

Regarding FTC Notice of Proposed Rulemaking regarding Business Opportunity Rule (16 CFR Part 437), published in Federal Register 12 April 2006

I'm sure the proposed FTC rule is a well-intentioned attempt to protect consumers from unscrupulous predators, it puts an unfair and onerous burden on small business owners like myself. The bulk of the regulations are to regulate against existing fraudulent practices and to impose penalties for lying. As such, the proposal of the new regulation is a waste of government resources to draft, staff, publish and hold for comment, and a burden on the small business owners like myself to read all 42 triple columned pages to uncover those areas that will drive many part-time home businesses out of business. For my part, I only learned of proposed rule 16 CFR Part 437 this week. Unless this rule is cancelled, the first notice that thousands of Virginia residents will have is when they are being told of their violation of this new restriction.

The stated purpose of this rule says that it is to "prohibit business opportunity sellers from failing to furnish prospective purchasers information needed to combat fraud." Indeed, the dominant theme of the entire proposal is to help the FTC regulate individuals who are already committing fraud as defined by existing regulations.

For example, Proposed Section 437.5(k) "would prohibit a seller from misrepresenting, directly or through a third party, the terms and conditions of any cancellation or refund policy ...ensures that any cancellation or refund offer a seller makes before the sale is truthful and accurate." Proposed Section 437.5(l) "would prohibit a seller from failing to cancel a purchase or make a refund when the purchaser has qualified for such relief under the seller's cancellation policy." Under proposed section 437.5(d), "both unsubstantiated and false earnings claims would be prohibited by the Rule." In other words, the regulation prohibits a seller from lying to a customer in order to make a sale, and tells such a miscreant to honor contract law.

The rest of the proposal is filled with actions that make illegal normal business practices of large businesses and store-based franchises. These include providing an opportunity to affiliate with a company that provides a valued consumer product, providing training to new business owners as a condition of affiliation separate from training given to those who have been with the company longer, and providing illustrative earnings estimates.

The biggest obstacle is the restrictions placed on home business owners who participate in a Direct Selling or MultiLevel Marketing business where customers of the products provide an opportunity for those interested to become distributors themselves. Every otherwise law-abiding distributor of cosmetics, scrapbooking supplies, nutritional supplements and home decoration products would be forced into excessive regulation and recordkeeping. This rule removes the protections of the cost provision of the Franchise Rule, wherein payment of sums less than \$500 to participate in a franchised business opportunity were exempt from this kind of recordkeeping.

The rule itself suggests that the fact that someone who requests a refund was the victim of fraud. Rather, some people start a home business and then find it is not suitable for their lifestyle, or the product does not suit them. Some of these people ask for a refund of fees paid, even for non-recurring licenses or administrative costs. There was no misrepresentation of the facts, or of the

work required, or of the reimbursement / payment structure (“If you do this, you will receive that amount; if you do 18 times that quantity of work, you can expect to receive a payment from the consumer of at least 18 times the amount, plus stated bonuses.”)

More troubling is the rule that every prospective client is entitled to that person’s contact information. In an era where privacy of my personal data is increasingly at risk, even from Government agencies charged to safekeep it, it is unconscionable that some company I no longer do business with will give out my name and contact information to the next hundred people that attempt to sign up with that company.

This rule is so broad in its definitions that I must keep - and disclose - records of every person I offered the opportunity to. As it reads, this rule obligates me, not just the sponsoring company, to keep those records. The rule targets the individual small business owner who is making a few thousand dollars a year holding home parties!

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The most troubling to me is that this rule removes the protections of the cost provision of the Franchise Rule, wherein payment of sums less than \$500 to participate in a franchised business opportunity were exempt from this kind of recordkeeping.

There are multiple types of business opportunities presented. In each of the affected small businesses I run, I provide not only the opportunity to create a micro-business with very little up front investment, but also have established the mechanism to train and mentor my recruits, as a matter of company policy. Mine are not “pay your money and get a website or package in the mail” free money work at home scams. If you want to regulate those, then make a rule that the company must identify a mechanism for tracking whether training was offered. (I’ve had people sign up who refused to accept no-cost company-provided training. Their failure to act with due diligence was the cause of their failure in the business.)

The disclosure requirements for a micro-small business like mine is onerous and ruinous, and I don’t think I will be able to protect the privacy of individuals I do business with and still comply with the rules as proposed.