



November 16, 2020

The Honorable Roger Wicker, Chairman
The Honorable Maria Cantwell, Ranking Member
United States Senate
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Wicker, Ranking Member Cantwell, and Members of the Committee:

As you approach a scheduled markup of S. 4613, the Contact Lens Rule Modernization Act, I write on behalf of National Taxpayers Union (NTU) to urge caution against moving this legislation forward. NTU is concerned that S. 4613 would unnecessarily weaken one of the clearest successes for taxpayers in Federal Trade Commission regulatory activity – the updated Contact Lens Rule that took effect barely a month ago.

In stark contrast to some of its other policymaking, FTC's actions regarding the contact lens marketplace have encouraged economic competition and innovation, while taxpayers have reaped savings as well. While oversight of FTC rulemakings is important, in this case the Committee can and should feel confident in leaving well enough alone. This is especially the case since the Office of Information and Regulatory Affairs (OIRA) on October 16 "approved without change" FTC's request for a currently approved collection of information surrounding the update of the Contact Lens Rule. We believe that OIRA's action was the correct one, and that FTC's assessments of information collections (i.e., compliance burdens) are reasonable – which should obviate one of the major motivations behind advancing S. 4613.

In a September 8 letter to OIRA Administrator Ray, NTU elaborated in this topic of compliance burdens with the update to the Contact Lens Rule (16 CFR Part 315) noting that "the positive fiscal and economic benefits far exceed the costs." The recommendations we made to OIRA that gave us cause to express this opinion bear repeating here, because they relate to and militate against the purposes of S. 4613:

- **Consider the Benefits to Taxpayers of the Contact Lens Rule Update as Written.** The economic impact of providing greater choice in vision care is important, but one of NTU's major concerns is fiscal. While considerable evidence exists that competition in optical services and supplies can reduce prices for consumers, such savings also accrue to taxpayers, who can subsidize 70 percent or more of costs for government employee insurance plans that cover millions of Americans' vision care. The savings could also become more important in the future as Medicaid programs experiment with offering vision care reimbursement. Other taxpayer benefits can include increases in government employee productivity owing to the convenience of online purchasing (and in some cases renewal exam) options that obviate retail outlet visits. Finally, we believe it is important to account for the long-term savings to public health programs owing to "spillover" of private-sector telehealth technologies, some of which have been tested and proven in the vision care space. These salutary developments would not have been possible without the Contact Lens Rule, and could be diminished if the update to 16 CFR 315 is modified by S. 4613.

- **FTC has Taken Great Care in Formulating the Contact Lens Rule Update.** NTU has often clashed with FTC over its rulemakings, which have tended to burden small and large businesses with considerable compliance expense for negligible gain in economic welfare. Yet the Contact Lens Rule, as well as its predecessor the Eyeglass Rule, has served as a model of deliberation, utilizing ample stakeholder input, proactive consideration of consequences for the private sector, guidelines that allow flexibility for small businesses implementing the rule update, and use of systematic projectable evidence. FTC has spent nearly five years developing the update of Contact Lens Rule – a time period rivalling even the most arcane and complex rulemaking in the field of tax policy. NTU has filed half a dozen in-depth comments to FTC on the rule update,¹ as did numerous organizations and individuals. We would submit that few, if any, major FTC actions have received the level of scrutiny that 16 CFR Part 315 has, and the result is an unusually well-balanced rulemaking.
- **Costs to Small Businesses of the Rule Update Must be Examined Thoroughly and Realistically.** Much of NTU’s experience with compliance burdens has been in the tax space. Of particular interest has been the subset of taxpayers involved in small business or self-employment. Informed by the research of Payne, Slemrod, and others, we have testified before Congress about the challenges associated with assessing the actual versus perceived incidence of paperwork burdens among regulated individuals and entities. As a 2019 NTU analysis submitted to FTC indicated, we believe that a similar situation may be presenting itself with projections that retail optometrists might be facing large compliance costs with, for example, obtaining a customer signature on a form acknowledging they are aware they are entitled to receive a copy of their prescriptions. In our opinion, HIPAA, insurance coding and recordkeeping, and state limitations of practice rules are likely much more overwhelming for optometry businesses. Concerns from businesses over statutory and regulatory compliance costs are quite genuine, and must be taken seriously. Pinpointing the actual areas where those costs are most acute remains vital for effective policymaking. Indeed, we would contend that other small business owners and self-employed individuals who are keeping long, irregular hours trying to stay afloat during the pandemic, need the choices that the Contact Lens Rule update would provide more than most other Americans.

NTU has already engaged the Committee on the issue of the Contact Lens Rule update in coalition with other organizations, but for purposes of this communication from NTU alone, we believe it is vital to pause now and consider the potential costs of modifying through legislation FTC’s Contact Lens Rule update. If public officials seek to lighten the burdens of government on small optometry businesses – a goal NTU wholeheartedly agrees with – then they should look beyond S. 4613 and instead work on additional reforms to health care licensure, HIPAA, tax, and workplace laws. In doing so, lawmakers would truly help these establishments to thrive in a challenging, and changing, economy. Toward these ends, NTU is at your service. Thank you for your consideration, and please feel free to call upon us for additional information.

Sincerely,



Pete Sepp, President

¹ See, for example, NTU Comments to FTC, 07/19, <https://www.ntu.org/publications/detail/ntu-submits-comments-on-the-ftcsupdated-contact-lens-rule> and Issue Analysis for FTC, 12/18, <https://www.ntu.org/publications/detail/ntu-led-coalition-offers-recommendationsregarding-the-updated-contact-lens-rule>.