

MEMORANDUM OF REVISIONS TO DSSRC GUIDANCE ON EARNINGS CLAIM GUIDANCE
FOR THE DIRECT SELLING INDUSTRY

| <u>Page # and Section #</u> | <u>Description of Change</u> |
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| Page 1 -Purpose Section Paragraph 2 | “DSSRC intended to periodically update this guidance to reinforce the fundamental principles regarding the dissemination of earnings claims.” Language added to specify that document is a fluid, “evergreen” document that will be periodically updated |
| Page 1 -Purpose Section Paragraph 3 | Addition of 2018 FTC Business Guidance Concerning Multi-Level Marketing as a source of reference for the Guidance |
| Page 1 -Purpose Section Paragraph 3 | Clarification that Guidance Principles apply to both direct selling companies and their independent salesforce members |
| Page 1 -Purpose Section Paragraph 4 | Addition of a new paragraph “While DSSRC has drawn upon the aforementioned sources in creating this guidance, this document is intended only to provide more detail on how DSSRC reviews and evaluates earnings claims and should not be construed as providing any guidance or advice as to how state or federal regulators may interpret earnings claims and/or applicable law.” . Reinforcing that document is intended solely to provide detail on DSSRC reviews and evaluates earnings claims and the adhere to Guidance |
| Page 2 – Introductory language of Section #2 | Clarification that, for purposes of a DSSRC inquiry, an earnings claim can be communicated by either the direct selling company itself or by its independent salesforce members |
| Page 2 – Section #2 new subsection (G) | Inclusion of language conveying that salesforce and consumer testimonials are considered earnings claims that must be supported “as if” the statement were communicated by the direct selling company itself |
| Page 2 Section 3 | Added the term “in a direct selling business opportunity” in the second sentence and removed the term “mandatory” to address de facto costs that may be considered by DSSRC |
| Page 2 – Section 5 | Remove the term “are statements that” from the first section describing lavish lifestyle claims, as lavish lifestyle claims are often visual depictions |
| Page 2 – Section 5 | Remove subsection (A) which had included examples of specific terms that didn’t pertain to lavish lifestyle depictions. Instead, the section now includes a second paragraph stating that “the following are examples of lavish lifestyle depictions when made to a general audience of prospective and current salesforce members: Descriptions of or images of opulent mansions, private helicopters, private jets, yachts, luxury automobiles, or any substantially similar descriptions or images.” Note that the word “luxury” has been substituted for the previous term “exotic.” |
| Pages 2 and 3– Section 6 | Amended list of prohibited terms to include: “unlimited income,” “full-time income,” “replacement income,” “career-level income”. We have also added several terms to the list of terms that can carry a particularly high risk of being misleading to consumers in an unqualified context – “financial flexibility,” and “be your own boss. We have also added langue preceding the terms which notes that “Such words and phrases include but are not limited to claims such as...” |
| Page 3 Section 7 | Removed the term “disseminated by salesforce members” to make clear that this section is not limited to salesforce members but also includes claims from the direct selling company itself. Language has also been included to note that “unqualified earnings claims” should be supported by substantiation demonstrating that the earnings communicated in the claim can be generally expected by a typical salesforce member in the depicted circumstances.” |

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| Page 3, Section 9 | Inclusion of the prepositional phrase – “ For purposes of a DSSRC inquiry... ” |
| Page 3, Section 9 | Include “hashtags” and “emojis” as examples of words and images that will contribute to net impression. |
| Page 3, Section 9 | Convert last part of the original section (i.e., that references top 1% of salesforce members) into stand-alone subsection (A). Create subsection (B) to include language that direct sellers should take the necessary precautions to assure that the earnings representation will not be repurposed to a broader audience that could not generally expect to receive the depicted results. (this pertains to YouTube videos, for example) that aren’t disabled but simply designated as “Private”). We have created a mock example for this. |
| Page 4 section 14 | Made several descriptive changes – i.e., adding the word disclosure so the term now reads “hyperlink disclosure”; “make the hyperlink obvious” (rather than “make the link obvious”) |
| Page 5 section 14 (E) | Modified language to state: “have the hyperlink lead directly to the disclosure the landing page. ” |

MOCK EXAMPLES

- We made several changes to the mock examples and the below highlighted sections indicate the addition of additional, modified language.
- We also made a global change of the amount that was used to represent the typical annual income from \$691 to \$239.
- All of the disclosures are in a larger font size than in the original DSSRC Earnings Claims Guidance so that they are more prominent and conspicuous

Example #1

- Changed image to remove images and money and language in the body of the post stating “or more.”
- DSSRC text - The above post is **intended only to** illustrate that **a claim stating** a range of potential earnings from a direct selling business opportunity will be considered an earnings claim.
- **This is an improper post in the unqualified context presented.** DSSRC would expect the direct selling company to possess evidence showing that the *maximum amount* that is referenced in the post (i.e., \$200 per month or \$2,400 per year) is income that could be generally expected by a salesforce member. **If the maximum amount of income referenced in the post is an amount that would not be generally expected by a typical company salesforce member, the direct selling company should include a clear and conspicuous disclosure of income that can be generally expected for typical salesforce members in the depicted circumstance.**

Example #2.1

- New image and modified language accompanying the post which references a lesser income amount
- DSSRC text - **This social media post is intended to illustrate that offering a scenario from which a current or prospective salesforce member could reasonably infer that he/she will earn a certain level or range of income is an earnings claim.**

- This is an improper post in the unqualified context presented. The unqualified inference here is that the typical salesforce member can generally expect to earn \$200 per month. The direct selling company should also be prepared to support the reference to the salesforce members “proven strategy.”

If the maximum amount of income referenced in the post is an amount that would not be generally expected by a typical company salesforce member, the direct selling company should include a clear and conspicuous disclosure of income that can be generally expected for typical salesforce members in the depicted circumstance.

Example #2.2

- Modified language above which reference a lower number of people recruited (10 instead of 20) and less monthly income (i.e., \$500 a month).
- DSSRC text - This post presents a hypothetical earnings scenario that will be interpreted by DSSRC as an earnings claim implying that potential recruits can earn \$500 per month or \$6,000 per year. This is an improper post in the unqualified context presented.

DSSRC would expect that the direct selling company would possess substantiation that the depicted earnings would be generally expected by a salesforce member.

If the maximum amount of income referenced in the post is an amount that would not be generally expected by a typical company salesforce member, the direct selling company should include a clear and conspicuous disclosure of income that can be generally expected for typical salesforce members in the depicted circumstance. Regardless of the appropriateness of a generally expected earnings disclosure, because earnings of \$6,000 per year would appear to significantly deviate from what would be typically expected by the typical direct selling company salesforce members, the direct selling company should expect a post with such stated earnings to be carefully scrutinized by regulatory agencies. In addition, posts focusing exclusively on recruiting compensation and not selling product are strongly discouraged.

Example #3

- Changed image and changed language in post to remove quantified income claim.
- This social media post is intended to illustrate a lavish-lifestyle depiction. In this context, this is an example of a lavish-lifestyle depiction that should be avoided by direct selling companies and their salesforce members.

Example #4

- Changed language in post to lower income amount of income in the claim and removed text stating “just sitting on my couch”
- DSSRC text - This social media post is intended to demonstrate the omission of material costs that should be included in a representation of direct selling income.

If the representative depicted above incurred \$100 a month in costs associated in the business opportunity, the claim above should instead state that the representative in fact earned \$400 in that month.

In the above context, if the WeSell Consultant netted \$500 income, this would be an example of a properly communicated social media post.

- This text is a complete substitute from the original language (i.e., “If the representative depicted above incurred \$500 a month in costs associated with purchasing product for resale (as opposed to product purchased solely for personal consumption), the claim above should instead state that the representative in fact earned \$600 a month. Similarly, a disclosure of generally expected income should account for any significant costs associated with the product or service that salesforce members purchase for resale along with any material or necessary costs of participating in the direct selling opportunity.”).

Example #5

- Intended to demonstrate lavish-lifestyle claim and inappropriate use of hashtags and emojis .

Example #6 (new)

- Changed image to make it less provocative

Example #7 (new)

- Intended to demonstrate how an appropriate social media post can turn problematic with the addition of hashtags

Example #8 (new)

- This post is intended to show that if an earnings claim is communicated to a limited, targeted audience, a direct selling company and/or its salesforce members should take the necessary precautions to assure that the earnings representation will not be repurposed to a broader audience that could not generally expect to receive the depicted results (e.g., making a video private rather than completely disabling it).

Example #9

- Lowered the amount of income referenced in claim from \$500,000 to \$100,000.
- DSSRC Text – Given that the typical WeSell distributor earns \$239 per month, the above claim would be considered extraordinary and incapable of being qualified with an appropriate disclosure. DSSRC notes that there is no specific amount of income that will be considered “extraordinary”; all earnings claims will be evaluated on a case-by-case basis.

This post should in no way be construed as conveying that any amount earned from a direct selling business opportunity less than \$100,000 would be deemed appropriate. DSSRC also notes that a claim that “The earning potential is truly limitless” is a prohibited earnings claim.

Example 11.1 through Example 13.2

- Lowered the amount of income referenced in posts from \$986 in one week to \$242 in one month to reflect a less atypical scenario and moved triggering claim below the phrase “Join the Team to illustrate closer proximity of the disclosure.

Example #14.1 and 14.2 (new)

- This post is intended to show that a direct selling testimonial claim can be considered an earnings claim and that while hyperlink disclosures may be acceptable in some circumstances, disclosures necessary to prevent deception should not be hidden behind a hyperlink.