



Office of the Chair

**Remarks of Chair Lina M. Khan
Regarding the Advance Notice of Proposed Rulemaking on Earnings Claims
Commission File No. R111003**

February 17, 2022

False earnings claims routinely mislead Americans into investing thousands of dollars into opportunities that turn out to be a sham. Be it misleading claims about multilevel marketing schemes that lure in aspiring entrepreneurs, false marketing from for-profit schools targeted at hopeful students, or deceptive representations from “gig” platforms that draw workers, the cost of these false claims can be devastating, losing people money and time and saddling them with debt. The economic precarity spurred for many by the pandemic has further created an environment ripe for these tactics, where fraudsters can use false claims to prey on Americans seeking additional income or a new job.¹ These tactics can also harm law-abiding businesses, who may lose out to rivals that are winning customers through deceptive claims.

The Commission has well-established legal authority to challenge deceptive earnings claims under Section 5 of the FTC Act. Since 2000, the FTC has brought over 129 enforcement actions against a wide array of companies making deceptive earnings claims, collecting more than \$530 million for redress to Americans.²

The FTC’s enforcement work has highlighted the heavy costs of false earnings claims. One area where these deceptive earnings claims can hit especially hard is in the “gig” economy, where information and power asymmetries between platform companies and their workers can be especially ripe for abuse. For example, in 2017, the FTC found that Uber had been exaggerating the yearly and hourly income that drivers could earn.³ Uber ultimately agreed to pay \$20 million to resolve the charges—the entirety of which went towards providing refunds to harmed drivers.⁴ Last year, the agency also took action against Amazon for deceiving drivers who deliver packages through Amazon Flex.⁵ Despite claiming that drivers would “receive 100% of the tips” they earned, Amazon pocketed over \$60 million in tips that rightfully belonged

¹ *Stopping COVID-19 Fraud and Price Gouging, Hearing Before the Subcomm. On Consumer Prot., Product Safety, and Data Security of the S. Comm. on Com., Sci., and Transp., 117th Cong. (2022)* (statement of Samuel Levine, Director, Fed. Trade Comm’n. Bureau of Consumer Prot.), available at https://www.ftc.gov/system/files/documents/public_statements/1600629/p210100stoppingcovid19fraudpricegougingtestimony.pdf.

² Melissa Dickey, Attorney, Fed. Trade Comm’n, Presentation on Advanced Notice of Proposed Rulemaking Concerning Earnings Claims at FTC Open Commission Meeting (Feb. 17, 2021) (to be published at <https://www.ftc.gov/news-events/events-calendar/open-commission-meeting-february-17-2022>).

³ Press Release, FED. TRADE COMM’N., Uber Agrees to Pay \$20 Million to Settle FTC Charges That It Recruited Prospective Drivers with Exaggerated Earnings Claims (Jan. 19, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/uber-agrees-pay-20-million-settle-ftc-charges-it-recruited>.

⁴ *Id.*

⁵ Press Release, FED. TRADE COMM’N., Amazon To Pay \$61.7 Million to Settle FTC Charges It Withheld Some Customer Tips from Amazon Flex Drivers (Feb. 2, 2021), <https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some>.

to over 140,000 drivers. Amazon settled with the FTC, agreeing to turn over the full amount of the wrongly withheld tips for redress to the affected drivers.⁶

Evidence suggests that gig workers are disproportionately likely to be people of color, immigrants, or from other marginalized groups—communities already reeling from the effects of the deadly pandemic.⁷ I am also concerned by how false claims can aid firms in amassing market power and locking-in users, and how that market power, turn, may also enable deceptive claims.⁸

In the Commission’s prior actions, the money won back for harmed consumers generally relied on our 13(b) authority, a path that is no longer available to the FTC after the Supreme Court’s decision in *AMG*.⁹ In the wake of this loss, the Commission has been identifying additional ways it can use its broader toolkit and authorities to secure redress and penalties for lawbreakers. For example, in October 2021, the Commission put more than 1,100 businesses on notice, reminding them that making misleading moneymaking claims as established in case precedent could incur significant civil penalties.¹⁰

Codifying a rule like we propose today will enable us to return money to injured consumers in future cases like these. While a legislative fix to Section 13(b) remains a key priority for the agency, a potential rule against misleading earnings claims will enable us to return money to injured consumers when they have been harmed by small fraudsters and dominant firms alike. I strongly support staff’s recommendation to initiate this rulemaking. I look forward to comments and engagement from the public as we pursue this rulemaking effort.

⁶ *Id.*

⁷ See Risa Gelles-Watnick & Monica Anderson, *Racial and Ethnic Differences Stand Out In the U.S. Gig Workforce*, PEW RSCH. CTR. (Dec. 15, 2021), <https://www.pewresearch.org/fact-tank/2021/12/15/racial-and-ethnic-differences-stand-out-in-the-u-s-gig-workforce/>; Chris Benner, et al., *On-demand and On-the-edge: Ride-hailing and Delivery Workers in San Francisco*, UC SANTA CRUZ (May 5, 2020), https://transform.ucsc.edu/wp-content/uploads/2020/05/OnDemand-n-OntheEdge_MAY2020.pdf.

⁸ See *Deception As an Antitrust Violation*, 125 HARV. L. REV. 1235 (2012); Maurice E. Stucke, *When a Monopolist Deceives*, 76 ANTITRUST L.J. 823 (2010).

⁹ *AMG Capital Management, LLC v. FTC*, 141 S.Ct. 1341 (Apr. 2021).

¹⁰ Press Release, FED. TRADE COMM’N., *FTC Puts Businesses on Notice that False Money-Making Claims Could Lead to Big Penalties* (Oct. 26, 2021), <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead>.