

Selling a Work-at-Home or Other Business Opportunity?

Revised Rule May Apply to You

If you sell business opportunities, take this opportunity to find out more about your compliance obligations. The Federal Trade Commission, the nation's consumer protection agency, has revised the Business Opportunity Rule to make it easier for people to get the information they need when they're thinking about buying a bizopp. What does that mean for your company? The Rule now covers a wider variety of business opportunities, so you might be covered even if you weren't covered before. In addition, the Rule streamlines and simplifies the disclosures you have to give prospective buyers.

What's covered. The Business Opportunity Rule applies to commercial arrangements where a seller solicits a prospective buyer to enter into a new business, the prospective purchaser makes a required payment, and the seller – expressly or by implication – makes certain kinds of claims. Examples of what's covered by the Rule include work-at-home opportunities like envelope stuffing or craft assembly where the seller offers to buy back merchandise from the bizopp buyer. Also covered: opportunities where a seller says it will help the buyer set up or run the business – for example, by providing the buyer with customers, accounts, or locations to sell products or services. Consult the Rule to find out if the opportunity you're selling is within the definition.

What's required. If a transaction falls within the Rule, a seller has three key legal responsibilities:

1. You have to give the buyer a one-page Disclosure Document. And you have to provide this document seven days before the prospective buyer signs a contract or pays any money for the business opportunity.

2. If you make an earnings claim, you have to give the prospective buyer a separate document that says across the top EARNINGS CLAIM STATEMENT REQUIRED BY LAW.
3. You have to comply with general truth-in-advertising principles, including avoiding deceptive practices. The Rule spells out a list of some “dos” and “don’ts.”

The Disclosure Document

At least seven days before prospective buyers sign a contract or pay any money for a business opportunity, you have to give them a one-page Disclosure Document that lists five key pieces of information. To keep things simple for you and the buyer, you must use the standard form. It’s attached and it’s available at business.ftc.gov/businessopportunitydisclosure.

What do you have to disclose on that form?

- **Identifying Information.** You have to list your company’s name, business address, and phone number; the sales person’s name; and the date you gave the document to the prospective buyer.
- **Legal Actions.** You have to disclose whether your company or certain key personnel have been the subject of civil or criminal actions involving misrepresentation, fraud, violation of the securities laws, or any unfair or deceptive practices – including violation of any FTC rule – within the past ten years. If the answer is yes, you have to attach a list of the actions to the Disclosure Document.
- **Cancellation or Refund Policy.** You have to check a box to say if you have a cancellation or refund policy. If you do, you have to attach to the Disclosure Document a statement describing your policy.

- **Earnings.** You have to check a box to say if you’ve stated – or implied – how much money a prospective buyer can earn. If you have, you must attach an Earnings Claim Statement to the Disclosure Document.
- **References.** On the Disclosure Document, you have to list contact information for at least 10 people who have bought a business opportunity from your company. If more than 10 people have bought a bizopp, you may list the 10 who live closest to the prospective buyer. If fewer than 10 people have bought the bizopp, you have to list everyone. Also, you have to update the list every month, until 10 people have bought the bizopp. In addition, the Disclosure Document must say clearly and conspicuously: “If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers.”

A few more things about the Disclosure Document: The prospective buyer has to sign, date, and return the form to you. You have to make sure you’ve attached any other documents the Rule requires. You have to update the form every quarter. And if you promote your business opportunity in a language other than English, the one-page Disclosure Document – along with the required disclosures – must be in that language. The Spanish-language form is attached and it’s available at business.ftc.gov/businessopportunitydisclosure. Furthermore, if you tell a prospective buyer something in person, in an email, over the phone, or in any other ad or promotion, make sure it doesn’t contradict what you say in your written disclosures. It’s illegal to make contradictory oral and written statements – and it just creates confusion.

The Earnings Claim Statement

If you make a claim expressly or by implication about how much money a person can earn from your business opportunity, you have to put the claim in writing. Furthermore, it's illegal to make an earnings claim unless you have written materials on hand that back up what you're saying. You have to make those materials available to a prospective buyer or to the FTC if they ask for them.

If you make an earnings claim, you have to give the prospective buyer a separate document that clearly says across the top **EARNINGS CLAIM STATEMENT REQUIRED BY LAW**. What has to be on that document?

- The name of the person making the claim and the date;
- The specifics of the claim;
- The start and end date those earnings were achieved;
- The number and percentage of your buyers who got at least that result;
- Any information about the buyers who got those results that might vary from prospective buyers – for example, where they're located; and
- A statement that prospective buyers can get written proof for your earnings claims if they ask for it.

What about earnings claims made online, on TV or in newspapers, or in other media? The Rule is clear: You must have written proof on hand that supports your representations, and you have to disclose certain information when you're making the claim – for example, the start and end dates the earnings were achieved and the number and percentage of your buyers who got at least that

result. What if you make general statements about earnings or talk about the performance statistics in the industry? You'll need to have written proof on hand showing that the results for the opportunity you're selling are at least as good. Read the Rule for the specifics.

What if the information you previously provided to a prospective buyer in the Earnings Claim Statement substantively changes? You have an obligation to let the prospective buyer know what those changes are, in writing, before the prospective buyer signs a contract or pays you any money. And like the Disclosure Document, if you promote your business opportunity in a language other than English, your Earnings Claim Statement has to be in that language, too.

Avoid Illegal Practices

The Rule puts down in black and white what's always been the case: It's illegal to engage in deceptive or unfair practices in the promotion, marketing, or sale of any business opportunity. For example, don't say anything orally or in other paperwork that contradicts information in your one-page Disclosure Document or your Earnings Claim Statement.

The Rule lists other clear "dos" and "don'ts." For example:

- Don't include anything in your Disclosure Document or Earnings Claim Statement other than what the Rule specifically allows.
- Don't mislead people about what other buyers have earned, what they might earn, or how much help you'll give them. Remember: Under the law, it is illegal to deceive people expressly or by implication. Even if what you say is literally truthful, it still could be deceptive in context. For example, a claim can be misleading if relevant information is left

out or if the claim implies something that's not true.

- Don't tell people they'll have exclusive territories if that's not the case. Be truthful in explaining the likelihood of finding locations, outlets, or customers.
- If you hold someone out as a successful buyer of your business opportunity, you have to clearly disclose if you've paid them or have some other relationship to them.
- Don't tell people you're offering them a job if what you're really doing is selling them a business.

The Rule also requires you to keep certain records and make them available to the FTC for three years. Examples of what you need to keep: each buyer's signed disclosure receipt, all executed written contracts, and substantiation supporting your earnings claims. Read the Rule for details on your record keeping obligations. The Rule generally exempts business opportunities that meet the definition of a "franchise," but check the Rule to see if that applies to you.

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair practices in the marketplace and to provide information to businesses to help them comply with the law.

To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a video, *How to File a Complaint*, at www.ftc.gov/video to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad. For free compliance resources, visit the Business Center, www.business.ftc.gov.

Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.



DISCLOSURE OF IMPORTANT INFORMATION ABOUT BUSINESS OPPORTUNITY

Required by the Federal Trade Commission, Rule 16 C.F.R. Part 437

Name of Seller:

Address:

Phone:

Salesperson:

Date:

[Name of Seller] has completed this form, which provides important information about the business opportunity it is offering you. The Federal Trade Commission, an agency of the federal government, requires that [Name of Seller] complete this form and give it to you. However, the Federal Trade Commission has not seen this completed form or checked that the information is true. **Make sure that this information is the same as what the salesperson told you about this opportunity.**

LEGAL ACTIONS: Has [Name of Seller] or any of its key personnel been the subject of a civil or criminal action involving misrepresentation, fraud, securities law violation, or unfair or deceptive practices, including violations of any FTC Rule, within the past 10 years?

- YES** → *If the answer is yes, [Name of Seller] must attach a list of all such legal actions to this form.*
- NO**

CANCELLATION OR REFUND POLICY: Does [Name of Seller] offer a cancellation or refund policy?

- YES** → *If the answer is yes, [Name of Seller] must attach a statement describing this policy to this form.*
- NO**

EARNINGS: Has [Name of Seller] or its salesperson discussed how much money purchasers of this business opportunity can earn or have earned? In other words, have they stated or implied that purchasers can earn a specific level of sales, income, or profit?

- YES** → *If the answer is yes, [Name of Seller] must attach an Earnings Claims Statement to this form. Read this statement carefully. You may wish to show this information to an advisor or accountant.*
- NO**

REFERENCES: In the section below, [Name of Seller] must provide you with contact information for at least 10 people who have purchased a business opportunity from them. If fewer than 10 are listed, this is the total list of all purchasers. **You may wish to contact the people below to compare their experiences with what [Name of Seller] told you about the business opportunity.**

Note: If you purchase a business opportunity from [Name of Seller], your contact information can be disclosed in the future to other potential buyers.

<u>Name</u>	<u>State</u>	<u>Telephone Number</u>	<u>Name</u>	<u>State</u>	<u>Telephone Number</u>
1.			6.		
2.			7.		
3.			8.		
4.			9.		
5.			10.		

Signature: _____

Date: _____

By signing above, you are acknowledging that you have received this form. This is not a purchase contract. To give you enough time to research this opportunity, the Federal Trade Commission requires that after you receive this form, [Name of Seller] must wait at least seven calendar days before asking you to sign a purchase contract or make any payments.

For more information about business opportunities in general: Visit the FTC's website at www.ftc.gov/bizopps or call 1-877-FTC-HELP (877-382-4357). You can also contact your state's Attorney General.

DIVULGACIÓN DE INFORMACIÓN IMPORTANTE SOBRE OPORTUNIDAD DE NEGOCIO

Formulario requerido por la Comisión Federal de Comercio (FTC)
Regla 16 de la Parte 437 del Código de Regulaciones Federales

Nombre del Vendedor:
Teléfono:

Domicilio:
Representante de Ventas:

Fecha:

[Nombre del Vendedor] completó el presente formulario y en el mismo le suministra información importante sobre la oportunidad de negocio que le está ofreciendo. La Comisión Federal de Comercio (*Federal Trade Commission*, FTC), una agencia del gobierno federal, le requiere a la compañía [Nombre del Vendedor] que complete el presente formulario y que se lo entregue a usted. Pero la FTC no ha visto este formulario completado por la compañía ni ha verificado que la información indicada sea veraz. **Asegúrese de que la información contenida en el presente formulario coincida con lo que le dijo el representante de ventas respecto de esta oportunidad.**

ACCIONES LEGALES: ¿La compañía [Nombre del Vendedor] o alguno de los principales miembros de su personal ha sido sujeto de una acción civil o penal, que involucre falsedad, fraude, infracción de las leyes de títulos y valores, o prácticas desleales o engañosas, incluyendo infracciones de las Reglas o Normas de la FTC, dentro de los 10 últimos años?

SI → Si la respuesta es afirmativa, [Nombre del Vendedor] debe adjuntar al formulario una lista completa de dichas acciones legales.

NO

POLÍTICA DE CANCELACIÓN O REINTEGRO: ¿Ofrece [Nombre del Vendedor] una política de cancelación o reintegro?

SÍ → Si la respuesta es afirmativa, [Nombre del Vendedor] debe adjuntar al formulario una declaración con la descripción de dicha política.

NO

INGRESOS: ¿La compañía [Nombre del Vendedor] o alguno de sus representantes de ventas ha manifestado la cantidad de dinero que pueden ganar o que han ganado los compradores de esta oportunidad de negocio? ¿Dicho en otras palabras, han expresado de manera explícita o implícita que los compradores pueden alcanzar un nivel específico de ventas, o ganar un nivel específico de ingresos?

SÍ → Si la respuesta es afirmativa, [Nombre del Vendedor] debe adjuntar a este formulario una Declaración de los Ingresos Proclamados. Lea esta declaración atentamente. Puede que desee analizar esta información con un asesor o contador.

NO

REFERENCIAS: En esta sección del formulario, [Nombre del Vendedor] debe listar la información de contacto de por lo menos 10 personas que le hayan comprado una oportunidad de negocio. Si le suministran los datos de menos de 10 personas, es porque ésa es la lista completa de todos los compradores. **Puede que desee comunicarse con las personas listadas a continuación para comparar sus respectivas experiencias con lo que le dijo [Nombre del Vendedor] sobre la oportunidad de negocio que le está ofreciendo.**

Nota: Si usted compra una oportunidad de negocio de [Nombre del Vendedor], podrá divulgarse su información de contacto a otros posibles compradores.

<u>Nombre</u>	<u>Estado</u>	<u>Número de Teléfono</u>	<u>Nombre</u>	<u>Estado</u>	<u>Número de Teléfono</u>
1.			6.		
2.			7.		
3.			8.		
4.			9.		
5.			10.		

Firma: _____

Fecha: _____

Por medio de su firma, usted acusa recibo del presente formulario. Esto no es un contrato de compra. La Comisión Federal de Comercio (FTC) establece que con el fin de concederle el tiempo necesario para que usted investigue esta oportunidad, [Nombre del Vendedor] debe esperar un mínimo de siete días naturales o corridos a partir de la fecha en que le entregue este formulario antes de pedirle que firme un contrato de compra o que efectúe un pago.

Para más información sobre oportunidades de negocio en general: Visite el sitio Web de la FTC www.ftc.gov/bizopp o llame al 1-877-FTC-HELP (877-382-4357). Usted también puede establecer contacto con el Fiscal General de su estado de residencia.