



January 31, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Proposed Rule, Federal Trade Commission; Business Opportunity Rule; Project No. R511993; 87 Fed. Reg. 4796

Dear Commissioners:

The U.S. Chamber of Commerce (“Chamber”) appreciates the opportunity to comment to the Federal Trade Commission (“FTC” or “Commission”) on its Advanced Notice of Proposed Rulemaking (“ANPR”) regarding the review of the Business Opportunity Rule.¹ While it is essential that businesses and independent earners have meaningful protections along with flexibility, we have serious concerns about regulatory conflicts and overlaps with other regulations and proposals. For example, the potential impact of the Earnings Claim ANPR on this ANPR adversely distorts the ability of commenters to provide the FTC with informed commentary.

Accordingly, the Chamber recommends that the ANPR on the Business Opportunity Rule be withdrawn until the Earnings Claim ANPR is either finalized or the FTC determines it will not proceed with a rule. At that time, the FTC should re-evaluate the current proposal and release a new ANPR to reflect any final Earnings Claim rule. Such a deliberative process would allow commenters to better evaluate the issues at hand and provide more informed commentary, and for the FTC to employ a more evidence-based approach.

The Chamber has significant concerns that overlapping and conflicting regulations being promulgated by the Commission could negatively impact individuals seeking flexible earnings opportunities.² For example, we outlined our apprehensions with the Earnings Claims ANPR in comments submitted May 10, 2022, and we reiterate those here.³

¹ 87 Fed. Reg. 72428 (November 25, 2022) available at <https://www.govinfo.gov/content/pkg/FR-2022-11-25/pdf/2022-25587.pdf>.

² 87 Fed. Reg. 13951 (March 11, 2022).

³ https://americaninnovators.com/wp-content/uploads/2022/05/220509_Comments_EarningsClaims_FTC.pdf.

We also believe problems will arise with potential expansion of the Business Opportunity Rule's existing requirement that at least ten references be disclosed⁴ because companies would be required to keep consumer data that they otherwise would not.⁵ Also, given the proliferation of content on the internet and new technology, the ten references requirement may be unnecessary and obsolete.

Lastly, the Business Opportunity Rule ANPR specifically asks whether the Rule should be expanded more broadly to other types of opportunities.⁶ In light of the Supreme Court's application of the Major Questions Doctrine in *West Virginia v EPA*⁷, the Chamber cautions against unnecessarily expanding entities covered by regulation. As noted previously, the Chamber believes that expanding the types of entities covered by the Business Opportunity Rule would be inappropriate until a final determination is made with the Earnings Claims ANPR to avoid potentially overlapping and conflicting obligations.

We respectfully request that you delay action on expanding the Business Opportunity Rule. Please contact me at jcrenshaw@uschamber.com if you have any further questions.

Sincerely,



Jordan Crenshaw
Vice President
Chamber Technology Engagement Center
U.S. Chamber of Commerce

⁴ 16 C.F.R. § 437.3(a)(5).

⁵ There also exists concerns about any federal enforcement efforts, as part of any current or future order, that compel companies to collect and retain PII and encourage the agency to avoid this practice considering the liability incurred for both the company and consumer.

⁶ 87 Fed. Reg. 72430 (Question 13.)

⁷ See *West Virginia v. Environmental Protection Agency*, 142 St. Ct. 2587 (2022).