.

Concurrently, the FTC and the DOJ jointly issued their new Joint Merger Guidelines in December 2023.²⁰ According to the FTC, the Guidelines “reflect the collected experience of the Agencies over many years of merger review in a changing economy”²¹ and are intended to increase clarity for the business community and deter illegal deals. These guidelines include 13 separate issue areas that explain how the FTC and DOJ intend to evaluate the legality of mergers.²² The FTC considers these guidelines to represent a necessary update to how mergers should be evaluated in today’s economy. The FTC reports that some merging parties recently have abandoned transactions in the face of FTC challenges, which could demonstrate that the guidelines are already having some effect. Still other parties seem keen to take on the FTC and the new guidelines in litigation, and they are bringing massive resources to bear.

FTC Progress in Addressing the Challenge

With respect to the proposed rulemaking to amend the HSR Premerger Notification and Report Form, the FTC reports that, as of September 30, 2024, it (in collaboration with the DOJ Antitrust Division) continues to work toward incorporating stakeholder feedback and finalizing the new rule. While this rulemaking project has required a significant investment of staff resources, the FTC reports that receiving additional information up-front will allow the agency to more effectively use the initial 30-day waiting period before issuing a second request. As a result, the agency aims to target resources more efficiently throughout the lifecycle of a merger investigation.

The agency also looks forward to resuming development of a new e-filing system that reflects changes to the Premerger Notification and Report Form and allows for easier data entry and analysis. The FTC asserts, however, that the existing e-filing system (implemented at the beginning of the pandemic) can and will be adapted to accommodate the new form once it becomes effective.

Since issuing the new merger guidelines, the FTC has filed complaints in four separate merger challenges under analyses described in the 2023 Joint Merger Guidelines. One of these four cases has reached resolution.²³ As litigation in the other

²⁰ See <https://www.ftc.gov/news-events/news/press-releases/2023/12/federal-trade-commission-justice-department-release-2023-merger-guidelines>.

²¹ See *Merger Guidelines* | U.S. Department of Justice and the Federal Trade Commission, p. 4, at https://www.ftc.gov/system/files/ftc_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf.

²² *Ibid.* Included in these are guidelines focused on significant increases in market concentrations, attempts to eliminate actual or potential competition, anti-competitive coordination, entrenchments of dominant positions, serial acquisitions, and entities that operate multi-sided platforms (i.e., businesses that facilitate interactions among multiple individuals, groups, or entities).

²³ In the Novant/Community Health System hospital merger, the case that reached resolution, a federal district court agreed with the FTC’s definitions and thresholds in the new Joint Merger Guidelines. *FTC v. Cmty Health Sys., Inc.*, 24-CV-00028, 2024 WL 2854690, at *18-23 (W.D.N.C. June 5, 2024), vacated as moot by *FTC v. Novant Health, Inc.*, No. 24-1526, 2024 WL 3561941 (4th Cir. July 24, 2024); See *Novant Health, Inc. & Cmty Health Sys., Inc.*, Dkt. No.

three matters progresses, courts across the country will have continued opportunities to evaluate and adopt the new Merger Guidelines.

3. Combating Sophisticated Scams and Enhancing the Public’s Awareness of Them

Despite the efforts of the FTC and other agencies, scam proliferation continues to rise. Consumers who contacted the FTC about scams reported losses of \$10.3 billion in 2023 (up from \$8.9 billion in reported losses in 2022). In 2024, fraud losses reported to the FTC are on track to top 2023 reported losses—with actual consumer losses likely much higher than those reported to the FTC.

Imposter scams²⁴ remain a significant fraud type reported to the FTC. In the first 6 months of calendar year 2024,²⁵ the FTC received nearly 360,000 reports about imposter scams, more than double the second-most frequent fraud type reported (i.e., online shopping and negative review fraud).²⁶ Imposter scams were also the most-reported fraud type in 2023, resulting in reported losses of \$2.7 billion. In our FY 2023 report, we noted that perpetrators of these scams conduct their schemes by masking their identities and locations, using voice over internet protocol (VoIP), social media, robocalls, text messages, and computer popups—often from overseas locations.

In 2024, the FTC spotlighted new data on its website on the most commonly reported forms of government and business impersonation scams: copycat account security alerts; phony subscription renewals; fake giveaways, discounts, or money to claim; bogus problems with the law; and made-up package delivery issues.²⁷ It further presented data-driven trends on how consumers are contacted by business and government impersonation scammers and how they pay these scammers. The agency notes that reported text message and email contacts on government and business impersonation scams increased as reports of phone calls decreased—and reported losses to these scammers via bank transfers and

9425 (FTC July 3, 2024) (granting joint motion to dismiss the complaint after the parties withdrew their Hart-Scott Rodino premerger notification and report forms). Three of the four cases are still in progress: Tempur Sealy/Mattress Firm, Tapestry/Capri, and Kroger/Albertsons., and Tapestry/Capri., *See, in re Tempur Sealy Int’l, Inc. & Mattress Firm Grp. Inc.*, Dkt. No. 9433, <https://www.ftc.gov/legal-library/browse/cases-proceedings/231-0016-tempur-sealy-international-inc-mattress-firm-group-inc-matter>; *in re Tapestry Inc./Capri Holdings Ltd.*, Dkt. No. 9429, <https://www.ftc.gov/legal-library/browse/cases-proceedings/231-0133-tapestry-inccapri-holdings-limited-matter>; and *in re Kroger Co./Albertsons Co.*, Dkt. No. 9428, <https://www.ftc.gov/legal-library/browse/cases-proceedings/kroger-companyalbertsons-companies-inc-matter>.

²⁴ The FTC defines *imposter scams* as those in which someone pretends to be a trusted person to get targeted consumers to send money or give personal information. Examples include scammers posing as an employee of a government agency, a friend or relative with an emergency need for money, a romantic interest, a computer technician offering technical support, or staff of a charity or company. The category also includes grant, property tracer, or refund scams, in which the scammer is allegedly a government employee.

²⁵ *See Consumer Sentinel Data Book Infographic*. Data published July 24, 2024, and current as of June 30, 2024.

²⁶ The top 5 categories of fraud, according to data collected by the Consumer Sentinel Network, are (1) imposter scams, (2) online shopping and negative reviews, (3) business and job opportunities, (4) investment related, and (5) internet services.

²⁷ *See* FTC Consumer Protection Data Spotlight, *Impersonation Scams: Not What They Used to Be* (April 1, 2024), available at <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2024/04/impersonation-scams-not-what-they-used-be>.

cryptocurrency outranked every other payment method used.²⁸ The FTC noted that reported losses to business and government impersonation scams increased more than threefold from 2020 to 2023.

We note that the FTC continues to take measures to protect consumers and educate them about scams and other types of fraud, as perpetrators adapt, and their methods evolve. Its efforts include paid radio, digital, and print advertising, in multiple languages and communities, as well as continuing public education campaigns focused on scam and fraud prevention. More specifically, FTC efforts have also included the following:

Public engagement. As voice-cloning and text-to-speech artificial intelligence (AI) scams have proliferated, the FTC has reached out to the public by staging a competition—an exploratory challenge to encourage the development of multidisciplinary approaches, aimed at protecting consumers from AI-enabled voice cloning harms. The agency awarded three winners a combined total of \$35,000, as well as publicly recognizing a fourth entry on voice-cloning detection.²⁹

Rulemaking. When the FTC was confronted with further potential challenges in federal court in its battle against impersonations, it finalized its rule combating government and business impersonations fraud.³⁰ The FTC expects that the rule will help it obtain monetary redress for victims, seek civil penalties against impersonators, and benefit businesses whose brands are harmed by unscrupulous impersonators.³¹ In August 2024, the agency announced another rule, banning fake reviews and testimonials. The rule supports the agency’s efforts to strengthen enforcement, seek civil penalties against violators, and deter AI-generated fake reviews.³²

Further efforts to combat robocalls. The agency continues work to disrupt robocalls, particularly by foreign based actors, through its Project Point of No Entry (PoNE). The FTC has described Project PoNE’s primary work as “1) identify[ing] point of entry VoIP service providers that are routing or transmitting illegal call traffic, 2) demand[ing] they stop doing so and warn[ing] their conduct may violate the Telemarketing Sales Rule, and then 3) monitor[ing] them to pursue recalcitrant providers, including by opening law enforcement investigations and filing lawsuits when appropriate.”³³

Joint efforts with other federal agencies. These include collaborations with other federal agencies experiencing impostor scams against their employees. Consumers find interagency cooperation when they consult many federal websites—including those of

²⁸ Ibid. According to 2023 FTC data, bank transfers accounted for about 40 percent of reported losses to government and business impersonators, while cryptocurrency accounted for 21 percent.

²⁹ See <https://www.ftc.gov/news-events/contests/ftc-voice-cloning-challenge>.

³⁰ See <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-impersonation-rule-goes-effect-today>.

³¹ See, e.g., <https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-acts-stop-student-loan-debt-relief-scheme-took-millions-consumers-first-case-under-impersonation>.

³² See <https://www.ftc.gov/news-events/news/press-releases/2024/08/federal-trade-commission-announces-final-rule-banning-fake-reviews-testimonials>.

³³ See <https://www.ftc.gov/PoNE>.

the Social Security Administration,³⁴ U.S. Customs and Immigration Service,³⁵ FBI,³⁶ and IRS³⁷—that direct consumers to the FTC to report these scams. The FTC further provides regular advice to consumers about scams involving other federal agencies in its routine consumer alerts.³⁸

FTC Progress in Addressing the Challenge

The FTC continues to collaborate with its federal partners to combat business and government impersonation scams. In FY 2024, members of the Elder Justice Coordinating Council and the DOJ’s U.S. Elder Fraud Working Group coordinated on a consumer education and outreach campaign regarding government impersonation scams. From June 13 to June 15, more than 13 federal agencies issued press releases, videos, social medial posts, radio ads, mailers, and print ads—all addressing government impersonation scams that generated over 140 million views, impressions, or other engagements. The FTC also alerts the public to new trends in impersonation scams through its data spotlights, which have also resulted in national media coverage.³⁹

The FTC will also continue enforcing its newly finalized rule banning the impersonation of government and businesses. The FTC will also continue to warn consumers about FTC impersonations through tactics such as placing warnings on its websites, such as FTC.gov. Consumers have reported to the FTC that these warnings have successfully alerted them to FTC impersonations and prevented them from losing money to such scams. Continuing to take proactive actions to identify such deceptive schemes and warn consumers is critical toward preventing economic harm to consumers.

4. Securing Information Systems and Networks from Destruction, Data Loss, Compromise, or Other Disruptions

In last year’s *TMC* report, the OIG first reported on the government-wide responsibility to adapt agencies’ IT security posture to a broadly common framework of zero trust architecture (ZTA). This year’s *TMC* reports on further changes to Federal Information Security Modernization Act of 2014 (FISMA) reporting requirements, as the federal government continues to ramp up its focus on cybersecurity. In addition, this year’s annual *TMC* IT security challenge examines an additional category of disruption—a vendor’s enterprise-focused security software update failure—that emerged after the Windows–CrowdStrike incident of July 19, 2024.

³⁴ <https://blog.ssa.gov/category/fraud-2/>.

³⁵ <https://www.uscis.gov/avoid-scams>.

³⁶ <https://www.fbi.gov/how-we-can-help-you/scams-and-safety>.

³⁷ <https://www.irs.gov/newsroom/tax-scamsconsumer-alerts>.

³⁸ <https://consumer.ftc.gov/consumer-alerts>.

³⁹ See, e.g., FTC, Consumer Protection Data Spotlight: *Bitcoin ATMs: A Payment Portal for Scammers* (Sept. 3, 2024), available at <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2024/09/bitcoin-atms-payment-portal-scammers>; FTC, Consumer Protection Data Spotlight: *Who’s Who in Scams: A Spring Roundup* (May 24, 2024), available at <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2024/05/whos-who-scams-spring-roundup>.

Along with other federal agencies' offices of inspector general, the FTC OIG adjusted its FISMA audit according to the Office of Management and Budget (OMB) Memorandum M-23-03, *Fiscal Year 2023 Guidance on Federal Information Security and Privacy Management Requirements*, issued on December 2, 2022. The new guidance marked a transition to a multiyear cycle of measuring agencies against FISMA metrics, with certain core metrics evaluated annually and the remainder evaluated on a 2-year cycle. In total, the new guidance spurred 40 FISMA metrics (20 core, plus 20 supplemental) for assessing agencies in the FY 2023 cycle. Other changes to FISMA assessments include a timeline adjustment to align results with the federal budget submission cycle (to facilitate targeted funding for IT problem remediation), as well as a different method for calculating agencies' average maturity levels.

In our FY 2023 assessment, we determined that the FTC's information security program was Managed and Measurable.⁴⁰ The OIG's contracted independent external auditor identified two findings that fell in the identity and access management (ICAM) and contingency planning FISMA metric domains, offering two recommendations to assist the FTC in strengthening its information security program. Overall, the FTC OIG's contractor determined that the agency's information security program and practices were effective for the period October 1, 2022, to July 31, 2023.

On Friday morning, July 19, the FTC—along with many other government agencies, airlines, railroads, banks, hospitals, 911 systems, and other critical industries worldwide—encountered days-long disruptions to Windows servers and end-user devices. Microsoft estimates that 8.5 million machines were affected when enterprise IT security vendor CrowdStrike pushed out a software update that led customers' computers to crash and fail. By noon Friday, the FTC's Office of Technology (OT) informed agency staff that the disruption, CrowdStrike users' second outage of summer 2024, was caused by the vendor's lack of proper testing on the update. OT assured FTC users that, most likely, the massive disruption was caused by CrowdStrike (as opposed to a wider Microsoft issue) and not the result of a malicious attack.

The FTC Office of the Chief Information Officer (OCIO) maintained a robust line of communication with staff, issuing no fewer than nine emails (including three on the first day of the outage) to update agency users on the disruption, as well as a multi-day Helpdesk effort to process staff requests for assistance. Even though OCIO received the fix that CrowdStrike provided enterprise customers by Friday afternoon, July 19, it was not until Thursday afternoon, July 25, that OCIO (whose staff worked around the clock, including the weekend, to help hundreds of FTC staff remotely and onsite) could report that the agency's massive outage had been resolved. By then, the media had reported the outage's heavy impact around the world. While FTC OT shared with the agency its analysis of three ways that CrowdStrike could have avoided the error, its analysis also determined that enterprise-level users likely could not have done anything to prevent the massive outage. The new IT security challenge that has emerged for the agency involves acknowledging the present state of play (i.e., that this endpoint detection and response vendor assumes full responsibility and

⁴⁰ The OIG contracted with an independent public accounting firm to conduct an audit to meet the FY 2023 FISMA requirements. The objective of the audit was to evaluate the status of the FTC's overall IT security program and practices. For further details, see [Fiscal Year 2023 Audit of the FTC's Information Security Program and Practices](#), FTC OIG (Nov. 6, 2023).

control over its software updates, allowing no intervention from OCIO administrators)—as well as charting a future course that balances interoperability and stability with its systems.

FTC Progress in Addressing the Challenge

The FTC worked diligently to restore devices and services that were disrupted during the global technical outage on July 19, 2024, and reports that it continues to focus on becoming more cyber-resilient and prepared for incidents. With the adoption of cloud and shared services as critical components of FTC’s Information Resource Management Strategic Plan,⁴¹ the agency asserts that it has balanced reducing the impact of disruptions by focusing on aspects of IT that are under the FTC’s control. According to the agency, this focus has included leveraging internal staging environments to conduct rigorous patch and update testing, ensuring all changes are documented, with rollback plans reviewed and approved. In taking these steps, the agency has aimed to make the FTC’s operating environments current; compatible with all latest software versions; and, in the event of an error, quickly restorable.

The agency asserts that its alerting and monitoring systems provide the early problem indicators needed to help isolate disruptions and assist in developing service restoration plans. Contingency plans are periodically tested and updated to ensure continuous improvement, according to the agency; it also reports that the disaster recovery plan is scheduled for completion in the first quarter of FY 2025. Finally, the FTC reports collaborating with critical service vendors to (1) establish guidelines that require FTC notification before implementing system updates and (2) identify system configurations that should remain unchanged during upgrades.

⁴¹ The FTC noted the need to focus on system interoperability and incorporated it as a goal within the [Information Resource Management \(IRM\) Strategic Plan FY 2022 to FY 2026](#), under “Goal 4: Deliver resilient and reliable systems and services.”