UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Inspector General

August 1, 2022

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

Thank you for your June 21, 2022, letter to the Federal Trade Commission (FTC) Office of Inspector General (OIG)[1] expressing concerns about the "revolving door" between the FTC and Intuit (and other Free File Alliance members). You requested that the OIG open an inquiry into potential conflicts of interest arising out of matters between Intuit (and other Free File Alliance member companies[2]) and the FTC, as well as the FTC's conflict of interest policies. This letter responds to your request.

Background

Federal conflict of interest law provides the framework for restrictions on former federal executive branch employees ("former employees"). Former employees must adhere to the following restrictions:

1. a lifetime ban on "switching sides" (i.e., communicating to the United States on behalf of others on a "particular matter" related to a specific party or parties on which the former employee had worked personally and substantially for the government);

2. a 2-year post-employment ban on "switching sides" on specific party matters which were under the employee's official responsibility within 1 year prior to the conclusion of the former employee's employment;

3. a 1-year restriction on assisting others on certain trade or treaty negotiations;

4. a 1-year "cooling off" period for certain "senior" officials barring representational communications to and attempts to influence persons in their former departments or agencies;

[1] The letter also was addressed to Treasury Inspector General for Tax Administration J. Russell George and U.S. Department of Treasury Deputy Inspector General Richard Delmar.

[2] The Free File Alliance is a nonprofit coalition of tax software companies partnered with the IRS to help people "prepare and e-file their federal tax returns for free." https://freefilealliance.org/.

5. a 2-year "cooling off" period for "very senior" officials barring representational communications to and attempts to influence certain other high ranking officials in the entire executive branch of government; and

6. a 1-year ban on certain former "senior" officials performing certain representational or advisory activities for foreign governments or foreign political parties.[3]

Criminal and civil penalties may result from violating these restrictions.[4] Additionally, the Department of Justice may pursue injunctive relief to prevent a former employee from violating the restrictions.[5] U.S. Office of Government Ethics regulations flesh out the restrictions laid out in federal law.[6]

Political employees appointed by President Biden's administration must pledge to adhere to even more stringent requirements, pursuant to President Biden's January 20, 2021, "Executive Order on Ethics Commitments by Executive Branch Personnel" (the "Biden Pledge").[7] For example, the Biden Pledge extends from 1 year to 2 years (a) the prohibition against participating in any particular matter involving specific parties that is "directly and substantially related" to an appointee's former employers or former clients and (b) the post-employment restriction on communicating with the former appointee's executive agency or White House staff.[8] The Biden Pledge also prohibits "senior" and "very senior" appointees from shadow lobbying (i.e., they may not "materially assist" others in making communications or appearances that they are prohibited from undertaking themselves).[9]

FTC Regulations and Policy

In addition to federal ethics law and regulations, as well as the Biden Pledge, the FTC "Clearance Rule" places further restrictions on former FTC employees, including Commissioners. Pursuant to the "Clearance Rule," a former employee who wishes to participate, even solely behind-the-scenes, in an FTC matter that was pending during the employee's FTC service—or that "directly resulted from" such a matter—must seek and receive "clearance" from the FTC before doing so.[10] According to the rule, the FTC will deny clearance to the former employee if (a) the former employee participated personally and substantially on behalf of the FTC in the same matter; (b) the application for clearance is made within 2 years after the employee left the FTC and, within 1 year before leaving, the matter had been pending under the former employee's official supervision (unless the former employee seeks to participate only "behind-the-scenes"); or (c) nonpublic documents or information pertaining to the matter came to, or was likely to have come to, the former employee's attention in the course of his or her duties, and the employee left the FTC within the previous 3 years (unless FTC staff determines that the nature of the documents or information in question is such that

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no present advantage could thereby be derived).[11] In addition, no partner, legal or business associate of a former FTC employee may participate in any FTC matter from which the former employee is disqualified because of having personally and substantially participated, unless the former FTC employee's colleague submits an affidavit describing how it is screening off the former employee from any involvement in the matter.[12]

Further, all FTC employees are required to meet with an FTC ethics official before they separate from the agency for a post-government employment federal ethics briefing. All sessions are conducted live (i.e., in person, via phone, or virtually) with an FTC ethics official. During the briefing, departing employees are provided with the FTC Post-Employment Package, which is also available on the FTC's intranet site.

Potential Conflicts of Interest Related to Intuit or Other Free File Alliance Members

In your letter, you requested that the OIG open an inquiry into potential conflicts of interest related to matters involving Intuit (or other Free File Alliance members). We have looked into this issue and have found no evidence of behavior that violates the federal ethics laws and regulations or FTC rules and policies.

We appreciate the issues you raised in this letter. We will keep your concerns in mind as we plan future oversight work—and continue to promptly look into allegations of conflict of interest violations.

Sincerely,

Andrew Katsaros
Inspector General

[11] *Id*. at § 4.1(b)(1).

[12] *Id*. at § 4.l(b)(8).

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Inspector General

August 1, 2022

The Honorable Katie Porter
U.S. House of Representatives
1117 Longworth House Office Building
Washington, DC 20515

Dear Representative Porter:

Thank you for your June 21, 2022, letter to the Federal Trade Commission (FTC) Office of Inspector General (OIG)[1] expressing concerns about the "revolving door" between the FTC and Intuit (and other Free File Alliance members). You requested that the OIG open an inquiry into potential conflicts of interest arising out of matters between Intuit (and other Free File Alliance member companies[2]) and the FTC, as well as the FTC's conflict of interest policies. This letter responds to your request.

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The Honorable Brad Sherman
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

Dear Representative Sherman:

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