To amend the Federal Trade Commission Act to prohibit pyramid promotional schemes and to ensure that compensation is not based upon recruitment of participants into a plan or operation, but on sales to individuals who use and consume the products or services sold, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2017

Mrs. Blackburn (for herself, Mr. Veasey, Mr. Lance, Mr. Thompson of Mississippi, Mr. Bishop of Utah, Mrs. Beatty, Mr. Bishop of Michigan, and Ms. Eddie Bernice Johnson of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Trade Commission Act to prohibit pyramid promotional schemes and to ensure that compensation is not based upon recruitment of participants into a plan or operation, but on sales to individuals who use and consume the products or services sold, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Anti-Pyramid Promotional Scheme Act of 2017”.

SEC. 2. PROHIBITION ON PYRAMID PROMOTIONAL SCHEMES; OTHER REQUIREMENTS.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by inserting after section 5 the following:

“SEC. 5A. (a) It shall be unlawful for any person to establish, operate, promote, or cause to be promoted a pyramid promotional scheme.

“(b) Any person who establishes, operates, promotes, or causes to be promoted any plan or operation which sells or solicits the sale of consumer products or services in the home or otherwise than in a permanent retail establishment, and which sells products or services directly or indirectly to independent salespeople, shall have a bona fide inventory repurchase agreement.

“(c) Nothing in this Act may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based upon the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods or services or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not require inventory
loading and the plan or operation implements a bona fide inventory repurchase agreement.

“(d) A violation of subsection (a) or (b) shall be treated as an unfair or deceptive act or practice in or affecting commerce under section 5.”.

SEC. 3. DEFINITIONS.

Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following:

‘‘Bona fide inventory repurchase agreement’ means a program by which a plan or operation—

“(1) promises to repurchase, on commercially reasonable terms, current and marketable inventory purchased and maintained by a participant for use, consumption, or resale, upon request at the termination of the participant’s business relationship with the plan or operation; and

“(2) clearly communicates such terms in its recruiting literature, sales manual, or contracts with participants, including the manner in which the repurchase is to be exercised and disclosure of any inventory not eligible for repurchase under the program.

‘‘Commercially reasonable’ means, with respect to the terms of repurchase by a plan or operation of current and marketable inventory from a participant, that the in-
inventory is repurchased not later than 12 months after the
date of purchase at not less than 90 percent of the original
net cost to the participant, less appropriate set-offs and
legal claims, if any.

"'Compensation' means the payment of any money,
things of value, or financial benefit.

"'Consideration'—

"(1) means the payment of money or another
thing of value or the purchase of a product, good,
service, or intangible property; and

"(2) does not include—

"(A) the purchase of a product or service
furnished at cost to be used in making a sale
and not for resale; or

"(B) any time and effort spent in pursuit
of sales or recruiting activities.

"'Current and marketable'—

"(1) means, with respect to inventory, that the
inventory—

"(A) in the case of consumable or durable
goods, is unopened, unused, and within its com-
mercially reasonable use or shelf-life period; and

"(B) in the case of services and intangible
property, including internet sites, represents the
unexpired portion of any contract or agreement;

and

“(2) does not include inventory that has been clearly described by a plan or operation to a participant prior to purchase as discounted, seasonal, a special promotion item, or not subject to the plan or operation’s inventory repurchase program.

‘Inventory’ means both goods and services, including company-produced promotional material, sales aids, and sales kits that a plan or operation requires participants to purchase.

‘Inventory loading’ means a practice in which a plan or operation requires or encourages its participants to purchase inventory in an amount exceeding that which the participant can reasonably expect to use, consume, or resell to ultimate users, and that is not subject to a bona fide repurchase agreement.

‘Participant’ means a person who joins a plan or operation.

‘Pyramid promotional scheme’ means any plan or operation in which individuals pay consideration for the right to receive compensation that is based upon recruiting other individuals into the plan or operation rather than primarily related to the sale of products or services to ultimate users.
"'Ultimate user' means, with respect to a product or service sold by a plan or operation, an individual who consumes or uses the product or service, whether or not the individual is a participant in the plan or operation."

SEC. 4. LIMITATIONS.

(a) OTHER VIOLATIONS OF FEDERAL LAW.—Nothing in this Act or the amendments made by this Act shall be construed to limit the authority of any Federal official from proceeding against pyramid promotional schemes (as defined in section 4 of the Federal Trade Commission Act (15 U.S.C. 44)) for other violations of Federal law, including the Federal Trade Commission Act.

(b) STATE LAW.—Nothing in this Act or the amendments made by this Act prohibits an authorized State official from proceeding in a State court of competent jurisdiction on the basis of an alleged violation of any civil or criminal statute of such State.