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Anticompetitive Regulations Task Force
U.S. Department of Justice, Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Re: Public Inquiries Regarding Anticompetitive Regulations
(Docket Nos. ATR-2025-0001 ("DOJ RFI"), FTC-2025-0028-0001 ("FTC RFI"))

The International Franchise Association ("IFA") appreciates the opportunity to recommend to the Federal Trade Commission (the "Commission") and the Department of Justice's Anticompetitive Regulations Task Force (the "DOJ") regulations and laws that have anticompetitive effects, "place an unnecessary burden on the American people," and "impose undue burden on small businesses and impede private enterprise and entrepreneurship," (the "IFA Comment") consistent with President Trump's Executive Order 14192 and Executive Order 14219. IFA and its members believe franchising is extraordinarily impacted by the laws and regulations described in this IFA Comment given the nature of the franchise model – a network of independent small business owners operating under a common brand according to established operational standards.

I. THE VALUE OF FRANCHISING

IFA is the largest organization representing franchising. Its members include franchise companies in over 300 different industries, individual franchisees, and companies that support those franchise companies in marketing, law, technology, human resources, business development,

and operations. At a time of economic instability in the U.S., franchising serves as engine for economic growth, contributing an estimated $896.9 billion in economic output and providing an estimated 8.8 million direct jobs in 2024.[1] And, while the direct impact of franchising on the U.S. economy is impressive, franchising also has a significant indirect impact on the economy, including the jobs supported in manufacturing, warehousing, distribution, and transportation, which are necessary to serve franchisees and their customers. Franchisees, like other small business operators, are required to navigate a myriad of burdensome laws and regulations which make it difficult, if not impossible, to operate a profitable business. There is a critical need to remove regulatory roadblocks to allow the franchise model and the more than 800,000 franchised businesses operating in the U.S. to continue to thrive.

When considering the significant impact of franchised businesses on the U.S. economy, it is imperative to recognize that franchising is small. Approximately half of the U.S. franchised businesses are operated by franchisees owning a single unit.[2] These small business owners hire local workers, serve local consumers, support local families and invest in local communities. Often, these small businesses are the first casualties of broad sweeping regulations that fail to appropriately consider the disparate impact of compliance costs on small businesses – those casualties have real consequences to local communities across America, including lost job opportunities, less competition resulting in higher prices and fewer consumer choices, and fewer local businesses investing back into the community. Increasingly, franchised businesses are not merely an inadvertent victim of broad sweeping regulation but an intentional target, stemming

[1] Ashley Rogers, Jin Qi & Khadija Cochinwala, 2025FRANCHISING ECONOMIC OUTLOOK 1-2, (INT'L FRANCHISE ASS'N 2025), https://www.franchise.org/franchising-economic-outlook/.

[2] *See 2023 Mega 99 Rankings*, MULTI-UNIT FRANCHISEE MAGAZINE ISSUE 1 (2023), https://www.franchising.com/articles/2023_mega_99_rankings.html [hereinafter, the 2023 MEGA 99 RANKINGS].

from the mischaracterization of franchise systems as "big business" rather than a network of local small business owners.

This IFA Comment identifies existing regulations and laws that threaten the viability of franchised businesses as well as categories of regulations and laws that are discriminatory toward franchising—and, in turn, hurt American consumers, workers and small businesses.

II. FEDERAL REGULATIONS

A. Federal Trade Commission Rules and Sub-Regulatory Guidance

In recent years, the Commission has engaged in rulemaking that applies a one-size-fits-all rule to all companies—from small businesses to large corporations—operating across a myriad of industries. At the same time, the Commission has stopped short of pre-empting state laws, resulting in substantial compliance burdens as affected companies navigate the requirements of state laws, the Commission's rules, and the intersection of those state laws and Commission rules. While large corporations have the resources to absorb the costs of compliance, small businesses are not able to meet the financial burden.

Franchised businesses are uniquely impacted by one-size-fits-all rulemaking: they are at the same time independently owned and operated local businesses and a unit that is part of a broader network subject to uniform standards. Compliance with applicable law in the jurisdiction in which a franchised business operates typically is the responsibility of the franchisee—the independent owner of the franchised business. But the franchisee—together with all other franchisees operating in the franchise system—must adhere to standards established for brand protection and delivery of a consistent consumer experience across all units operating under the brand.

The value of the franchise business model that allows small business owners to be in business for themselves but not by themselves—i.e., to have the autonomy to control their day-to-day operations while leveraging the benefits of an established brand—is borne out year over year in the economic performance of franchised businesses.[3] But, the structure of the franchise model means that assessing compliance obligations and implementing compliance requirements under Commission rules—like the Negative Option Rule—is costly and slow, as further described in IFA's comment submitted in response to the Commission's proposed Negative Option Rule (Docket No. FTC-2023-0033-0856) and amicus brief filed in support of the challenge to the Negative Option Rule currently pending in the Eighth Circuit. IFA member brands operating membership-based models—including fitness centers, gyms, chiropractic and other preventative healthcare facilities, massage studios and spas, personal wellness centers offering waxing, tanning and other beauty services, after school activities like trampoline and indoor adventure parks, martial arts studios, music lessons, performing arts studios and supplemental education services, and residential services like insect and pest treatments, housekeeping, and routine maintenance—use third party membership management platforms designated by the franchisor to administer membership contracts systemwide to ensure a consistent consumer experience. Franchisees are responsible for managing compliance with state laws, including the existing landscape of state negative option laws and laws specifically applicable to health club contracts. The Negative Option Rule does not preempt those existing state laws. Instead, franchisees must assess whether compliance with the state laws applicable where they operate their small businesses also satisfy their obligations under the Negative Option Rule, and where compliance is not satisfied, update

[3] Ashley Rogers, Jin Qi & Khadija Cochinwala, 2025FRANCHISING ECONOMIC OUTLOOK 1-2, (INT'L FRANCHISE ASS'N 2025), https://www.franchise.org/franchising-economic-outlook/.

the terms of the membership contract to comply with both state laws and the Negative Option Rule, which necessitates modifications to the third party membership management platform designated by the franchisor. In short, while compliance with both state laws and the Negative Option Rule is alone complex, the added complexity (and associated time and cost) of compliance for franchised businesses sets those small businesses at a competitive disadvantage to their non-franchised counterparts. IFA requests that the Negative Option Rule be repealed to allow the Commission to a conduct Small Business Regulatory Impact Analysis so that the Commission's rulemaking may be informed by data of the actual costs incurred by small business owners—particularly those in franchise systems operating in membership-based models.

Like the Commission's recent rulemakings, the Commission's issuance of one-size-fits-all sub-regulatory guidance that fails to consider the differences between the hundreds of industries in which franchise businesses operate has anti-competitive effects on the very businesses the Commission seeks to protect. In 2023, and again in 2024, the Commission issued a Request for Information on Provisions of Franchise Agreements and Franchisor Business Practices (FTC Docket No.-2023-0026) (the "Franchise RFI"). As IFA explained in both its original response (Docket No. FTC-2023-0026-2152) and second response (Docket No. FTC-2023-0026-2777) (collectively, the "IFA Franchise RFI Comments"), a one-size-fits-all federal regulation of the franchise relationship, the breadth of which spans the scope of the Franchise RFI, would serve not to protect franchisees but rather reduce the franchised businesses operating within their respective industries. A broad sweeping federal franchise relationship rule would subject all franchised businesses to the same restrictive regulatory regime—whether a restaurant, hotel, pet care facility, fitness center, home healthcare service, residential painting service, childcare, or the hundreds of

other industries in which franchisees operate. Regulatory restrictions that increase the time for a franchise system to evolve in response to changing market conditions or consumer preferences places all franchised businesses operating within that franchise system at a competitive disadvantage to their non-franchised counterparts that are free from such regulatory restrictions and can pivot immediately. In today's environment of real-time global dissemination of information and increasing integration of technology in all aspects of daily life, franchised systems must be able to adapt, albeit within the boundaries of the franchise agreement—the private contract that governs the franchisor-franchisee relationship and establishes the incentives of each party to enter a relationship that often spans decades. A federal relationship rule in the scope of the Franchise RFI will protect neither consumers nor competition—quite the opposite. Slow-to-adapt franchised businesses will fall behind their competition in their respective markets, and those franchised businesses operating in heavily regulated are unlikely to survive an additional regulatory burden that restricts their ability to innovate. IFA requests the Commission instead focus its attention on completion of its review of the Franchise Rule that has been ongoing since 2019. The Franchise Rule governing the franchise sales process—the moment when the relationship between a franchisor and franchisee begins—was last updated in 2007 and is in desperate need of modernization to reflect the evolution in consumer access to information that has occurred in the nearly two decades since it was last amended, as further described in the IFA Franchise RFI Comments.

Concurrently with re-issuing the RFI, the Commission issued a Policy Statement regarding the use of confidentiality, non-disparagement and goodwill clauses in franchise agreements and the Commission staff issued Guidance on fees charged to franchisees that were not included in the

franchise disclosure document provided to franchisees when signing the franchise agreement. Both the Policy Statement and Guidance were issued outside of a formal rulemaking and not open to public comment. IFA's concerns with the Policy Statement and Guidance—specifically, that they would be interpreted by the States as binding regardless of the Commission's and staff's statement that they were non-binding—are already being realized. Franchisors navigating the 2025 franchise registration and renewal season in States that regulate the sale of franchises are subjected to varying State interpretations of the Policy Statement and Guidance as though it is a binding rule, causing further delays in an already lengthy annual franchise registration process. Franchisors are restricted from offering and selling franchises while their applications for new renewal registrations are under review by the States (i.e. the "dark period"), and due to the lack of clarity among the States in interpreting and applying the Policy Statement and Staff Guidance, the lengthier dark period means that not only is new franchised business development adversely impacted, but the ability of existing franchisees to monetize their investment by selling their franchised businesses also is stalled. IFA requests the Commission withdraw for reconsideration its Policy Statement and Guidance.

B. Department of Labor Overtime Rule and OSHA Walkaround Rule

In 2024, the Department of Labor ("DOL") issued its Overtime Rule to increase the nationwide overtime salary threshold to $58,656. The DOL failed to consider the impact to small businesses in implementing the increase, particularly those operating in the southern geographic areas of the U.S., as further described in IFA's Complaint, Motion for Summary Judgment, and franchisee Declarations in support, each filed in the U.S. District Court for the Eastern District of Texas (Civ. No. 4:24-CV-468-SDJ). This broad sweeping overtime salary increase threatens not only the viability of small, franchised businesses, but also the job opportunities they provide and

the consumers they serve. Unlike large corporations that can spread labor cost increases across operations nationwide and implement price increases where markets will tolerate the increase, the hundreds of thousands of small business owners lack the ability to mitigate the impact of increased labor costs. While the court vacated the 2023 Overtime Rule, the DOL's appeal is pending before the Fifth Circuit (currently in abeyance). IFA requests that the Commission and Department of Justice ("DOJ") consider the anti-competitive effects of an Overtime Rule that increases the nationwide overtime salary threshold to a level that is not sustainable for many small, franchised business owners, ultimately forcing their closure to the detriment of workers and consumers.

We have seen firsthand the consequences of regulatory increases to labor costs for small businesses in markets that will not support such increases. In 2023, California passed AB 1228, effecting an increase in the minimum wage for fast food workers at "national fast food chains" (i.e., primarily those fast-food restaurants operating under the franchise model) to $20 per hour. A study conducted by Berkely Research Group found that in the 12 months following the mandated wage increase, California fast-food restaurants lost 10,700 jobs—the worst performing year in decades excluding the 2009 Great Recession and 2020 COVID-19 Pandemic.[4] Moreover, consumers of fast-food restaurants faced menu price increases of 14.5% between September 2023 and October 2024, nearly double the national average.[5] The data is indisputable—regulations that

[4] Katy Grimes, "SEIU Researchers Admit $20 Wage Law Caused Fast Food Job Losses," California Globe (Feb. 26, 2025) (citing Berkely Research Group Study: Impact of the $20 per Hour Minimum Wage on California's Fast Food Workers: Early Indications), https://californiaglobe.com/fl/new-seiu-funded-report-admits-20-wage-law-caused-fast-food-job-losses/#:~:text=The%20increase%20to%20%2420%20minimum,food%20price%20hikes%20for%20consumers.

[5] *Id.*

disregard the impact to the viability of franchised small businesses are anti-competitive, raising prices for consumers and eliminating job opportunities for workers.

Also pending in Texas federal court is IFA's challenge to OSHA's Walkaround Rule, amended to provide for third parties to accompany OSHA compliance officers for site inspections, including community activists, union organizers and industry competitors. Similar to the other regulations identified in this IFA Comment, OSHA failed to narrowly tailor the Walkaround Rule to consider the threat to small businesses of industry competitors accessing their premises under the auspices of an interest in workplace safety. Like the Overtime Rule, IFA requests the Commission and DOJ consider the anti-competitive effects of the Walkaround Rule to small business owners.

C. Other Federal Regulations Impacting Franchised Businesses

In addition to the federal rules and sub-regulatory guidance identified in this IFA Comment, IFA echoes the concerns raised by the U.S. Chamber of Commerce in its response to the DOJ RFI and FTC RFI regarding agriculture and food regulations. Specifically, the "Extended Producer Responsibility" state laws and the compliance costs associated with such state laws that are not only burdensome to small, franchised business owners but also discourage franchisors from introducing new products into their systems, reducing consumer choice, not only in states with Extended Producer Responsibility state laws, but in all states in which the franchise system operates.

III. ANTI-COMPETITIVE EFFECTS OF STATE LAWS DISCRIMINATORY OF FRANCHISED BUSINESSES

As noted above in Section II.B, the requirements of California AB 1228 apply only to "national fast-food chains." But, despite the fact that franchised chains operate under a single name and are therefore subject to California AB 1228, the majority of the restaurants are small, franchised businesses notwithstanding the total number of restaurants operating under a common brand but owned by different small business owners. In addition to raising minimum wage, AB 1228 establishes a labor standards board—the "Fast Food Council" to co-regulate work standards that suppress competition in labor markets.[6] Other States have followed California's lead—earlier this year, Washington attempted to establish a labor standards board, applying specifically to child care workforce (and extending to the hundreds of franchised businesses offering early childhood education, supplemental education and afterschool programs). While the proposed Washington legislation does not specifically target franchised businesses, the unintended harm to competition in labor markets will be disparately felt by small, franchised business owners.

Similar disparate impacts to small, franchised businesses result from state laws implementing predictive scheduling requirements, often with steep penalties that do not take into account the compliance challenges and costs of scheduling unskilled labor in many of the industries in which franchisees operate, including Connecticut SB 831, Maryland HB 1226 and its companion bill Maryland SB 0994, New York A846, and Hawaii SB 358. While purportedly intended for large employers, the repeated legislative attempts across these States are specifically discriminatory towards franchised businesses because they disregard the nature of the franchise

[6] IFA echoes the concerns of Littler Workplace Policy Institute regarding the anti-competitive effects of labor-standards boards raised in its response to the DOJ RFI.

model and the autonomy of franchisees to control essential terms and conditions of employment, instead collapsing the independent contractor relationship between a franchisor and franchisee to subject franchisees to predictive scheduling laws based on the number of units operating in the franchise system or number of employees across those units, despite the franchisee having no control over those units or their respective employees. Small, franchised businesses cannot withstand the regulatory burden of laws intended for large employers. If this discriminatory and anti-competitive conduct continues, these businesses will fail. When they do, there will be less competitors in the market, leaving behind large corporations to control the industries, prices and consumer choice.

IFA and its members increasingly face State legislative attempts to discriminate against franchised businesses. The bills, laws and regulations discussed above are just a handful of the clear examples of such discrimination and the related harm to small business owners, consumers and competition. There is no reasonable basis for treating small business owners that are part of a franchised brand differently than other similar businesses simply based on the total number of units operating under a common brand or the total number of employees working for different businesses under a common brand. IFA requests the DOJ and Commission consider issuing guidance to inform state legislatures of the anti-competitive effects of such laws under antitrust laws.