



June 23, 2023

Hon. April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex C)
Washington, D.C. 20580

Re: International Franchise Association Comments on Proposed Amendments to the Commission's Negative Option Rule; Project No. P064202

Dear Secretary Tabor:

The International Franchise Association (IFA) appreciates this opportunity to submit its views (the "Comment") to the Federal Trade Commission (the "FTC" or "Commission") in connection with the Commission's request for public comment to its Notice of Proposed Rulemaking ("NPR") amending the Negative Option Rule (the "Rule") issued by the Commission on March 23, 2023.

INTRODUCTION

The IFA is the world's oldest and largest organization representing franchising. IFA members include franchise companies in over 300 different industries, individual franchisees, and companies that support those franchise companies in marketing, law, technology, and business development. IFA works through its government relations, public policy and media relations departments and its educational programs to protect, enhance and promote franchising and the approximately 790,492 franchise establishments that support nearly 8.4 million direct jobs, \$825.4 billion of economic output for the U.S. economy, and almost 3 percent of the U.S. Gross Domestic Product (GDP).¹

IFA shares the concerns articulated by IHRSA, The Global Health & Fitness Association ("IHRSA") in its comments submitted to the Commission to the proposed amendments to the Rule (the "IHRSA Comments"). IFA is particularly concerned on the potential adverse effects of the proposed amendments to the Rule on franchised small businesses operating not only in the fitness and health industry, but also in the spa/massage and location-based entertainment industries, as well as other industries whose business models were constructed based on membership programs with their respective consumers. According to FRANdata's database, there currently are 21,524 franchised fitness establishments, 7,627 franchised spa/massage studios, 3,797 franchised location-based entertainment facilities and 12,730 franchised preventative healthcare facilities operating in the U.S., of which at least 99% are owned by franchisees that operate ten or less units. Many of these franchisees invested in their franchise systems based on a business model that includes as a core component a membership program.

¹ Alka Sinha & Jin Oi, 2023 FRANCHISING ECONOMIC OUTLOOK 1-2, (INT'L FRANCHISE ASS'N 2023), <https://www.franchise.org/sites/default/files/2023-03/2023-Franchising-Economic-Report.pdf> [hereinafter 2023 ECONOMIC OUTLOOK].

We urge the Commission to narrowly tailor the amendments to the Rule, as further described in the IHRSA Comments, to minimize disruption to a membership-based business model intrinsic to the fitness, spa/massage, preventative healthcare and location-based entertainment franchise systems in which tens of thousands of franchisees elected to invest. Additionally, as IFA stated in its response to the Commission's *Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices* (FTC Docket No. 2023-0026) ("RFI")², IFA is troubled by the Commission's policymaking process that applies broad-brush regulation not rooted in rigorous data collection and empirical analysis.

The Commission has repeatedly stated that its role is to protect small business, including franchises. The Commission, however, has not conducted an empirical cost-benefit analysis to assess the proposed rule's impact on small businesses. In the NPR, the Commission notes that it "does not have sufficient empirical data at this time regarding the affected industries to determine whether the proposed amendments to the Rule may affect a substantial number of small entities as defined in the RFA," and "that it is also unclear whether the proposed amendments to the Rule would have a significant economic impact on small entities." Without this analysis, the Commission cannot conclude with confidence that "the impact of the proposed requirements on all firms, whether small businesses or not, may not be substantial," or that "a preliminary analysis suggests the proposed amendments to the Rule would not have a significant economic impact on small entities." Consistent with the IHRSA Comments, IFA therefore encourages the FTC to conduct a Small Business Regulatory Impact Analysis (SBRIA) to determine how the proposal will impact small businesses, and examine this issue fully at an informal hearing. This is especially necessary here because the Advanced Notice of Proposed Rulemaking did not seek comment on all issues presented in the NPR.

CONCLUSION

In sum, we echo the need for collaboration between the Commission and the industries impacted by its rulemaking stated in the IHRSA Comments. IFA welcome the opportunity to work cooperatively with the Commission to establish guidelines that promote transparency while also recognizing the unique aspects of the industries that utilize membership programs as a core component of their business model.

Thank you for the opportunity to submit our views, and for considering our perspective.

Respectfully submitted,



Sarah Bush
General Counsel
International Franchise Association

² IFA filed its response to the Commission's *Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices* on June 8, 2023 (Comment Tracking Number lin-azte-ygv).