



September 8, 2020

The Honorable Paul J. Ray  
Administrator, Office of Information and Regulatory Affairs  
Eisenhower Executive Office Building  
1650 Pennsylvania Ave., NW  
Washington, DC 20503

Re: RIN 3084-AB36

Dear Administrator Ray:

On behalf of National Taxpayers Union (NTU), I write to offer our comments and provide analytical materials regarding a rule currently under Paperwork Reduction Act (PRA) procedural review with your office: 16 CFR Part 315, popularly known as the Federal Trade Commission's (FTC's) Contact Lens Rule update.

As you may know, for the better part of three decades NTU has strongly supported widespread incorporation of PRA and other cost-benefit analysis techniques into executive branch policymaking. We actively advocated for 2018's Memorandum of Agreement between OMB and Treasury to facilitate review of tax regulations under Executive Order 12866, and have applauded the improvements in regulatory circumspection the MoA has engendered. In addition, NTU has praised the Federal Trade Commission's process for implementing and updating the Contact Lens Rule as one of the finest examples of what we term "deregulatory rulemaking" – clearing away barriers to entry and competition at the state and federal levels to the benefit of both consumers and taxpayers.

It is from this perspective that I write to you today. As you and your staff evaluate RIN 3084-AB36, NTU would make the following observations, which are treated in-depth in the materials I am enclosing with this comment letter:

- **Consider the benefits to taxpayers in your analysis.** As we have made clear in the documents I am providing, the economic impact of providing greater consumer choice in vision care is important, but one of NTU's major concerns is, of course, fiscal. Tens of millions of Americans are covered under federal, state, and local government employee health insurance plans, the majority of which offer some type of vision care benefit. 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 those government insurance plan costs. 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 threatened in the absence of the update.
- **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, as did numerous organizations and individuals. To illustrate the contrast, consider that in 2018, FTC launched a thorough top-to-bottom reassessment of its current role and future mission. A total of 14 sessions with dozens of experts, involving hundreds of filed public comments on 11 separate topics were held, giving FTC a treasure trove of guidance that will, along with Congressional direction, help to chart the agency's course for years to come. All this was accomplished in a period of 10 months. 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 that OIRA can certainly appreciate.

- **Costs to business must be examined thoroughly and realistically.** Much of NTU's experience with PRA and other cost-benefit analyses has been in the tax compliance 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. For the tax area, most researchers conclude that in survey-style situations, filers tend to overestimate the time to prepare and complete a form, while underestimating the time associated with other chores such as recordkeeping or seeking compliance advice. As the NTU analysis I have enclosed indicates, we believe that a similar situation may be presenting itself with projections that retail optometrists might be facing large compliance costs by, 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. They could help to explain some of optometrists' responses to incremental burden changes that were recorded in a study by Avalon with which you are likely familiar. Businesses' concerns over statutory and regulatory compliance costs are genuine, and must be taken seriously. Yet, pinpointing the actual areas where those costs are most acute remains vital for effective policymaking.

In short, NTU believes that on net, the positive economic and fiscal benefits of the 16 CFR Part 315 update far exceed the costs. Hopefully, the materials I have provided here will be of some assistance in your deliberations, but I would also be honored to discuss with you and your staff additional work and research we conducted into the impact of this rule update during preparation of the materials. My colleagues and I would likewise be delighted to review methodologies which, with OIRA's access to data, could even more directly quantify that impact. Toward these ends, we are at your service. Thank you for your consideration.

Sincerely,



Pete Sepp, President

Enclosures: 1) Comments to FTC, 07/19, <https://www.ntu.org/publications/detail/ntu-submits-comments-on-the-ftcs-updated-contact-lens-rule>.

2) Issue Analysis for FTC, 12/18, <https://www.ntu.org/publications/detail/ntu-led-coalition-offers-recommendations-regarding-the-updated-contact-lens-rule>.