

July 18, 2017

The Honorable Paul Ryan
Office of the Speaker
United States House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Office of the Democratic Leader
United States House of Representatives
H-204, The Capitol
Washington, DC 20515

RE: Consumer groups' opposition to Moolenaar amendment to the Financial Services appropriations bill

Dear Speaker Ryan and Leader Pelosi,

The undersigned consumer organizations wish to express our strong opposition to an amendment offered by Congressman Moolenaar that was included in the FY18 Financial Services and General Government Appropriations bill, which is currently pending before the House.ⁱ This amendment, based on the "Anti-Pyramid Scheme Promotion Act of 2016,"ⁱⁱ would rob the Federal Trade Commission ("FTC") of its ability to protect consumers from all but the most egregiously fraudulent pyramid schemes.

This amendment is problematic for a number of reasons:

- First, it eliminates the need for direct selling companies to establish their product with a retail customer base other than distributors themselves. It relieves distributors of any responsibility to sell to retail customers, other than those that they recruit to pursue the business opportunity, who in turn recruit others for the purpose. This would relieve direct selling businesses of the need to operate a viable retail business, as opposed to a fraudulent or deceptive recruitment scheme.ⁱⁱⁱ
- Second, it allows direct selling companies to profit off a churning base of recruits who are incentivized and often required to continually repurchase product directly from the company in order to qualify for rewards, rather than meeting legitimate retail demand for the product or service on offer.
- Third, it eliminates anti-pyramiding safeguards established in prior case law to ensure that the direct selling company successfully demonstrates its distributors' emphasis on legitimate retail customers.
- Finally, it gives fraudulent or deceptive MLMs permission to engage in purchase and recruiting behaviors that the courts have already identified as endemic to illegal pyramid schemes. Recent actions by the FTC and SEC demonstrate the ongoing risk.

Since 2013 the FTC used its enforcement authority to successfully prosecute MLM companies BurnLounge,^{iv} Fortune Hi-Tech Marketing,^v and Vemma,^{vi} as pyramid schemes. The FTC also imposed significant business changes and a seven-year reporting requirement on, Herbalife, one of the largest MLM companies operating in the US.^{vii} It is difficult to imagine any of these actions occurring under the terms of the Moolenaar amendment.

The ability of the FTC to prosecute fraudulent or deceptive pyramid schemes posing as legitimate multi-level marketing business opportunities is crucial to the Commission's ability to protect the ability of consumers to have trust in the direct selling industry.

Unfortunately, instead of empowering the FTC to protect consumers, the Moolenaar amendment would blur the line between legitimate business opportunities and illegal pyramid schemes. The courts have consistently stated that the critical difference between a legitimate MLM business and a pyramid scheme is that a MLM's revenues must come primarily from the sale of products and services to retail customers unaffiliated with the business opportunity. By contrast, a pyramid scheme generates its revenue primarily from the recruitment of new members into an endless chain business opportunity. This test has been upheld by over 40 years of case law. Unfortunately, the Moolenaar amendment would undermine this critical tenet and create numerous carve-outs and exemptions that would prevent the FTC from prosecuting all but the most blatantly fraudulent pyramid schemes.

Given these serious concerns, the undersigned organizations urge you to support the removal of this language from the appropriations bill when it is considered on the House floor.

Sincerely,

Consumer Action

Consumers Union

Consumer Federation of America

Consumer Watchdog

League of United Latin American Citizens

National Association of Consumer Advocates

National Consumer Law Center (on behalf of its low income clients)

National Consumers League

Public Citizen

U.S. PIRG

William W. Keep, PhD, The College of New Jersey School of Business

Peter J. Vander Nat, PhD, Senior Economist (retired), Federal Trade Commission

cc: Members of the United States House of Representatives

ⁱ House of Representatives Committee on Appropriations. "Appropriations Committee Approves Fiscal Year 2018 Financial Services Bill," press release. July 13, 2017. Online:

<https://appropriations.house.gov/news/documentsingle.aspx?DocumentID=395001>

ⁱⁱ Online: <https://www.congress.gov/bill/114th-congress/house-bill/5230?q=%7B%22search%22%3A%5B%22hr+5230%22%5D%7D&r=1>

ⁱⁱⁱ Vander Nat, Peter. "Why this anti-pyramid scheme bill is outrageously wrong for consumers," TruthinAdvertising.com. May 23, 2016. Online: <https://www.truthinadvertising.org/why-hr-5230-is-wrong/>

^{iv} Federal Trade Commission. "FTC returns almost \$1.9 million to consumers in BurnLounge pyramid scheme," press release. June 15, 2015. Online: <https://www.ftc.gov/news-events/press-releases/2015/06/ftc-returnsalmost-19-million-consumers-burnlounge-pyramid-scheme>

^v Federal Trade Commission. "FTC Settlement Bans Pyramid Scheme Operators From Multi-LevelMarketing," press release. May 13, 2014. Online: <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-settlement-bans-pyramid-schemeoperators-multi-level>

^{vi} Federal Trade Commission. "FTC acts to halt Vemma as alleged pyramid scheme," press release. August 26, 2015. Online: <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-acts-halt-vemmas-allegedpyramid-scheme>

^{vii} Federal Trade Commission. "Herbalife Will Restructure Its Multi-level Marketing Operations and Pay \$200 Million for Consumer Redress to Settle FTC Charges," press release. July 15, 2016. Online: <https://www.ftc.gov/news-events/press-releases/2016/07/herbalife-will-restructure-its-multi-level-marketing-operations>