

**Request for Applications to Serve as  
Independent Compliance Auditor for Herbalife**

**I. DESCRIPTION**

The Federal Trade Commission (“FTC”) is seeking applications for an Independent Compliance Auditor to assess and report on Herbalife’s compliance with and implementation of a judicially-enforceable Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”). The Order was signed by the Hon. Beverly Reid O’Connell, United States District Judge, Central District of California, on July 25, 2016 and is available at <https://www.ftc.gov/system/files/documents/cases/160725herbalifeorder.pdf>.

The Order provides for an Independent Compliance Auditor (“ICA”) to assess and report on implementation of reforms in the following general areas of Herbalife’s U.S. business: tracking of retail sales; distinguishing between business opportunity participants and discount buyers (also known as “preferred customers”); observing limitations on compensation that is based on consumption of products by business opportunity participants; calculation and payment of multi-level compensation; and certain training requirements.

As provided in Section VI of the Order, the ICA will be selected jointly by the FTC and Herbalife (the “Parties”) unless the Parties are unable to agree, in which case the court will appoint the ICA. This Request for Applications does not commit the Parties to select an individual or firm to serve as the ICA from the applicants who respond to this Request for Applications, and the Parties may solicit additional information from applicants to supplement information provided in response to this Request.

This Request for Applications is issued solely by the FTC and does not constitute a part of, and shall not be governed by, any formal federal procurement process. Pursuant to the Order, the ICA shall be an independent third party, not an employee or agent of the FTC or of Herbalife, and shall serve at the expense of Herbalife.

The Parties may seek and solicit information regarding interested candidates through means other than this Request. Responders are advised that the Parties will not pay for any information or administrative costs incurred in response to this Request; all costs associated with responding to this Request will be solely at the Responder’s expense. Not responding to this Request does not eliminate an individual, firm, or organization from being considered to serve as the ICA or a member of the ICA’s team. Nevertheless, interested individuals, firms, or organizations are strongly encouraged to respond to this Request.

**ICA Term:** The term of the ICA is seven years. [*Order §§ VI.H&M–N, XIII.*] Responders should carefully consider this multi-year commitment in developing their teams and plans. As set out below, applications must include a projection of estimated costs and expenses, including yearly estimates and an estimated overall total.

A description of the scope of work required by this project, along with the information that must be included in the application, is set out below.

## II. SCOPE OF WORK

The ICA's duties include assessing and reporting on the following:

### **Retail Sales**

- Is Herbalife collecting all required retail sales information?  
*[Order § I.C]*
- Is Herbalife accurately calculating profitable retail sales in a downline?  
*[Order § I.A.1]*
- Is Herbalife adhering to the requirement that a participant's claimed profitable retail sales cannot exceed that participant's total product purchases minus his or her product designated for personal consumption?  
*[Order § I.D.3]*
- Is Herbalife adequately monitoring profitable retail sales to ensure that they are genuine and in fact occurred as reported?  
*[Order § I.D.1&2]*

### **Preferred Customers**

- Is Herbalife correctly differentiating between preferred customers and business opportunity participants, including by
  - reclassifying preferred customers and business opportunity participants only upon their own written request or application made directly to Herbalife, and
  - ensuring that preferred customers neither sell goods or services, nor recruit others into the program, nor receive multi-level compensation?

*[Order § I.B & Def. I]*

- Is Herbalife adhering to the requirement that a preferred customer who transitions to business opportunity participant may not receive or retain any benefit or status other than a continued discount on product for personal consumption?  
*[Order § I.B.3]*
- Is Herbalife accurately calculating the preferred customer sales of a participant and in the participant's downline?  
*[Order § I.A.1]*
- Is Herbalife adequately monitoring sales to preferred customers to ensure that they are genuine?  
*[Order § I.D.2]*

### **Personal Consumption by Business Opportunity Participants**

- Is Herbalife accurately calculating rewardable personal consumption in a downline according to the both the designation requirement and individual monthly limit?  
*[Order § I.E]*

- Is Herbalife ensuring that product purchases that are counted as rewardable personal consumption are in fact being purchased for the participant’s own or household use?  
*[Order § I.E & Def. O]*

**Paying Multi-Level Compensation**

- Is Herbalife paying multi-level compensation on retail sales only when retail sales information has been collected and reflects that the sale was profitable?  
*[Order § I.A & Def. M]*
- Is Herbalife limiting the multi-level compensation paid for consumption by business opportunity participants in a downline based on the relevant volume of retail sales and preferred customer sales?  
*[Order § I.A.1]*
- Is Herbalife paying multi-level compensation for rewardable transactions during the same period only, with the sole exception being a three-month “look-back” for new business opportunity participants during their first six months in that status?  
*[Order § I.A.1]*
- Is Herbalife complying with the prohibition against paying multi-level compensation to a participant who has not taken and successfully completed a training course that focused on required topics?  
*[Order § I.H]*
- Is Herbalife adhering to the prohibition against varying multi-level compensation based on non-rewardable transactions?  
*[Order § I.A.2]*
- Is Herbalife adhering to the prohibition against varying aspects of multi-level compensation based on the identity of the purchaser?  
*[Order § I.A.3]*
- If business opportunity participants must meet any thresholds related to multi-level compensation, is Herbalife adhering to the requirement that such thresholds may be met exclusively through profitable retail sales and preferred customer sales?  
*[Order § I.F.2]*
- Is Herbalife complying with the prohibition against paying a “headhunter fee”?  
*[Order § I.A.5]*
- Is Herbalife complying with the prohibition against paying multi-level compensation based on purchase of a start-up package?  
*[Order § I.F.1]*

**Annual U.S. Multi-Level Compensation**

- Is Herbalife accurately calculating net rewardable sales and total net sales, and limiting the sum of multi-level compensation payments if so required?  
*[Order § I.A.4]*

### **Limitations on Leased or Purchased Business Locations**

- Is Herbalife adequately enforcing the prohibition against participants leasing or purchasing a physical location unless they have met all relevant requirements?  
*[Order § 1.1]*

### **III. REQUIREMENTS OF APPLICATION**

The application to serve as the ICA should clearly demonstrate the Responder's qualifications to perform the requested scope of work. The application should include the following:

#### **A. Executive Summary**

A brief description of how the Responder would complete the project.

#### **B. Personnel**

- The names of the individuals and/or subcontractor consultants who would comprise the team;
- A summary of the relevant background of each team member;
- The internal organization of the team including the areas of responsibility for each member; and
- A description for each team member of any existing or expected significant time commitments that would limit the individual's availability for work on the ICA team.

#### **C. Qualifications**

Provide each team member's qualifications, addressing the following areas as applicable:

- Monitoring, auditing, evaluating, or otherwise reviewing performance of organizations, including experience in monitoring settlements, consent decrees, or court orders;
- Statistical and data analysis;
- Information technology;
- Data management;
- Completing projects within anticipated deadlines and budget;
- Preparing for and participating in court proceedings; and
- Report writing.

#### **D. Prior Experience And References**

List current or recent (within the past 10 years) project experience for members of the team relevant to the ICA duties and responsibilities; references for each project listed, including the name of the organization, contact person, title, address, e-mail address, and telephone number;

and, if available, examples of non-confidential work product that is similar to the reports required for this project.

#### **E. Proposed Activities**

Describe (in as specific detail as possible and using illustrations as necessary) the activities proposed to perform the Scope of Work. This discussion may address but not be limited to:

- Methods of obtaining information;
- Methods of analyzing information;
- Methods of reporting information;
- Frequency of proposed activities;
- Personnel responsible for the various activities described in the Scope of Work and the number of hours anticipated to be devoted to specific aspects of the project by month or quarter, including the number of hours that would be spent on site at Herbalife's headquarters in Los Angeles;
- Coordination with Herbalife to arrange visits, on-site records reviews, and interviews; and
- Reporting to the Parties.

#### **F. Potential Conflicts Of Interest Or Bias**

Disclose any potential or perceived conflicts of interest involving team members, associated firms or organizations, and any employee(s) assigned to the project, or proposed subcontractor(s), including current or former employment, and contracts or grants with the FTC or Herbalife. Any close, familial, or business relationship with any of the mentioned entities, or their agents or employees, must be disclosed. To the extent a conflict or potential bias exists, explain why it does not bar the individual's or the team's selection, including any legal or ethical opinions or waivers upon which the team relies.

Please note that any individual who serves as ICA or performs duties at the ICA's direction shall agree not to be retained by the FTC or Herbalife for a period of two years after the conclusion of the engagement. *[Order § VI.A]*

The following shall be ineligible for selection as the ICA or as a member of the ICA team: previous Herbalife board members, employees, or distributors and previous FTC Commissioners and Bureau Directors.

#### **G. Estimated Costs**

Provide a Cost Estimate for this project based on the above Scope of Work and requirements of the Order:

- Include a projected budget for all costs including but not limited to hourly billing rates, travel, sub-consultant/contractor services, overhead, and supplies.

- Break down the different activities that members of the team will perform (*e.g.*, policy review, technical assistance, training assessment, report writing, and/or incident review).
- Include a projected allocation of hourly commitments by each team member, broken down by the number of hours projected for both on-site and off-site work.
- Estimate annual costs that are expected for each year the ICA is in place.
- Include a total seven-year cost estimate that fees and costs are not expected to exceed.

#### **IV. RESPONSES MAY BE MADE PUBLIC**

After the August 29 deadline for submissions (see below), the FTC may make public any applications received in response to this request, pursuant to 16 C.F.R. § 4.11(h). Applicants are therefore advised not to include in their responses any trade secrets, proprietary information, or other information they do not want made public.

Groups or individuals interested in serving as ICA or on the ICA team may submit an application by email, paper copy, or both.

Applications submitted by email should be sent to [ICA-application@ftc.gov](mailto:ICA-application@ftc.gov).

Paper copies may be sent to both recipients listed below:

Janet Ammerman  
 Federal Trade Commission  
 Bureau of Consumer Protection  
 Division of Marketing Practices  
 600 Pennsylvania Avenue NW  
 CC-8528  
 Washington, DC 20580

Brad Winter  
 Federal Trade Commission  
 Bureau of Consumer Protection  
 Division of Enforcement  
 600 Pennsylvania Avenue NW  
 CC-9528  
 Washington, DC 20530

Applications must be **received** by **August 29, 2016, at 12:00 midnight ET**. If submitting a paper copy, please use a courier service such as Federal Express or UPS to ensure timely receipt; postal deliveries to the FTC are subject to delays due to heightened security precautions. Please state “Herbalife ICA Application” on the package containing the application.