

**Federal Trade Commission
Supporting Statement
Business Opportunity Rule
16 C.F.R. Part 437
(OMB Control Number: 3084-0142)**

1. Necessity for Collecting the Information

The Business Opportunity Rule (“Rule”) requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information about the seller, the seller’s business, and the nature of the proposed business relationship. Additional disclosures are required if a seller makes claims about the earnings a purchaser can achieve with the business opportunity that is offered for sale. The seller must also preserve the information that forms a reasonable basis for such claims.

The Rule requires that all disclosures be made at least seven calendar days before any sale, and that sellers use disclosure documents compliant with the form and content specified by the Rule. The Rule also requires disclosures of material facts, but it does not regulate the substantive terms of the relationship between business opportunity seller and purchaser. It also requires sellers to keep for a period of three years copies of: (1) each materially different version of documents required by the Rule; (2) each purchaser’s disclosure receipt and contract; and (3) substantiation for any earnings claims.

For business opportunities marketed in Spanish, Section 437.5 of the Rule requires that sellers provide potential purchasers with the Spanish version of the disclosure document (Appendix B to the Rule) and provide all other required disclosures in Spanish. For sales conducted in a language other than English or Spanish, the Rule requires that sellers make the required disclosures in the same language as the sale, using the form and an accurate translation of the language set forth in Appendix A to the Rule, as well as any additional required disclosures through attachments to the disclosure document.

2. Use of the Information

Prospective business opportunity buyers use the required disclosures both to become better informed about the prospective investment and to verify the seller’s representations.

If the business opportunity seller chooses to make financial performance claims, disclosures are necessary to enable a prospective purchaser to analyze the credibility of those claims. For example, a business opportunity seller might represent to a prospective purchaser that s/he should expect annual sales of \$50,000. Without the Rule, the prospective purchaser might have difficulty in assessing the accuracy or reliability of the claim. To make sure the prospective purchaser can accurately assess the claim, the Rule requires the business opportunity seller to: (1) indicate the number and percentage of purchasers whose performance equaled or exceeded the claim; and (2) save and offer to show prospective purchaser the background material upon which the claim is based. This allows the prospective purchaser to form an independent judgment about the reliability of the claim. It also discourages the use of unrealistic financial performance claims, because the business opportunity seller knows that the prospective

purchaser can determine whether an earnings claim is credible by examining the background material. The Rule also requires that any background material must be shown to the Commission during a compliance investigation so that the Commission can evaluate whether or not the basis for the claim is reasonable.

3. Consideration of Using Improved Information Technology to Reduce Burden

Consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, the Rule permits business opportunity sellers great latitude in using new technologies, in particular the Internet, to reduce compliance costs. Business opportunity sellers can reduce significantly printing and distribution costs through the expanded use of email and the Internet to furnish disclosure documents. The Rule also permits the use of electronic signatures and electronic recordkeeping.

4. Efforts to Identify Duplication

FTC staff has not identified any other federal statutes, rules, or policies that duplicate, overlap, or conflict with the Rule and the Rule's information collection requirements do not duplicate any other information collection requirements imposed by the Commission. Approximately twenty six states have some kind of business opportunity sales regulations. These state regulations, however, are not uniform and vary both in their coverage and in the disclosure requirements. To reduce potential duplication with state requirements, the Commission has kept the disclosure obligations arising from the Rule to a minimum. In most instances, business opportunity sellers complying with the Rule will be able to furnish a single-page disclosure document, with appropriate attachments.

Similarly, the Rule reduces duplication by enabling business opportunity sellers to comply with the Rule by using existing materials. For example, rather than repeating its cancellation or refund policy in the disclosure document, a seller can simply check the box indicating that it offers a cancellation or refund policy and then attach to the disclosure document a brochure or other document that already sets forth the required information.

5. Efforts to Minimize Burden on Small Businesses

Unlike business opportunity regulations in many states, the Rule does not require a seller to register or file disclosure documents with the government as a prerequisite to a sale. Thus, compliance with the Rule does not require the fees usually associated with registering or filing disclosure documents, a consideration that reduces burden on covered entities including small businesses. The Rule, moreover, keeps required disclosures to a minimum, permitting sellers to reference existing materials, and permitting electronic disclosure.

6. Consequences of Conducting Collection Less Frequently

Any reduction in the frequency of collecting information required by the Rule would not be appropriate given the Rule's purpose to ensure that all prospective business opportunity purchasers receive valuable and accurate pre-sale information about the proposed investments. To reduce the required disclosures, which are already streamlined would diminish the Rule's effectiveness.

7. Circumstances Requiring Collections Inconsistent with Guidelines

The collection of information in this Rule is consistent with all applicable guidelines contained in 5 C.F.R. Part 1320.5(d)(2).

8. Consultation with Outside Sources

The FTC sought public comment on its request to OMB for a three-year extension of the current PRA clearance for the information collection aspects of the Rule, as required by 5 CFR § 1320.8(d). See 85 Fed. Reg. 45427 (July 28, 2020). No comments were received. The FTC is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rule.

In addition, the Commission has a long history of seeking outside input regarding the Franchise Rule and the Business Opportunity Rule.¹ The Commission plans to initiate a retrospective review of the Business Opportunity Rule in 2021.

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

No assurance of confidentiality is necessary, because the Rule does not require business opportunity sellers to register or file any documents with the Commission. To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f), 57b-2, will apply.

11. Sensitive or Private Information

Under the Rule, a business opportunity seller must disclose certain purchaser's names, states, and telephone numbers. This information lets prospective purchasers conduct their own due diligence investigation of the business opportunity seller's claims; in particular, earnings claims. No other information about individual purchasers must be disclosed. For example,

¹ See, e.g., 60 Fed. Reg. 17,656 (April 7, 1995) (periodic rule review, including comment sought on whether the Franchise Rule's disclosure requirements were appropriate for business opportunity sellers, whether there should be a separate business opportunity trade regulation rule, etc.); 62 Fed. Reg. 9,115 (February 28, 1997) (Advance Notice of Proposed Rulemaking) (comments sought on amending the Franchise Rule and promulgating a separate business opportunity rule); 64 Fed. Reg. 57,294 (October 22, 1999) (Notice of Proposed Rulemaking) (proposing a revised disclosure law that would, among other things, separate the disclosure requirements pertaining to business opportunities from those pertaining to business-format franchises); 71 Fed. Reg. 19,054 (April 12, 2006) (original Notice of Proposed Rulemaking); 73 Fed. Reg. 16,110 (March 12, 2008) (revised Notice of Proposed Rulemaking); 78 Fed. Reg. 18,712 (April 24, 2009) (Notice announcing public workshop, revised disclosure document, and request for public comment); 75 Fed. Reg. 68,559 (Nov. 8, 2010) (seeking public comment on the FTC Staff Report on the Business Opportunity Rule).

sellers who choose to make an earnings claim based upon the earnings history of current purchasers need not identify in the disclosure document the individual purchasers whose information formed the basis of the earnings claim, or the earnings of any individual purchaser.

Further, to ensure that purchasers understand that their contact information may be disclosed, a privacy statement is included in the disclosure document attached to the Rule: “If you buy a business opportunity from [Name of Seller], your contact information can be disclosed in the future to other potential buyers.” Provided this information, a purchaser concerned about the release of his/her contact information may elect not to make the purchase.

12. Estimated Annual Hours Burden and Labor Cost

FTC staff estimates there are approximately 3,050 business opportunity sellers covered by the Rule, including vending machine, rack display, work-at-home, and other opportunity sellers. Of this total, staff estimates that on an annual basis approximately 90% are established sellers and the remaining 10% are new entrants (i.e., 2,745 existing business opportunity sellers plus 305 new entrants). In addition, staff estimates that approximately 92 business opportunity sellers market business opportunities in Spanish (in addition to English) and another 61 sellers market in languages other than English or Spanish (in addition to English).²

A. Estimated Hours Burden

Compliance burdens will vary depending on a business opportunity seller’s prior experience with the Rule. Appendices A and B to the Rule provide models of the required disclosure documents in both English and Spanish, reducing the potential burden that sellers may incur to provide the required disclosures. Commission staff estimates that 2,745 existing business opportunity sellers will require approximately two hours to update their disclosure documents annually. This yields a total annual burden of **5,490 hours** for established sellers. Staff also projects that 305 new business opportunity sellers will require approximately five hours to develop their initial disclosure documents. This yields a total annual burden of approximately **1,525 hours**. In addition, staff estimates that all business opportunity sellers will require approximately one hour to file and store required records for a total of **3,050 hours**. This yields a cumulative total of **10,065 hours**.

B. Estimated Labor Cost

The Commission determines estimated labor costs by applying applicable wage rates to the burden hours discussed above. Commission staff assumes that an attorney likely would

² FTC staff bases these estimates on census data. See American Community Survey, Household Language Table K201601 (2018), at <https://data.census.gov/cedsci/>. The census data indicates that approximately 3% of Spanish-speaking U.S. households are classified as limited English speaking households. In addition, the data indicates that approximately 2% of the United States population speaks a language other than Spanish or English at home and are classified as limited English speaking households. Staff estimates that approximately 3% of all entities selling business opportunities market in Spanish and 2% of all such entities market in languages other than English or Spanish.

prepare or update required disclosure documents at an approximate hourly rate of \$69.86.³ Accordingly, staff estimates that cumulative labor costs are **\$703,141** (10,065 hours × \$69.86 per hour).

13. Estimated Capital and Other Non-Labor Costs

A. Printing and Mailing of the Disclosure Document

Business opportunity sellers may also incur costs to print and distribute the single-page disclosure document, plus any attachments. These costs vary based upon the length of the attachments and the number of copies produced to meet the expected demand. Commission staff estimates that 3,050 business opportunity sellers will print and mail approximately 1,000 disclosure documents per year at a cost of \$1.00 per document, for a total cost of **\$3,050,000**. Conceivably, many business opportunity sellers will elect to furnish disclosures electronically; thus, the total cost could be much less.

B. Translating the Required Disclosures Into a Language Other Than English

The costs associated with translating the disclosures will vary depending upon a business opportunity seller's prior experience and the language the seller uses to market business opportunities. Because Appendices A and B to the Rule provide illustrations of the required disclosure documents in both English and Spanish, business opportunity sellers marketing in Spanish will not incur costs to translate the disclosure document but may incur translation costs to update their disclosures over time. New entrants that market business opportunities in languages other than English or Spanish will incur costs to translate Appendix A into other languages.

Informed by Census data, FTC staff estimates that 92 sellers market business opportunities in Spanish and an additional 61 sellers market in languages other than English or Spanish. This includes an estimated 6 new entrants that market business opportunities in languages other than English or Spanish that will incur translation costs to draft a disclosure document consistent with Appendix A to the Rule.

FTC staff estimates that approximately 153 new and existing business opportunity sellers are marketing business opportunities in languages other than English. Staff estimates these sellers will require approximately 250 words (about one standard, double-spaced page) to update initial disclosures, in the case of existing business opportunity sellers, or supply and translate their initial disclosures, in the case of new business opportunity sellers. Therefore, staff

³ This figure is derived from the mean hourly wage for Lawyers. See "Occupational Employment and Wages—May 2019," Bureau of Labor Statistics, U.S. Department of Labor (March 31, 2020), Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019"), available at <https://www.bls.gov/news.release/pdf/ocwage.pdf>.

estimates the total cost to translate the updates or to translate from English the initial disclosures is approximately **\$6,694** [153 sellers × (17.5⁴ cents per word × 250 words)].

In addition, staff estimates that new entrant business opportunity sellers marketing in languages other than English or Spanish will incur burden to translate the required disclosures. There are 485 words in Appendix A to the Rule. Therefore, staff estimates that the average annual cost burden for new business opportunity sellers to translate the required disclosures into a language other than English or Spanish will be approximately **\$509** [6 sellers × (17.5 cents per word × 485 words)].

Thus, cumulative estimated non-labor costs are **\$3,057,203** (\$3,050,000 + \$509 + \$6,694).

14. Estimate of Cost to Federal Government

Based on recent years' experience monitoring compliance with the Rule, staff estimates that annualized cost for such activities will be approximately \$62,000. This estimate includes time spent by attorneys and investigators.

15. Changes in Burden

There are no program changes or adjustments. Changes in the estimated non-labor costs associated with the Rule reflect updated staff estimates regarding the number of business opportunity sellers marketing business opportunities in languages other than English. These updated estimates are based on U.S. Census data.

16. Statistical Use of Information

There are no plans to publish any information for statistical use.

17. Failure to Display of the Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exemption to these certification requirements.

⁴ Staff estimates that this represents the current market rate per word to translate the disclosure documents into the language the sellers use to market business opportunities.