Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
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Statement of Commissioner Rebecca Kelly Slaughter

Regarding Advance Notice of Proposed Rulemaking on the Use of Earnings Claims
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Unfair and deceptive earnings claims underpin some of the worst and most financially ruinous scams Americans face. Pyramid schemes, phony investments, and multi-level-marketing all exploit people's hopes—for financial stability, for a chance to improve their lives—with false promises. These scammers often take advantage of national and financial crises to exploit the newly vulnerable. And unfortunately, we've seen that in the Covid-19 pandemic as well. The extent of these scams is astounding. In a 2020 law enforcement crackdown the FTC pursued over a billion dollars lost to these schemes.[1]

Combating these schemes illuminates something important about the agency's authority and our mission, too. Section 5's requirement that earnings claims are honest and substantiated reflects an underappreciated obligation of the FTC: to protect Americans as *workers* and not simply as the consumers of products and services. Markets cannot function effectively without honest and transparent pricing. That is just as true for the labor market as it is for consumer goods. False or misleading earnings claims robs people of their investments, their time, and the fair value of their labor. It is also worth remembering: individuals who put their savings into the stock market—often wealthier individuals—can rely on the SEC to police misrepresentations about earnings claims with respect to those investments. But less wealthy folks who may pour their life savings into promised business opportunities deserve the protection of the federal government as well; that is why we must aggressively police misleading earnings claims.

Two of our recent enforcement actions demonstrate how this kind of exploitation works in practice. Last year the FTC settled with the owners and operators of Moda Latina.[2] The company primarily targeted Latinas with Spanish-language ads that made false promises of significant earnings reselling luxury products. Moda Latina's marketing campaign specifically targeted Latina consumers interested in starting work-at-home businesses.[3] It seems like none of the women targeted in this scheme made money but were instead cheated out of their time and funds to buy useless goods. These kinds of false claims crowd out honest opportunities for

[1] Press Release, Federal Trade Commission, *As Scammers Leverage Pandemic Fears, FTC and Law Enforcement Partners Crack Down on Deceptive Income Schemes Nationwide*, December 14, 2020, https://www.ftc.gov/news-events/press-releases/2020/12/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners
[2] Press Release, Federal Trade Commission, *Operators of Bous Income Scam Targeting Latinas Face FTC Settlement*, March 2, 2021, https://www.ftc.gov/news-events/press-releases/2021/03/operators-bogus-income-scam-targeting-latinas-face-ftc-settlement
[3] *FTC v. Moda Latina BZ Inc*., No. 2:20-cv-10832 (filed C.D. Cal. 2020), https://www.ftc.gov/system/files/documents/cases/001_complaint.pdf

people to start businesses, making life even more precarious for vulnerable workers and would-be entrepreneurs.

I'm also deeply concerned about the effect of the over-promises of the gig economy on workers and the labor market. Last year, the FTC settled with Amazon over our charges that it robbed its Amazon Flex drivers the full amount of tips it promised to them.[4] These gig-economy workers signed up as drivers to deliver goods and groceries order through Amazon based on an advertised hourly rate and the promise of receiving "100% of tips" they earned while completing deliveries. After people had already signed up to work for the company, Amazon secretly changed its payment scheme and ceased giving drivers their tips while still representing that it did so to these workers and to consumers. In settlement the agency recovered $61.7 million from Amazon, the full amount of the tips the agency believe Amazon withheld from them. By misrepresenting these drivers' take-home pay Amazon distorted both the gig-driver labor market *and* the consumer home delivery market in what I believe we can fairly surmise was an unlawful bid to increase its market share and lower its labor costs.

Effective enforcement of Section 5's consumer protection obligations helps make these markets for labor functional, fair, and competitive. That's why I'm eager to begin a rulemaking inquiry on earnings claims. I'm proud of the decades of enforcement actions the agency has undertaken to protect against these unfair and deceptive practices. But case by case enforcement has left gaps unscrupulous actors can exploit.

Starting this inquiry means we can now gather evidence on how best to protect against these scams and begin to think about how a possible Trade Regulation Rule could help level the playing field between workers and those that employ them. Pursuing rule violations would also reopen an avenue to return stolen money to consumers – something we can no longer do under Section 13(b) until Congress steps in to fix it.

I want to thank everyone that helped bring this ANPR to the Commission today, in particular Melissa Dickey, Andrew Hudson and Kati Daffan in DMP. I'd also like to thank Elisa Jillson, the CTD for the Bureau, Kenny Wright in the Office of the General Counsel, Jason Adler and Guy Ward from the MWRO, and David Givens, Douglas Smith, and Yan Lau, in the Bureau of Economics for all their work.

[4] Press Release, Federal Trade Commission, *Amazon to Pay $61.7 Million to Settle FTC Charges it Withheld Some Customer Tips from Amazon Flex Drivers,* February 2, 2021, https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some