

# What Sellers of Coaching Services and Work-at-Home Opportunities Need to Know

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As the Coronavirus continues to spread, the FTC (and state attorneys general) has/have dedicated significant resources to investigating and prosecuting those that offer business coaching services and work-at-home opportunities. Simply stated, the Federal Trade Commission considers consumers looking for such opportunities to be in a class of vulnerable people that warrant extra government protection.

## What are Red Flags that Pique the FTC's Attention

If the program disseminates express or implied representations about guaranteed income, large returns or a "proven system," it is likely that you are or soon will be on the radar of a regulatory agency. Also, free or low-cost "systems" to get a business started that eventually turn into significant expenditures for mentoring or other services that promise - but typically do not deliver - results are what regulatory investigations and enforcement actions are often based upon.

Consider online business coaching where the promoters claim a consumer can make big money with no experience. And, reference is made in marketing materials and/or communications to "experts" that will teach people a "proven method" for building a successful business on the Internet. Many even state that they are affiliated with well-known online sellers.

Regulatory attention grabbers:

- Be your own boss
  - Learn from experts, coaches or mentors
  - Guaranteed income
  - Follow a proven system
  - Deposit checks
  - Make money with little time or effort
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- Make money with little or no experience
  - Recruit more people to make big money
  - Claims that a detailed understanding of the business is not required

## **What About the Information Imparted to Consumers?**

Tiered memberships with different service levels and price points also tend to invite regulatory scrutiny. For example, leading consumers to believe that they will be provided with useful, valuable and/or proprietary business information to help them earn money that is - in reality - freely available online often lands promoters in hot water. If the majority of consumers that have enrolled for such programs have not, in fact, achieved a functional online or earned revenue (winding up in debt) the FTC will be keenly interested if somehow brought to the agency's attention.

## **Does the FTC Business Opportunity Rule Apply?**

Yes. In fact, various states have their own legal regulations that govern coaching services and work-at-home business opportunities

The FTC's [Business Opportunity Rule](#) requires those that offer 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. For example, opportunities where a seller says it will help the buyer set up or run the business.

Consult an [FTC CID lawyer](#) in order to determine if the Business Opportunity Rule fits within the definition of the offer that you are promoting.

## **What is Required of a Transaction Falls Within the Business Opportunity Rule**

If the transaction falls within the Business Opportunity Rule, the buyer must be provided with a Disclosure Document within seven days of a buyer signing a contract or pays any money for the business opportunity.

The Disclosure Document must list five key pieces of information and is a standard form. It must list the company name, business address, phone number, the sales person's name and the date the document was provided to the prospective buyer. It must also disclose whether the 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, the seller must attach a list of the actions to the Disclosure Document.

The Disclosure Document must also address the cancellation or refund policy. The seller must check a box to say if it has a cancellation or refund policy. If the seller does, it has to attach to the Disclosure Document a statement describing its policy.

The seller must also check a box that indicates whether it has stated (or implied) how much money a prospective purchaser can earn. If the seller has, it must attach as Earnings Claim Statement to the

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## Disclosure Document.

Additionally, on the Disclosure Document, the seller is required to list contact information for at least ten people that have purchased a business opportunity from the seller. If more than ten people have bought a bizopp, the seller may list the ten that live closest to the prospective buyer. If fewer than ten people have purchased the bizopp, the seller must list everyone.

Also, the seller is required to update the list every month, until ten people have purchased 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."

With respect to the Disclosure Document, the prospective buyer has to sign, date and return the form to the seller. The seller must ensure that it has attached any other documents required by the Business Opportunity Rule. The seller must update the form every quarter and if it promotes a business opportunity in a language other than English, the Disclosure Document - along with the required disclosures - must be in that language.

If a seller makes express or implied claims about how much money a person can earn from a business opportunity, the seller is required to put the claim(s) in writing. Importantly it is unlawful to make earnings claims unless there exists (prior to dissemination thereof) reasonable evidence like written materials that substantiate such representations. And, the seller is required to make such materials available to a prospective buyer or to the FTC if they are requested.

If a seller makes an earnings claim, it must provide the prospective a separate document that clearly says across the top **EARNINGS CLAIM STATEMENT REQUIRED BY LAW**. The document must set forth who is making the claim and the date, the specifics of the claim, the start and end date the purported earnings were achieved, the number and percentage of buyers that got at least that result, any information about the buyers that got those results that might vary from prospective buyers (e.g., where they are located) and a statement that prospective buyers can get written proof for the earnings claims if requested.

For earnings claims made online, on TV, in newspapers or in other media, the seller must possess written proof on hand that supports the representations and has to disclose certain information when the claim is made. For example, the start and end dates the earnings were achieved and the number and percentage of purchasers that obtained 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.

If the information a seller previously provided to a prospective buyer in the Earnings Claim Statement substantively changes, the seller is obligated to let the prospective buyer know what those changes are, in writing, before the prospective buyer signs a contract or pays any money. Also, like the Disclosure Document, if a seller promotes a business opportunity in a language other than English, your Earnings Claim Statement has to be in that language, too.

If a prospective buyer is told something in person, in an email, over the phone, or in any other ad or promotion, the seller should ensure that the foregoing do not contradict what is stated in written disclosures, including the Disclosure Document and the Earnings Claim Statement.

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## **Business Opportunity “Dos” and “Don’ts”**

Sellers should be careful not to include anything in the Disclosure Document or Earnings Claim Statement other than what the Business Opportunity Rule specifically allows. Sellers should never mislead people about what other buyers have earned, what they might earn or how much help they will be provided.

It is unlawful to deceive people expressly or by implication. And, even if what a business opportunity seller says something that is literally truthful, it still could be deceptive in context.

For example, a claim can be misleading if relevant information is omitted or if the claim implies something that is not true. The Business Opportunity Rule also requires a seller to keep certain records and make them available to the FTC for three years. For example and without limitation, each buyer's signed disclosure receipt, all executed written contracts and substantiation supporting earnings claims.

### **What Else do Sellers of Coaching Services and Work-at-Home Opportunities Need to Know?**

Regulatory agencies have demonstrated that they will not hesitate to add allegations of unlawful telemarketing operations. For example, the [Telemarketing Sale Rule](#). Additionally, many such offers fail to deliver on their promises.

If consumers will have to work a lot of hours without pay, advertisements should clearly and conspicuously disclose that. Costs should be disclosed, up-front.

Most, not all, companies that draw unwanted regulatory attention make unsubstantiated earnings claims. Always have a reasonable basis for all express and implied representations, including earnings claims. Always be prepared to share documents with regulators that prove your claims are true.

Also, if the “coaches” are, in fact, commissioned salespeople and consumers are not made fully aware of this fact, this could be a problem.

The FTC is also often interested in programs where consumers are informed, after they pay, that in order to succeed they will have to pay more for additional services. Always disclose the total cost of a work-at-home program, including supplies, equipment and membership fees.

### **Takeaway**

The Federal Trade Commission and state attorneys general have been extremely aggressive when it comes to marketers that offer business coaching and work-at-home programs. Particularly, those that promise a great living by working from home, with little effort. Consult experienced advertising compliance counsel to ensure compliance with applicable federal and state legal regulations.

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