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Legislation and Rulemaking

FTC Proposes Changes to Deter Deceptive Earnings Claims by Multilevel Marketers and Money-Making Opportunity Sellers

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On January 13, 2025, the Federal Trade Commission announced that it is seeking public comment on proposed changes to the Business Opportunity Rule and a proposed new Earnings Claim Rule to strengthen the agency's tools to curb deceptive earnings claims in multi-level marketing (MLM) programs and money-making opportunities. The announcement came with the dissenting statement of two Commissioners who objected to the move as inconsistent with the new Trump administration's approach to regulation.

The proposal would expand the Business Opportunity Rule to cover money-making opportunities, such as business coaching and investment opportunities, which claim to assist consumers in building a business or otherwise earning income. The proposed changes would allow the FTC to impose penalties including consumer restitution and civil penalties for deceptive MLM sellers or business coaching sellers. In support of the proposal, the FTC cited a "widespread problem" of deceptive tactics including deceptive earnings claims. The proposal would prohibit sellers of business or investment opportunities from making material misrepresentations and require written substantiation—to be provided to consumers on request—to back up any earnings claims.

The FTC also announced it is seeking public comment on the need for additional rule requirements including:

- whether to require MLMs to provide earnings data to potential recruits and current MLM participants or to post such data on their websites;
- whether all MLM earnings claims should be accompanied by clear and conspicuous information about the earnings MLM participants can generally expect;
- whether there should be a waiting period before a recruit pays any money to the MLM or otherwise joins the MLM;
- whether to prohibit misrepresentations relating to expenses, benefits, or the compensation plan; and

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- whether to prohibit MLMs from using non-disparagement or other “gag” clauses to prohibit participants from communicating truthful negative information to the Commission, potential recruits, or others.

The long-term prospects of the proposed changes and the public comment period are uncertain given the January 20, 2025 administration change and Presidential Regulatory Freeze Pending Review directing “all executive departments and agencies” to refrain from issuing any new rule until President Trump or a newly-appointed department or agency head reviews said rule. It is unclear whether the FTC, generally considered an “independent” agency, will consider itself subject to the freeze.