



Office of the Chairman

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 12, 2019

MEMORANDUM

FROM: Chairman Joseph Simons
TO: Commission Staff and Commissioners
SUBJECT: Small Business Non-Retaliation Policy

The Small Business Regulatory Enforcement Fairness Act (SBREFA) provides small businesses with a statutory right to comment without fear of reprisal to the National Small Business Ombudsman about federal agency compliance and enforcement activities. (15 U.S.C. § 657(b).) This memo is a reminder of the FTC's longstanding written non-retaliation policy, which the FTC initially adopted in 2002 and then re-issued in revised form in 2011 and 2017.

The FTC is committed to ensuring the proper treatment of small businesses and any other subjects of agency compliance or enforcement activities. This includes providing a non-retaliatory environment in which small businesses can exercise their right to comment to the National Small Business Ombudsman on the agency's compliance and enforcement actions, without fear of reprisal.

FTC staff are expected to conduct investigations in a fair and professional manner and must make every effort to continue to avoid even the appearance of unfairness or retaliatory action. A staff member will not take any retaliatory action against a small business or any other subject of a compliance or enforcement activity if the subject requests Ombudsman assistance or otherwise questions or comments about FTC regulatory or enforcement actions, requirements, or policies. The subject of a compliance or enforcement activity or the subject's attorney may file a complaint with a staff member's supervisor or with the Office of the Inspector General.

Specific complaints will be reviewed as appropriate in the particular circumstances. If an employee is found to have taken an action against a small business in retaliation for exercising its right to comment, the employee will be subject to discipline as appropriate.

Information about Opportunities to Comment

Staff should furnish to firms that appear to qualify as small businesses, or to their attorneys, written notice of their right to comment to the Small Business Ombudsman, no later than the time the staff forwards a complaint recommendation against the small business. (This procedure does not apply in instances in which such notice might be prejudicial to the matter, such as where the agency anticipates that the target of the

investigation may flee or may hide or dissipate assets.). If compulsory process issues against the small business, staff should provide the information no later than when the process is served. Staff may provide the notice at any earlier time.

The following or something similar is recommended language for a notice of opportunity to comment:

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to <https://www.sba.gov/ombudsman>.

Thank you for your continued compliance with SBREFA and the FTC's non-retaliation policy.