



National Programs

Direct Selling
Self-Regulatory Council

Guidance on Income Disclosure Statements *for the Direct Selling Industry*

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Background

The Direct Selling Self-Regulatory Council (DSSRC) was created in January 2019 to address earnings claims (including lifestyle representations) and product claims communicated by direct selling companies and their salesforce members to ensure a high level of accuracy and adequate substantiation of those claims, thereby enhancing the confidence of consumers in direct selling. DSSRC is supported by the Direct Selling Association (DSA) and administered by BBB National Programs to provide an independent mechanism for the monitoring of such claims by all members of the direct selling channel.

Purpose

As regulatory agencies continue to scrutinize earnings claims, it is incumbent on direct selling companies and their salesforce members to provide truthful and non-misleading information regarding the level of income that can be generally expected by salesforce members who engage in the direct selling business opportunity.

Although not required by law, an income disclosure statement (IDS) is a document that many direct selling companies publish to disclose the amount of income that direct selling salesforce members can generally expect to earn. Preparing an IDS, however, can present significant risks for a direct selling company through either the inclusion of ambiguous earnings information or the omission of material information.

One of DSSRC's objectives is to provide educational support and guidance to the direct selling channel and to reinforce the fundamental principles of truthful and accurate claim dissemination. This guidance is based on the tenets of advertising law that have been articulated in the Federal Trade Commission's (FTC) .com Disclosures Guide, the 2018 FTC Business Guidance Concerning Multi-Level Marketing, the FTC Guides Concerning Use of Endorsements and Testimonials in Advertising, DSSRC's Guidance on Earnings Claims for the Direct Selling Industry, and Section A(8) of the DSA Code of Ethics. DSSRC anticipates updating this guidance in response to any new government rules or guidance related to earnings representations. The following principles apply to the use of an IDS by direct selling companies and their independent salesforce members and are intended to provide direction regarding the type of information that should be considered in an IDS.

While DSSRC has drawn upon the aforementioned sources in creating this guidance, this document is intended only to provide direct selling companies with a broad overview of items to consider when preparing an IDS. This Guidance is not advice on legal compliance obligations under state and federal law or guidance regarding how state or federal regulators may interpret earnings claims or applicable law. Direct selling companies should always consult their legal counsel for compliance with federal and state laws and regulations that govern the communication of earnings claims, including the dissemination of an IDS.

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Defining an IDS

An IDS is a disclosure document published by many direct selling companies that is intended to serve as an accurate and reliable depiction of the income that is earned by the company's salesforce members over a given time period. For most direct selling companies, an IDS is the company's most prominent – and public – presentation of the earnings opportunity available to prospective and current salesforce members.

An IDS is also often used to complement earnings claims disseminated by a direct selling company and its salesforce members. An IDS, however, cannot be used as a stand-alone disclosure to qualify an earnings claim, but rather should be used to complement an earnings disclosure.

There is no one way that an IDS must be presented. However, it is imperative that direct selling companies recognize that they must have a reasonable basis for the claims they communicate about the business opportunity. A “reasonable basis” means objective evidence that supports the claim. The FTC's 2018 Business Guidance Concerning Multi-Level Marketing states that a direct selling company's “representations about its business opportunity, including earnings claims, violate Section 5 of the FTC Act if they are false, misleading, or unsubstantiated and material to consumers.”

IDS for Transparency

Many direct selling companies choose to publish an IDS to be transparent about the amount of income that direct selling salesforce members can generally expect to earn.

Companies should be candid about what the income opportunity offers. For a large majority of direct selling companies, most salesforce members do not earn significant income. Thus, direct selling companies may wish to consider including clear and conspicuous language in an IDS such as: “This opportunity provides our salesforce members with an opportunity to earn modest or supplemental income by selling products they are passionate about, while enjoying flexibility, mentoring, and social interaction. The Company and its independent salesforce members do not guarantee any level of income. Financial success in any direct selling endeavor requires dedication and diligent effort.”

Consumers should be provided with the ability to make an informed decision before they choose to join a direct selling company. As such, direct selling companies that do utilize an IDS should consider amending the IDS on an annual basis to educate and protect consumers and to provide accurate and updated earnings information about the business opportunity.

Presentation of IDS Data in a Clear, Digestible Format

An IDS can often be complex and difficult to understand. Therefore, direct selling companies should present earnings information in an easy, digestible form that is understandable to a diverse group of individuals as it is important for salesforce members and potential recruits to have a clear and accurate understanding of the income potential associated with the business opportunity. An IDS should be presented in a format that is easy to navigate and should use plain language to help the reader find the information, understand the information, and make an informed decision regarding the direct selling business opportunity.

An IDS should use clear and concise language and explanations of key terms and concepts (e.g., how the company defines who is an active salesforce member or a preferred customer). Companies should refrain from using legal jargon or ambiguous terminology as this reduces the likelihood that consumers will understand the income data. Rather, companies should use understandable language that presents information in the least complex way possible using examples and clear calculations.

Moreover, the presentation of material or qualifying information should be placed where

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prospective salesforce members are likely to look, and such information should not be buried in a dense block of text that will not be noticeable to salesforce members or require the reader to scroll down or dig through the document. Companies should refrain from using hidden elements in an IDS such as fine print to present material or qualifying information.

By prominently presenting income disclosure information in an easy, digestible form, direct selling companies can help to promote transparency and build trust with their stakeholders. This can ultimately lead to a more engaged and successful network of salesforce members, as well as a stronger and more sustainable business model for the company.

Issues for Consideration When Preparing an IDS

Is an IDS considered advertising?

According to BBB National Programs' National Advertising Division, an advertisement is defined as "Any paid commercial message, in any medium (including labeling), if it has the purpose of inducing a sale or other commercial transaction or persuading the audience of the value or usefulness of a company, product or service." As such, DSSRC considers an IDS to be advertising. Accordingly, for purposes of industry self-regulation, a direct selling company is responsible for the truth and accuracy of any express or implied messages that the IDS may convey to reasonable consumers.

Because an IDS discloses information about the income that can be generally expected by salesforce members, it typically includes data about the range of income earned by distributors at various levels within the company. Accordingly, it is reasonable to expect that prospective salesforce members will rely on such information when considering the company's business opportunity.

Generally, representations of income in an IDS are considered earnings claims. Earnings claims can be expressed in a variety of ways, such as gross revenue, net income, or profits. It is important to reinforce that any representations regarding income earned by a salesforce member should be supported by internal evidence or data reported to the company by its salesforce members.

Most importantly, an IDS should accurately depict earnings that can generally be expected by salesforce members and should not be a vehicle for inaccurate claims.

What is the amount of income that the typical salesforce member can generally expect to earn?

One of the primary objectives of an IDS is to provide transparency and information to potential salesforce members about the amount of money they can reasonably expect to earn from the company's business opportunity. While the amount of income that a salesforce member can expect to earn from a direct selling business opportunity can vary depending on a number of factors, including the company's compensation plan, the products or services being sold, the salesperson's level of skill and effort, and the market demand for the product or service, in most cases the typical salesforce member should not expect to earn more than modest and supplemental income.

The Typical Salesforce Member

Determining the "typical salesforce member" for purposes of an IDS can be a challenging endeavor. Direct selling companies often have a salesforce made up of people from diverse geographical locations, age groups, and selling experience with different motivations for participating in the business opportunity, and salesforce members will have achieved various levels of success.

Often an IDS will present a range of generally expected earnings based upon data aggregated from all salesforce members affiliated with the direct selling company and/or at various ranks

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in the direct selling company hierarchy.

However, when identifying the “typical” salesforce member for either group, several critical factors must be considered.

The Target Audience

Generally, an IDS is intended to help potential salesforce members make informed decisions about whether to engage in direct selling. An IDS can also help current salesforce members assess the earnings opportunity that can be expected as they rise through various ranks within the company.

Consistent with the fact that most salesforce members earn modest or supplemental income, in accurately depicting the earnings that a typical salesforce member can earn, direct selling companies should give careful consideration as to whether or not to disclose income earned by their top salesforce members. The top salesforce members at many direct selling companies often earn income that is so significant that it is, in most cases, not representative of what can be generally expected by typical salesforce members and can, thus, skew earnings data. Therefore, if a direct selling company chooses to disclose the income earned from its top salesforce members, it should also disclose separately what most salesforce members typically earn. The company should take additional steps to distinguish income earned by its top salesforce members from typical salesforce earnings, such as by clearly separating the two, explaining the length of time it took the company’s highest-earning salesforce members (e.g., top 2% of salesforce members) to achieve that level, and providing the percentage of sales force members who achieve that goal explaining that doing so takes hard work, skill and dedication.

Additionally, given that many direct selling companies have a global footprint, it would be prudent for these organizations to furnish an IDS in the languages used where its salesforce members are located.

Salesforce Members Who Have Earned No Income

It is important for incoming direct selling salesforce members to know how many active salesforce members have earned no income in the direct selling endeavor because it gives them a better understanding of the reality of the business. By disclosing in an IDS the number or percentage of salesforce members who have earned no money during the given time period, incoming salesforce members can better recognize the challenges they may face with the business opportunity. If a company simply highlights the success stories of its top earners, it will create a false impression that the business opportunity is easy and lucrative for many or most salesforce members. This can lead to unrealistic expectations and disappointment for new recruits who may end up investing time and money into a business opportunity from which they have little chance of profiting.

Providing information regarding salesforce members who have not earned income during a given period allows potential recruits to make an informed decision about whether the business is right for them and whether they have the skills and resources to succeed.

An IDS, like any advertisement, can be misleading if it fails to disclose material, relevant information. Information is considered “material” if a consumer would rely on it when deciding whether to make a purchase or pursue an opportunity. For those individuals contemplating participation in a direct selling business opportunity, the number of salesforce members who have earned no money is material information and by providing such information, direct selling companies can help to build trust and credibility with regulators, consumers, and the public, as it shows that the company is committed to ethical business practices and is willing to be transparent about the potential outcomes of its business model.

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Salesforce Members Who Have Joined or Left the Company

An IDS should provide an accurate reflection of the number of salesforce members who were active in the given year. DSSRC recognizes that including the earnings of salesforce members who did not engage in direct selling for a full year when preparing an income disclosure can be challenging. Nevertheless, for purposes of full transparency and informed decision-making, it is important for direct selling companies to account for the income of those salesforce members who did not complete a full year with the company.

For example, including the earnings of salesforce members who did not work a full year can skew the annual earnings data and make it difficult to provide an accurate representation of the earnings potential for a typical distributor. Salesforce members who only worked part of the year most likely earned less than those who worked the full year, and this could distort the earnings figures. It is for this reason that many direct selling companies provide monthly income data rather than annual data.

In addition, it can be difficult for a direct selling company to ascertain the reasons why a distributor didn't work a full year. They may have left the company because they were not successful and did not earn a significant income, for personal reasons unrelated to their earnings, because they obtained full-time employment elsewhere, or because they were engaged only in seasonal direct selling.

Regardless, the number of salesforce members who left the company provides insight into attrition rates at a direct selling company. High attrition rates may indicate potential issues within the company, such as dissatisfaction among salesforce members or problems with the business model.

Income disclosure statements are intended to provide a realistic understanding of the income potential in a direct selling business opportunity. The inclusion of information regarding the number of salesforce members who have joined or left the company in a given year can provide a clearer picture of the generally expected income levels and success rates within the company. This helps potential salesforce members set realistic expectations about their potential earnings and decide if the opportunity is appropriate for them.

Disclosure of Material Expenses

The FTC has stated that a disclosure of material expenses should be provided when making claims about the amount of income that can generally be expected by the typical direct selling program participant. As such, companies should make a concerted effort to include some indication of the amount of expenses that will be incurred in participating in the direct selling business opportunity because the out-of-pocket costs incurred by salesforce members can impact their net earnings.

DSSRC recognizes that determining the material expenses incurred by a direct selling salesforce member can be a complex and challenging process, requiring careful record-keeping and analysis of data. As independent contractors, salesforce members are responsible for covering many of their own expenses, including materials, training, and other costs associated with their business. Moreover, because salesforce members are not employees, direct selling companies may not have access to information about the expenses incurred by their salesforce members and, as such, it can be difficult for the company to track and calculate their expenses accurately.

In addition, expenses incurred by direct selling salesforce members can vary widely depending on the individual's business practices. For example, one salesperson may invest in marketing materials, while another may focus more on training and development.

These differences make it challenging to standardize expenses across the entire salesforce. However, without this information, salesforce members may not fully understand the costs involved in maintaining their status or eligibility for bonuses and may not be able to accurately

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assess the profitability of their sales activities.

Despite these challenges, DSSRC urges direct selling companies to provide an estimate of the mandatory costs of the direct selling product or service that participants purchase for resale, as well as other mandatory or de facto mandatory costs of participation in a direct selling business opportunity, such as starter kits, registration, travel, and accommodation costs incurred when attending highly recommended or required company events. Other non-incident expenses should be considered depending upon the significance of those costs and should be evaluated on a case-by-case basis. If the company is unable to provide the precise costs, then an estimate or other disclosure may be appropriate if it provides sufficient information to allow participants to estimate their own costs. Any statements regarding material expenses should be clear and conspicuous and placed in close proximity to the stated earnings.

Direct selling companies should also recognize the importance of disclosing an estimation of expenses for purposes of regulatory compliance. For example, if there is a mandatory enrollment or starter kit that must be purchased, this information should be disclosed. Similarly, an IDS should disclose if there are mandatory renewal or registration costs. Moreover, when companies recommend or promote certain events, it is important that salesforce members have complete information regarding the cost of the event, and such cost should be clearly and conspicuously disclosed, particularly when that information is known to the company.

Disclosing material expenses is important for maintaining transparency between direct selling companies and their salesforce members as well for regulators and other industry stakeholders. Providing this information also helps ensure compliance with legal and regulatory requirements.

Disclosure of Time to Reach a Particular Level

The duration of time required to reach a particular level at a direct selling company can be an important factor in a prospective salesforce member's decision-making process. It is essential for direct selling companies to foster transparency and open communication with the current and prospective salesforce members. Accordingly, DSSRC encourages direct selling companies to disclose the average or typical duration of time required for a salesforce member to progress and achieve a specific level within the organization. Providing the amount of time it takes a salesforce member to achieve a specific level with the organization is a valuable tool for allowing individuals to assess the feasibility and potential income associated with reaching a specific level within a certain timeframe. Providing such information also helps prevent unrealistic or misguided expectations about the speed of progression within the organization and enables individuals interested in participating in a direct selling endeavor to evaluate whether the opportunity aligns with their personal goals, lifestyle, and time availability.

Average Income vs. Median Income

One of the key metrics included in an IDS is the average and/or median earnings of salesforce members, but there are reasons why median earnings may be a better indicator of the earnings potential of salesforce members. The average (or mean) is calculated by adding up all the values and dividing by the total number of values. The average can thus be distorted by a few high earners, making it an inaccurate representation of the income that a typical salesforce member can expect to earn. For most direct selling companies, there are typically a small number of salesforce members who earn a significant amount of income. These high earners can inflate the average earnings, making it appear as if salesforce members, overall, are earning more than they are and, thus, may provide unrealistic expectations for prospective salesforce members.

Although many direct selling companies use a mean average to report the monthly or annual

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income from salesforce members, DSSRC recommends that direct selling companies provide median income data, as this “middle value” presents a more accurate and realistic indication of the income that can be generally expected by salesforce members. More specifically, the median is the middle value in a distribution of values, which means that half of the people earned more than the median and half earned less. DSSRC recommends that companies use and define median income in an IDS using plain language that is easy to understand by an ordinary consumer (e.g., “The median income for all company salesforce members in 2022 was \$250, meaning that half of the company’s salesforce members earned more than \$250 and half earned less than \$250...”).

Furthermore, companies may wish to consider providing explanations regarding how the data in the IDS was calculated, which expenses and deductions were included in the calculations, what percentage of salesforce members are represented in the disclosure, and, as previously noted, how long it took a typical salesforce member to reach a specific company rank or level. This transparency can help salesforce members and potential recruits make informed decisions about their participation in the company’s business opportunity.

Participant Segmentation

Many direct selling companies are partially comprised of individuals who register for the sole purpose of receiving savings on the products offered by the company. These individuals have little to no interest in participating in the company’s business opportunity and are often referred to as “preferred customers” and are not likely to earn any income. For years, direct selling companies have been confronted with the challenge of including these preferred customers in the company’s IDS, which minimizes the projected income across all ranks within the company.

To accurately depict the generally expected income of those individuals who are genuinely interested in participating in the company’s business opportunity, some direct selling companies have attempted to segment their “preferred customers” from those individuals who are interested in attempting to build a business. These companies report the income of only those salesforce members who pursued the business opportunity to provide a clearer picture of the experience of the typical salesforce member who is interested in the business opportunity, and not simply the opportunity to purchase the product wholesale or at a discount.

If the only significant difference between preferred customers and business opportunity participants is the chance to participate in the compensation program, most individuals will likely choose to become a business opportunity participant because it allows them the option to build a business. Accordingly, it is important for a company to consider providing adequate incentives to steer persons who enjoy the products but are not interested in building a business to enroll as preferred customers so that they appropriately classify themselves upon registration.

Such incentives may include lowering the enrollment and renewal fees for preferred customers, offering larger discounts to preferred customers, and/or sending periodic gifts or product samples to preferred customers that are not available to salesforce members. Making product auto-shipments available exclusively to preferred customers is another incentive that many companies can offer.

Summary

Direct selling companies should present an IDS in a simplified accessible manner that can be easily understood by a wide range of individuals. It is vital that both salesforce members and prospective recruits understand the income expectations associated with the business opportunity accurately, with an understanding of the material expenses that might be incurred

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in reaching a level of income as well as those salesforce members who did not earn income. Consequently, an IDS should be presented in a user-friendly format, using simple language to assist readers in locating and comprehending material information, allowing them to make well-informed decisions regarding the direct selling opportunity.