

January 31, 2023

Submitted via regulations.gov

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

Re: Business Opportunity Rule ANPR, Project No. R511993

To Whom It May Concern:

The Consumer Federation of America (“CFA”) is a nonprofit organization that seeks to promote the interests of consumers through research, education, and advocacy.¹ CFA is a federation of more than 250 organizations that include advocacy groups, consumer cooperatives, labor unions, consumer protection agencies, and other pro-consumer groups. CFA submits this comment along with U.S. PIRG, Center for Economic Justice, Virginia Citizens Consumer Council, National Consumer Law Center (on behalf of its low-income clients), Consumers for Auto Reliability and Safety, Consumer Advocates Against Reverse Mortgage Abuse, National Consumers League, Delaware Community Reinvestment Action Council, Inc., Columbia Consumer Education Council, Consumer Federation of California, Virginia Poverty Law Center, Texas Appleseed, and Americans for Financial Reform Education Fund.

CFA submits this comment in response to the Federal Trade Commission’s (“FTC” or “Commission”) November 25, 2022 advance notice of proposed rulemaking (“ANPRM”) on the Business Opportunity Rule.² This comment addresses why the Business Opportunity Rule is necessary, how the FTC is properly using its authority to review and potentially expand the scope of the Business Opportunity Rule, and how enhancing the Business Opportunity Rule to include currently expanding business opportunity enterprises, such as work-from-home, e-commerce, and investment mentorship opportunities, would help protect consumers. CFA appreciates the opportunity to submit comments on this ANPRM.³

¹ Overview, CFA, <https://consumerfed.org/overview/> (last visited Jan. 31, 2023).

² Business Opportunity Rule, 87 Fed. Reg. 72,428 (Nov. 25, 2022) (to be codified at 16 C.F.R. pt. 437), available at <https://www.federalregister.gov/documents/2022/11/25/2022-25587/business-opportunity-rule>.

³ We thank Maddy Gitomer, counsel for CFA for this comment, who was assisted by Legal Fellow Courtney Dougherty (not admitted to practice), both of the Democracy Forward Foundation.

I. The Business Opportunity Rule is Necessary and Has Benefited Consumers.

The Business Opportunity Rule regulates commercial arrangements in which a seller (“seller” or “enterprise”) solicits a prospective buyer (“consumer” or “purchaser”) to enter into a new business, and the purchaser makes a required payment in order to purchase the business opportunity. Often the seller makes certain kinds of claims about the opportunity and what financial outcomes may be possible or probable.⁴

In the types of business opportunities currently covered by the Business Opportunity Rule, the seller provides one of three types of assistance to the purchaser: the seller may (1) provide locations or space for the use of equipment owned and controlled by the purchaser—for example, purchasing vending machine or video game console routes, where the seller provides the space on which that equipment will be operated; (2) offer outlets, accounts, or customers for the purchaser’s services—for example, where a seller says it will help the purchaser run or set up the business by selling them a list of customers; or (3) propose to buy back goods or services that the purchaser previously bought—for example, craft assembly products previously used by the purchaser.⁵ The rule currently covers many types of business opportunities, such as the sale of vending machines, rack displays, public telephones, and Internet kiosks,⁶ as well as work-from-home jobs stuffing envelopes or providing medical billing for local doctors.⁷

For those enterprises covered by the current rule, sellers are required to provide a disclosure document to potential buyers. The document must: identify the seller; provide information about certain lawsuits or legal actions involving the seller; share whether the seller has a cancellation or refund policy; disclose whether the seller is making an earnings claim; and provide a list of references.⁸

The FTC has, in past years, invested significant time and collected feedback on its disclosure form, and the current disclosure document provides consumers and prospective purchasers with important information to help avoid scams or fraud. For example, researchers found that, in similar situations, “educational interventions can . . . increase consumers’ ability to recognize fraudulent investment opportunities and increase their knowledge about investment

⁴ *Selling a Work-at-Home or Other Business Opportunity?*, FTC Facts for Bus. (2011), <https://www.ftc.gov/system/files/documents/plain-language/bus79-selling-work-home-or-other-business-opportunity.pdf>.

⁵ Business Opportunity Rule, 76 Fed. Reg. at 76,860 (Dec. 8, 2011).

⁶ *Id.* at 76,821.

⁷ Kathleen Benway et al., *Disclosure Requirements and Prohibitions Concerning Business Opportunities Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 437)*, FTC, 6 (2011), https://www.ftc.gov/sites/default/files/documents/federal_register_notices/staff-report/101028businessopportunitiesstaffreport.pdf.

⁸ *Bogus Business Opportunities*, FTC (Nov. 2011), <https://www.ftc.gov/business-guidance/resources/bogus-business-opportunities>.

fraud.”⁹ Further, research has also found that the nature of a disclosure matters, and, in the financial sector, “[s]mall wording changes can significantly affect how a consumer understands important financial product concepts.”¹⁰

II. CFA supports the FTC’s Regulatory Review Plan and the review and expansion of the scope of this regulation.

A. The FTC’s regulatory review is appropriate and critical to helping protect consumers.

This Business Opportunity Rule ANPRM was issued as part of the FTC’s practice of reviewing its rules approximately once every ten years and seeking “information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry to avoid deceptive or unfair practices.”¹¹ This practice is set forth in the FTC’s Regulatory Review Plan, issued in 2011 in response to several executive orders calling upon agencies to prepare plans to determine whether regulations “should be modified, streamlined, expanded, or repealed.”¹² When used appropriately, this process enables the Commission to ensure that its rules are updated as necessary to remain effective in achieving its original goals.¹³ CFA supports the process as used in this review, and in particular supports using periodic reviews as a vehicle to ensure the scope of each regulation is appropriate to protect against consumer harm.

B. The scope of the Business Opportunity Rule should be expanded to reflect the expansion of ways in which business opportunities are offered to consumers.

The Commission’s review of the Business Opportunity Rule is particularly important. In the decade since the revised Business Opportunity Rule took effect,¹⁴ the ways in which business opportunities are offered to consumers have changed dramatically, and the Commission should expand the rule to reflect these changes. Determining the scope of the current Business Opportunity Rule involved significant periods of notice and comment, and the public record reflects that the FTC considered applying these disclosure requirements to a broader swath of

⁹ *Can Educational Interventions Reduce Susceptibility to Financial Fraud?* FINRA Inv. Educ. Found., 1 (Mar. 2021), <https://www.finrafoundation.org/sites/finrafoundation/files/can-educational-interventions-reduce-susceptibility-to-financial-fraud.pdf>.

¹⁰ Jeanne M. Hogarth & Ellen A. Merry, *Designing Disclosures to Inform Consumer Financial Decision Making: Lessons Learned from Consumer Testing*, Fed. Rsrv. Bull., <https://www.federalreserve.gov/pubs/bulletin/2011/articles/designingdisclosures/default.htm> (last updated Oct. 21, 2011).

¹¹ 87 Fed. Reg. at 72,429.

¹² *Regulatory Review Plan: Ensuring FTC Rules Are Up-To-Date, Effective, and Not Overly Burdensome*, FTC, 1 (Sept. 2011), <https://www.ftc.gov/system/files/documents/one-stops/retrospective-review-ftc-rules-guides/regreviewplan.pdf>.

¹³ *Id.*

¹⁴ 76 Fed. Reg. at 76,817.

practices. While the Commission declined to do so more than a decade ago, in light of significant changes in the marketplace, it should carefully consider doing so now. The current criteria for a covered “business opportunity” and the resulting scope of the current rule do not adequately reflect the realities of the modern marketplace or the evolution of technologies that afford individuals the ability to work from home. Thus, CFA encourages the Commission to consider expanding the rule to include additional business opportunities.

With increasingly advanced technology, growing access to the internet,¹⁵ and video conferencing capabilities, as well as paradigm-shifting events like the COVID-19 pandemic, the availability of work-from-home businesses, e-commerce opportunities, mentoring programs, and similar investment opportunities has risen considerably. Following the COVID-19 pandemic, remote work is becoming the norm in many industries. The number of individuals working remotely tripled from 9 million in 2019 to 27.6 million people in 2021.¹⁶ And in the last decade, the number of individuals who work from home has increased by almost 400 percent.¹⁷

This increase in remote work has been followed by a similar rise in sellers offering the promise of work-from-home business opportunities, many of which are not currently covered by the Business Opportunity Rule.¹⁸ Like business opportunities covered by the Rule, these opportunities require individuals to pay money to a seller in order to have access to the opportunity. Some of these business opportunities take the form of training, coaching, or mentoring programs, in which participants pay money to learn special tips and tricks for starting a business, investing in real estate, or investing in cryptocurrency or other e-commerce

¹⁵ The U.S. Census Bureau found in 2021 that 93.1 percent of households have a computer and 87.0 percent of households have a broadband internet subscription. *Why We Ask Questions About... Computer and Internet Use*, U.S. Census Bureau, <https://www.census.gov/acs/www/about/why-we-ask-each-question/computer/> (last visited Jan. 31, 2023).

¹⁶ Press Release, U.S. Census Bureau, The Number of People Primarily Working from Home Tripled Between 2019 and 2021 (Sept. 15, 2022), <https://www.census.gov/newsroom/press-releases/2022/people-working-from-home.html>.

¹⁷ Macy Bayern, *How Remote Work Rose by 400% in the Past Decade*, TechRepublic (Jan. 22, 2020), techrepublic.com/article/how-remote-work-rose-by-400-in-the-past-decade.

¹⁸ Greg Iacurci, *Consumers lost \$5.8 billion to fraud last year — up 70% over 2020*, CNBC (Feb. 22, 2022), <https://www.cnbc.com/2022/02/22/consumers-lost-5point8-billion-to-fraud-last-year-up-70percent-over-2020.html>; see also, Rebecca Butcher, *Bartlett Woman Shares Red Flags She Spotted After Getting "Hired" For Remote Job*, Loc. Memphis News (May 12, 2022), <https://www.localmemphis.com/article/money/bartlett-tennessee-woman-remote-work-job-scam/522-2daa743b-4534-40d5-8e3c-cb8c7508d658>.

programs.¹⁹ Some of these enterprises promise guaranteed income following their training; many times, however, the seller fails to provide any substantiated evidence of these results.²⁰

The rapidly changing types of business offers presented to consumers—now often online—necessitate expansion of the Business Opportunity Rule to ensure such enterprises are captured by its scope.

III. As the Types of Business Opportunities have Expanded, so Have the Number of Business Opportunities That Are Misleading, Fraudulent, or Scams, Which Requires Expanding the Scope of the Business Opportunity Rule.

In some cases, as the Commission has acknowledged, business opportunities are legitimate and can lead to profitable returns for the purchaser. However, as remote and online work opportunities have expanded, so have the proliferation of opportunities that can be misleading, predatory, or deceptive for the purchaser. Currently, these types of businesses do not fall under the scope of the Business Opportunity Rule, and some may intentionally structure their products so that they are exempt from the rule. When they do so, these businesses are often not required to provide disclosures to potential purchasers of business opportunities. Without an expansion of the Rule to cover such opportunities, consumers interested in business opportunities, particularly those in vulnerable communities, are at greater risk of incurring harm from these predatory scams.

- A. *Many business opportunities, including these new types of business opportunities, involve fraud or scams, which often target marginalized or vulnerable populations, and can result in significant financial loss.*

A primary concern with “business opportunities” is the potential for significant losses due to frauds and scams, including deceptive and misleading claims by the person providing the “opportunity.” The losses incurred by consumers are not merely financial; participating in these opportunities often requires consumers to provide their personal information, which may then be provided to third parties or used in other nefarious ways without the consumer’s consent.²¹

¹⁹ In 2021, 64% of complaints to the FTC about fraudulent mentoring and coaching programs were related to cryptocurrency. Jim Kreidler, *The Training Program Trap: Deceptive Financing*, FTC: Consumer Advice (Jan. 29, 2021), <https://consumer.ftc.gov/consumer-alerts/2021/01/training-program-trap-deceptive-financing>; see also, Alexandra Semenova, *Instagram Users Are Easy Targets for Get-Rich-Quick Investment Scams*, Yahoo! News (Mar. 15, 2022), <https://yhoo.it/3WHZI12>.

²⁰ *When a Business Offer or Coaching Program Is a Scam*, FTC: Consumer Advice (Aug. 2022), <https://consumer.ftc.gov/articles/when-business-offer-or-coaching-program-scam>; *Real Estate and Investment Scams*, FTC: Consumer Advice (Dec. 2020), <https://consumer.ftc.gov/articles/real-estate-investment-scams>.

²¹ Andrew Rayo, *Want to Work from Home? Spot the Scams First*, FTC: Consumer Advice (May 11, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/05/want-work-home-spot-scams-first>.

Notably, these losses are particularly acute in vulnerable consumer communities, including low-income and minority communities.

The risk of scams and serious financial harm from these opportunities is becoming all the more common and widespread. One state regulator estimated that for every 60 work-from-home offers, only one is actually legitimate.²² The fact that, in 2021, the Commission received three times the number of complaints about business opportunity scams as they did in pre-COVID 2019²³ provides further evidence of the proliferation of fraudulent business opportunities. In these instances, the median loss was almost two thousand dollars per person. In the same vein, one 2021 FTC report found that 95,000 individuals reported losses to investing offers that were initiated on social media platforms, an eighteen-fold increase from 2017.²⁴ And with the reach of social media platforms like TikTok constantly increasing, the frequency of these deceptive opportunities will likely continue to rise.

Some business opportunities may not be entirely fraudulent but, nonetheless, make deceptive and misleading statements about the potential for earnings from the opportunity. One such example is multi-level marketing (MLM), currently exempt from the Rule. The vast majority of individuals who participate in these opportunities do not make any earnings and even lose money.²⁵ In a 2018 study conducted by AARP, 47% of participants who joined MLMs disclosed that they lost money.²⁶ About a quarter more reported that they made no money at all.²⁷

Further, these opportunities are often intentionally marketed to vulnerable or marginalized populations. Many business opportunity enterprises not currently covered by the rule, including some MLMs, target offerings to “immigrants, minorities and lower-income

²² *Work-From-Home Scams*, Off. of the Minn. State Att’y Gen., <https://www.ag.state.mn.us/consumer/publications/workathomescams.asp#:~:text=Tips%20to%20Avoid%20Work%20Data,not%20the%20other%20way%20around> (last visited Jan. 31, 2023).

²³ *Work-from-home Scams*, AARP, <https://www.aarp.org/money/scams-fraud/info-2019/work-at-home.html> (last updated June 29, 2022).

²⁴ Lesley Fair, *Gold Mine for Scammers: Social Media*, FTC: Bus. Blog (Jan. 27, 2022), <https://www.ftc.gov/business-guidance/blog/2022/01/gold-mine-scammers-social-media>; *FTC Finds Huge Surge in Consumer Reports about Losing Money To Scams Initiated Through Social Media*, FTC: For Your Info. (Jan. 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-finds-huge-surge-consumer-reports-about-losing-money-scams-initiated-through-social-media> (finding that a quarter of all fraud losses from 2021 came from scams originated on social media).

²⁵ Jon M. Taylor, *The Case (for and) against Multi-level Marketing*, Consumer Awareness Inst. (2011), https://www.ftc.gov/sites/default/files/documents/public_comments/trade-regulation-rule-disclosure-requirements-and-prohibitions-concerning-business-opportunities-ftc.r511993-00008%20A0/00008-57281.pdf.

²⁶ Marguerite DeLiema et al., *AARP Study of Multilevel Marketing: Profiling Participants and Their Experiences in Direct Sales*, AARP, 3 (2018), https://www.aarp.org/content/dam/aarp/aarp_foundation/2018/pdf/AARP%20Foundation%20MLM%20Research%20Study%20Report%2010.8.18.pdf.

²⁷ *Id.*

communities,”²⁸ fully aware that on average, these populations earn less money and have an increased need for income.²⁹ For example, the FTC concluded in a 2016 report that “many scams targeting African American and Latino communities exploit [a] core need – the need to work and generate income.”³⁰ During the Covid-19 pandemic, many enterprises targeted low-income Latinx communities with promises of lucrative part-time work.³¹ Similarly, an FTC study found that many enterprises targeted individuals who have immigrated to the US and who needed work authorization.³²

In addition, certain communities, including Latinx, African American, and immigrant communities, may be viewed by those looking to perpetrate fraud as more close-knit, “valuing family and community” and having “close, trusting connections.”³³ These qualities can be exploited to spread awareness of and interest in business opportunities. MLMs, for example, often encourage consumers to use “word-of-mouth” to help their business more quickly, knowing that individuals within the same community will trust each other’s recommendations. When such opportunities involve fraud or deception, this can result in numerous members of these communities losing significant amounts of money as a result of trusting their friends and family.³⁴

The FTC’s history of enforcement against business opportunity fraud provides further evidence of these impacts on marginalized populations. For example, the agency sued both an “an enterprise allegedly holding conferences and seminars to deceptively sell a healthcare business opportunity for thousands of dollars to African American audiences,” as well as a “telemarketing operation that it alleged falsely pitched to Spanish-speaking women the opportunity to make money selling high-end designer merchandise.”³⁵

In addition, senior citizens are often targeted by scammers, preying on their lack of comfort or familiarity with technology. AARP recently warned senior citizens about the potential fraud that accompanies “secret shopper” job opportunities, in which individuals are promised

²⁸ Mona Bushnell, *MLMs: Predatory Scams or Entrepreneurial Opportunities?*, Business.com, <https://www.business.com/articles/mlms-target-women-and-immigrants/> (last updated January 23, 2023).

²⁹ See *Earnings Disparities by Race and Ethnicity*, Dep’t of Lab., <https://www.dol.gov/agencies/ofccp/about/data/earnings/race-and-ethnicity> (last visited Jan. 31, 2023) (showing that for every \$1.00 earned by a white person, a Black person earned \$0.76 and a Hispanic person earned \$0.73).

³⁰ Edith Ramirez et al., *Combating Fraud in African American & Latino Communities*, FTC, 11 (June 15, 2016), <https://www.ftc.gov/system/files/documents/reports/combating-fraud-african-american-latino-communities-ftcs-comprehensive-strategic-plan-federal-trade/160615fraudreport.pdf>.

³¹ Steph Amaya Mora, *The Pandemic Leaves More Latinos Vulnerable to Illegal Pyramid Schemes*, Project Pulso (Oct. 28, 2020), <https://projectpulso.org/2020/10/28/the-pandemic-leaves-more-latinos-vulnerable-to-illegal-pyramid-schemes/>.

³² Ramirez et al., *supra* note 30, at 11.

³³ Bushnell, *supra* note 28.

³⁴ Ramirez et al., *supra* note 30, at 11-13.

³⁵ *Id.* at 12.

reimbursements for purchases made at a store. But rather than follow through on these promises, the scammers instead pull back the reimbursement check and leave individuals out several thousand dollars.³⁶

Finally, work-from-home opportunities and multi-level marketing companies also target stay-at-home parents, often women, who seek out flexible work and income sources in order to balance childcare.³⁷ Three-quarters of direct sellers are women,³⁸ many of whom receive messages that support the belief that these opportunities “sound[] so easy[,] and they like the idea [that] they can work from home and be with their kids.”³⁹ University students, who may also have some free or flexible time, are also sought out to participate in these propositions.⁴⁰ Both stay-at-home parents and students often desire income sources that can be balanced with their busy and varying schedules, and these opportunities, frequently touted as quick and easy money-making programs, appear to be a perfect fit for many.⁴¹ To reach these audiences, companies or programs promising substantial earnings market on platforms like Facebook, Instagram, and TikTok.⁴²

B. The FTC has taken action to rein in these fraudulent practices, but additional regulation is needed.

The FTC has identified many instances of fraudulent behavior that involve business opportunities not currently covered by the Business Opportunity Rule. For example, the FTC has issued numerous guidance documents designed to help consumers and sellers alike determine

³⁶ *Secret Shopper Scams*, AARP, <https://www.aarp.org/money/scams-fraud/info-2021/secret-shopper.html> (last updated Oct. 13, 2021); see also Sari Harrar, *Top Scams Targeting Older Americans in 2021*, AARP (Apr. 1, 2021), <https://www.aarp.org/money/scams-fraud/info-2021/schemes-targeting-older-adults.html>.

³⁷ Kathryn A. Edwards, *What MLMs and Stay-at-home Moms Reveal About the U.S. Labor Market*, Dallas Morning News (Oct. 31, 2021), <https://www.dallasnews.com/opinion/commentary/2021/10/31/what-mlms-and-stay-at-home-moms-reveal-about-the-us-labor-market/>.

³⁸ Casey Bond, *MLMs Are a Nightmare for Women and Everyone They Know*, HuffPost, https://www.huffpost.com/entry/mlm-pyramid-scheme-target-women-financial-freedom_1_5d0bfd60e4b07ae90d9a6a9e (last updated Jan. 29, 2021).

³⁹ Monica C. Fountain, *Work-At-Home Scams*, Wash. Post (Jan. 26, 1998), <https://www.washingtonpost.com/archive/lifestyle/1998/01/26/work-at-home-scams/02b5cdbe-cab5-4ecb-9120-45f243db36a2/>.

⁴⁰ Elliott Grover, *Multi-Level Marketing Companies Are Coming for Your College Students*, InsideHook (Aug. 20, 2020), <https://www.insidehook.com/article/news-opinion/multi-level-marketing-companies-recruiting-college-students>; Karissa Korman, *College Students Are the New Recruits in Multilevel Marketing Schemes*, Huntington News (Sept. 7, 2022), <https://huntnewsnu.com/68871/lifestyle/college-students-are-the-new-recruits-in-multilevel-marketing-schemes/>.

⁴¹ Korman, *supra* note 4.

⁴² *Id.*

when a business opportunity, like a training program or a work-from-home opportunity, is legitimate.⁴³

The Commission has also brought numerous enforcement actions under Section 5(a) of the FTC Act in order to hold bad actors engaging in these types of business opportunity practices accountable. For example, in a 2016 action, the Commission brought a suit against numerous entities that had made misrepresentations in their advertisements for their investing programs, which targeted seniors and others living on fixed incomes.⁴⁴ In that case, individuals bought or invested in e-commerce websites, and were lured by a promise of “lavish returns” and a “risk free” investment.⁴⁵ In a similar case, the Commission held to account a group of businesses that sold work-from-home business kits to individuals with false “rags to riches” stories and fake images to convince consumers of their products’ successes.⁴⁶ Defendants encouraged participants to buy coaching programs, which cost up to \$3,000 to \$12,000, but which resulted in little to no financial gain.⁴⁷

In another enforcement case, the Commission sued Moda Latina BZ Inc., a multi-level marketing group that targeted Latinx consumers by running advertisements in Spanish that promised substantial financial gain.⁴⁸ Utilizing television as well as social media sites like Facebook, the defendants promoted work-from-home jobs that required consumers to buy and resell merchandise.⁴⁹ Finally, in a case against Raging Bull, a company selling stock investment coaching programs, the Commission argued that the defendants marketed unsubstantiated claims

⁴³ *When a Business Offer or Coaching Program Is a Scam*, *supra* note 20; *Real Estate and Investment Scams*, *supra* note 20; *Selling a Work-at-Home or Other Business Opportunity? Revised Rule May Apply to You*, FTC (Nov. 2011), <https://www.ftc.gov/business-guidance/resources/selling-work-home-or-other-business-opportunity-revised-rule-may-apply-you-1>; Jim Kreidler, *The training program trap: deceptive financing*, FTC (Jan. 29, 2021), <https://consumer.ftc.gov/consumer-alerts/2021/01/training-program-trap-deceptive-financing>; Cristina Miranda, *Business opportunities and trainings that claim you'll make big money are often scams*, FTC (Nov. 16, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/11/business-opportunities-and-trainings-claim-youll-make-big-money-are-often-scams>.

⁴⁴ Complaint, *Fed. Trade Comm'n v. Advert. Strategies, LLC*, No. CV-16-3353-PHX-DJH, 2016 WL 5942859 (D. Ariz. Oct. 4, 2016).

⁴⁵ Press Release, FTC, *FTC Acts to Stop Telemarketing Fraud Targeting Seniors* (Oct. 13, 2016), <https://www.ftc.gov/news-events/news/press-releases/2016/10/ftc-acts-stop-telemarketing-fraud-targeting-seniors>.

⁴⁶ Press Release, FTC, *FTC Halts Multi-Million Dollar Work-From-Home Business Coaching Scheme* (Feb. 24, 2014), <https://www.ftc.gov/news-events/news/press-releases/2014/02/ftc-halts-multi-million-dollar-work-home-business-coaching-scheme>; Complaint, *Fed. Trade Comm'n v. Apply Knowledge, LLC*, No. 2:14-cv-00088-DB (D. Utah Feb. 10, 2014), available at <https://www.ftc.gov/system/files/documents/cases/140224applyknowledgcmpt.pdf>.

⁴⁷ *FTC Halts Multi-Million Dollar Work-From-Home Coaching Scheme*, *supra* note 46.

⁴⁸ *Moda Latina BZ Inc.*, FTC, <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023068-moda-latina-bz-inc> (last updated Mar. 2, 2021); Complaint, *Fed. Trade Comm'n v. Moda Latina BZ Inc.*, No. 2:20-cv-10832-FMO-SK (C.D. Cal. Nov. 30, 2020), available at https://www.ftc.gov/system/files/documents/cases/001_complaint.pdf.

⁴⁹ Complaint, *Federal Trade Commission v. Moda Latina BZ Inc.*, *supra* note 48.

that consumers could “beat the market[s]” and become wealthy by following “self-made” millionaire coaches and their strategies.⁵⁰ The company also sought to capitalize on the COVID-19 pandemic by selling programs promising to teach consumers about their “pandemic plays.”⁵¹ While the defendants made millions of dollars from these programs, many consumers lost substantial amounts of money following the programs’ instructions.⁵²

While impactful, these enforcement actions demonstrate that more should be done to arm individuals with the material needed to make informed judgments in this area. In these types of scenarios, requiring these enterprises to provide disclosures to consumers prior to their purchase of a business opportunity may help reduce or avoid harm to consumers.

The FTC’s enforcement authority was also significantly limited by the U.S. Supreme Court’s 2021 decision in *AMG Capital Management v. FTC*, finding that it does not have the authority to seek refunds (equitable relief) for victims of consumer fraud and deception under Section 13(b) of the FTC Act.⁵³ In light of that limit, it is all the more important, as FTC Commissioners have noted,⁵⁴ for the FTC to pursue rulemaking to enable it to pursue consumer redress and other damages for these illegal practices under Section 19(b) of the FTC Act, 15 U.S.C.A. 57b(b). We encourage the FTC to make the Business Opportunity Rule as strong as possible to ensure that providers of fraudulent and deceptive business opportunities cannot retain their illegally obtained gains.

In addition, consumers are often precluded from obtaining relief on their own due to the presence of arbitration provisions governing their relationship with the seller.⁵⁵ These provisions are often buried in terms and conditions, imposed as a precondition to engaging in a purchase of

⁵⁰ Second Amended Complaint at 3, 5, *Fed. Trade Comm’n v. RagingBull.com*, No. 1:20-cv-03538-GLR (D. Md. Mar. 15, 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/304%20-%20Second%20Amended%20Complaint.pdf.

⁵¹ *Id.* at 2-3 (internal quotations omitted).

⁵² *Id.* at 3.

⁵³ *AMG Cap. Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341 (2021).

⁵⁴ *Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter on the U.S. Supreme Court Ruling in AMG Capital Management LLC v. FTC*, FTC (Apr. 22, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/04/statement-ftc-acting-chairwoman-rebecca-kelly-slaughter-us-supreme-court-ruling-amg-capital>; see also 87 Fed. Reg. at 72,432.

⁵⁵ Alexander Colvin, *The Growing Use of Mandatory Arbitration*, Econ. Pol’y Inst. (Apr. 6, 2018), [https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/#:~:text=More%20than%20half%E2%80%949453.9%20percent,percent%20have%20mandatory%20arbitration%20procedures;ExaminingMandatoryArbitrationinFinancialServiceProducts:HearingBeforetheS.Comm.onBanking,Housing,andUrbanAffs.,117thCong3-4\(2022\)\(statementofMyriamGilles,PaulR.VerkuilResearchChairinPublicLaw,CardozoLawSchool\),availableathttps://www.banking.senate.gov/imo/media/doc/Gilles%20Testimony%203-8-22.pdf](https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/#:~:text=More%20than%20half%E2%80%949453.9%20percent,percent%20have%20mandatory%20arbitration%20procedures;ExaminingMandatoryArbitrationinFinancialServiceProducts:HearingBeforetheS.Comm.onBanking,Housing,andUrbanAffs.,117thCong3-4(2022)(statementofMyriamGilles,PaulR.VerkuilResearchChairinPublicLaw,CardozoLawSchool),availableathttps://www.banking.senate.gov/imo/media/doc/Gilles%20Testimony%203-8-22.pdf).

a business opportunity, and written in legalese that further obscures the nature of the terms.⁵⁶ These provisions present an enormous hurdle for consumers to bring claims against and obtain relief from bad actors. Thus, the FTC should use all of its available tools, including additional oversight and regulation, to ensure that consumers who have been defrauded by deceptive business opportunities can obtain relief.

C. The FTC should ensure coordination in expansion of the Business Opportunity Rule and the promulgation of a rule regarding deceptive earnings.

The Business Opportunity Rule requires disclosures in an effort to better inform consumers of the investments and purchases they may make. While disclosures can be effective, they are not the only tool available to reduce fraud. For that reason, CFA has supported the FTC’s parallel efforts to adopt a rule which governs deceptive or unfair earnings claims (“Earnings Claim ANPR”).⁵⁷ The Earnings Claim ANPR and the Business Opportunity Rule should be crafted to work in concert with each other, rather than to the exclusion of one another.⁵⁸ At the crux of many deceptive business opportunities is the failure to provide accurate information about what the consumer may earn; thus, it makes sense to ensure that individuals are required to accurately provide this information in the form of a disclosure while also ensuring that the disclosure is not used as a shield by individuals that nonetheless make deceptive statements.

CFA is pleased that the FTC has stated it will consider, in this rulemaking, any comments submitted previously in response to the Earnings Claim ANPR. CFA acknowledged then and reiterates here the fact that more than a decade ago, the FTC made the determination that MLMs should not be regulated by the Business Opportunity Rule. Since the adoption of the Business Opportunity Rule, MLMs and other gig economy platforms, have become more widespread. CFA remains concerned that these industries engage in practices that harm consumers, and that such harms could be reduced through the use of the disclosures required by the Business Opportunity Rule.⁵⁹ We encourage the Commission to coordinate the promulgation of both rules to ensure that there are no gaps in coverage that could leave consumers susceptible to harm.

⁵⁶ See *Disclaimer*, Warrior Trading, <https://www.warriortrading.com/disclaimer/> (last visited Jan. 31, 2023); *Terms & Conditions*, Raging Bull, <https://ragingbull.com/terms-conditions/> (last updated Dec. 5, 2022).

⁵⁷ Deceptive or Unfair Earning Claims, 87 Fed. Reg. 13,951 (Mar. 11, 2022) (to be codified at 16 C.F.R. pt. 462), available at <https://www.federalregister.gov/documents/2022/03/11/2022-04679/deceptive-or-unfair-earnings-claims>.

⁵⁸ For instance, the FTC asked in the Earnings Claim ANPR whether being subject to the Business Opportunity Rule should exempt a business from claims under an earnings claim trade regulation rule. *Id.* at 13,956. The answer is no – individuals should be required to comply with all applicable provisions.

⁵⁹ Statement of Commissioner Rohit Chopra, *Regarding the Business Opportunity Rule Commission File No. P924214*, FTC (June 14, 2021),

IV. Conclusion

In the decade since the Business Opportunity Rule's last review, the types of business opportunities being offered to consumers have greatly evolved. The changing environment over the last ten years necessitates comprehensive review by the Commission and potential rule expansion to ensure that the Business Opportunity Rule has a sufficiently broad scope to help protect consumers against predatory behavior and fraud. CFA commends the Commission for undertaking this review and greatly appreciates the opportunity to provide input on this ANPRM.

Respectfully submitted,

Consumer Federation of America
U.S. PIRG
Center for Economic Justice
Virginia Citizens Consumer Council
National Consumer Law Center (on behalf of its low-income clients)
Consumers for Auto Reliability and Safety
Consumer Advocates Against Reverse Mortgage Abuse
National Consumers League
Delaware Community Reinvestment Action Council, Inc.
Columbia Consumer Education Council
Consumer Federation of California
Virginia Poverty Law Center
Texas Appleseed
Americans for Financial Reform Education Fund

https://www.ftc.gov/system/files/documents/public_statements/1591046/statement_of_commissioner_roh_it_chopra_regarding_the_business_opportunity_rule.pdf.