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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, DC 20580

Submitted electronically via <https://www.regulations.gov>

RE: “Unfair or Deceptive Fees” (Junk Fees) NPRM, R207011

Dear Chair Khan and Commissioners:

We at U.S. Public Interest Research Group Education Fund appreciate the opportunity to comment on the Federal Trade Commission’s [proposed rulemaking](#) to prohibit unfair or deceptive practices relating to fees for goods or services. We support the Commission’s efforts to protect consumers from companies that try to misrepresent the actual total cost of goods and services “by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees.”

The fight over junk fees has escalated in the last few years. Corporate efforts to maximize revenue by hiding price increases have drawn opposition from one of our oldest consumer agencies – the 1914 Federal Trade Commission — and our newest — the Consumer Financial Protection Bureau, established in 2010 following the massive 2008 economic collapse brought on by risky bank lending practices.

The FTC estimates junk fees/deceptive fees now cost consumers tens of billions of dollars each year in numerous areas of the marketplace. The problem seems to have gotten worse as consumers have become accustomed to online transactions, either

because it's the primary way some companies conduct business or because consumers prefer online commerce for the sake of convenience, time or their health. It's estimated that 85% of Americans have experienced a hidden fee for a service in the previous two years, according to Consumer Reports, which also says consumers are paying more in hidden charges than five years ago.

The junk fee explosion was preceded by an increase in unfair or deceptive practices, which led to enhanced regulatory, Congressional and even presidential interest in taking action.

Recent efforts to fight junk fees certainly attracted President Biden's attention. His 2021 Executive Order on Competition urged agencies to investigate and act on "hidden fees," "early termination fees" and "airline ancillary fees," among others.¹ His 2023 State of the Union address called for passage of a Junk Fee Prevention Act. The president specifically excoriated airlines for their practices, including the imposition of family seating fees that treat "your child like a piece of luggage."² The president's senior National Economic Council staff explained further:

"These so-called 'junk fees' are not just an irritant – they can weaken market competition, raise costs for consumers and businesses, and hit the most vulnerable Americans the hardest."³

They then differentiated junk fees from reasonable fees.

"There is nothing wrong with a firm charging reasonable add-on fees for additional products or services," the NEC staff explained. They used the example of charging more to add mushrooms to your pizza, if you want them, or to upgrade you to a hotel room with an ocean view, if you approve. "However," they wrote, "in recent years we've seen a proliferation of 'junk fees' – a category of fees that serve a different purpose. They can be defined as fees designed either to confuse or deceive consumers or to take advantage of lock-in or other forms of situational market power."⁴

¹ President Joe Biden, Executive Order on Promoting Competition in the American Economy, July 9, 2021, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

² White House, "President Biden's State of the Union Address," February 7, 2023, available at <https://www.whitehouse.gov/state-of-the-union-2023/>

³ Deese, Mahoney and Wu, White House Blog, "The President's Initiative on Junk Fees and Related Pricing Practices," October 26, 2022, available at <https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>

⁴ *Id.*

PIRG for years has believed regulators should ban fees that:

- **Aren't transparent because they're not disclosed up front, or are added along the way (drip-pricing) or are sprung on a consumer at the end of a transaction.**
- **Aren't transparent in name or description, or whether they're optional or required by a third party.**
- **Are buried deep in fine print.**

An issue we believe is important: Transparency and upfront pricing help not only consumers, but also honest businesses. If every business is playing by the same rules, then businesses don't have to worry about being undercut by a competitor that is hiding the actual cost of a product or service once it adds in a bunch of fees that aren't disclosed or that customers can't opt out of.

TOTAL PRICE

We feel strongly that the price a customer will pay should be disclosed up front in the Total Price, *and* include a breakdown of the mandatory fees within that Total Price for consumers who want details of fees. But the Total Price should be provided first and with the most prominence. Businesses must not be allowed to confuse consumers with a barrage of numbers.

Both the Total Price and list of mandatory fees are important for consumers to make an informed decision and to have the ability to price shop and compare apples to apples. We believe this disclosure should occur in all advertising, whether we're talking about a hotel room, a car rental, an event ticket or an airline ticket. Companies shouldn't be allowed to advertise one price and then, when you go to make that purchase, you discover that price actually didn't include some mandatory fees or even some optional fees that weren't disclosed but were included by default.

The only two mandatory items that the Commission could consider exempting from an advertised Total Price would be taxes and shipping costs, which can vary based on where a customer is located. But, any taxes and shipping costs added later in the transaction must equal what's actually paid to government offices or shipping providers, not padded for the company's benefit.

“Total Price” or some specific term should be required by the FTC for all businesses. If one company is calling it “Total Price,” and another company is calling it “final price” and another company is calling it an “all-in price,” this will confuse consumers. Unethical companies could try to exploit this by forcing consumers to figure out which shell the ball is hiding under.

FEE TRANSPARENCY

In disclosing the Total Price and any mandatory *or* optional fees, companies must:

- Be transparent about whether a fee is mandatory.
- Be transparent about the purpose of the fee.
- Be transparent about who will receive that fee.

Mandatory fees: What is mandatory? It’s mandatory if the company decides to charge everyone that fee and you can’t opt out of it if given the opportunity. We’ve all likely encountered situations where companies portray fees as mandatory when they’re actually not. Companies should not be permitted to include optional fees in their Total Prices.

In addition, any additional or optional services with fees should specifically require an opt-in, not an opt-out.

Purpose of fees: Companies often layer in a list of fees with vague but important-sounding names. This is unacceptable. Examples:

“Service charges” – A service for what?

“Convenience fees” -- Convenient for who?

“Processing fee” -- To process what?

“Administrative fee” – To administer what?

“Regulatory compliance fee” – To comply with what regulation?

The examples above are too vague and further, specific descriptions should be required.

Accurate descriptions must be required for both mandatory and any optional fees.

A hotel “resort fee” makes it sound like you’re getting poolside cocktails or VIP treatment. Maybe the resort fee actually just covers free Wi-Fi and access to the gym. Many guests might be fine with that. But what if you don’t want hotel Wi-Fi because you think it’s risky, or you cannot use fitness equipment right now because you’re recovering

from abdominal surgery? Maybe you don't want to pay for the gym. Can you forgo gym access? By accurately describing the fees, it gives the consumer the opportunity to ask whether they can opt out. If the answer to this question is no, then at least consumers know what they're paying for.

A car rental company may charge a delivery fee, even if the customer is picking the vehicle up on site. An accurate description gives the consumer the opportunity to question that fee or choose another rental company.

Cellphone providers often add in all sorts of vague fees, or bundle them into one line item. In some cases, the nickels and dimes may go toward providing 911 service or providing phone services to those hard of hearing. Transparency of these fees may help build trust that customers have in their cellphone providers. On the other hand, cellphone companies have been known to [charge fees they vaguely label](#) as "calling plan" or even brashly labeled as "other fees."⁵ This lack of transparency is unacceptable and should be prohibited by the Commission.

Not too many years ago, the banking industry was notorious for playing shell games with fees. In the case of fees associated with a mortgage, a bank might advertise, "We don't charge an origination fee," which often was 1% of the loan amount. They wouldn't charge an origination fee but they *would* charge an underwriting fee, a processing fee, an application fee and a document prep fee that just happened to add up to 1% of the loan amount. This is part of the reason the Consumer Financial Protection Bureau adopted rules for transparency as part of the [Know Before You Owe](#) closing disclosure requirement that took effect in 2015.⁶

Final recipient of fees: Beyond the description of the fee, we believe an important aspect of transparency is citing who the fee is being paid to. Again, going back to the mortgage industry, many of the fees might raise eyebrows. But it helps consumers realize they are being deceived if a broker or mortgage lender claims a fee goes to a third party (such as a title company, escrow agent or attorney), but the fee actually goes to the broker or mortgage lender itself. There's a reason mortgage documents require disclosure of who is receiving the fee.

Companies in other industries must be required to be honest when citing who a fee goes to. The Commission should require this for both mandatory and optional fees. So if there's a shipping fee, does that *all* get paid to the USPS or FedEx or UPS? Or is only

⁵ Consumer Guide, "Understanding Your Telephone Bill," FTC, February 19, 2021, available at <https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill>

⁶ Consumer Resource, "Know Before You Owe," CFPB, available at <https://www.consumerfinance.gov/know-before-you-owe/>

half of it for delivery and the other half goes to the company as part of the sale? Disclosing who the fee goes to would help weed out the dishonesty. And clearly, a company must be prohibited from claiming certain charges are taxes paid to some government agency, if they're actually not.

FEES WITH LITTLE OR NO VALUE

Just because a company designates that a fee is mandatory doesn't mean it will have significant or any value for the customer. Each consumer should have the opportunity to decide whether a fee provides any value, based on the name of the fee, the description of the fee and their needs. Similarly, requiring mandatory fees and accurate descriptions to be included up front in the Total Price wouldn't *necessarily* eliminate fees that provide little or no value to the customer. It would just mean consumers would know more about what they're paying for.

Issues are often raised with banking fees such as one to send a payment electronically overnight or with airline fees such as baggage fees. This is where discussion of value gets messy.

If a consumer forgets to pay a bill that's due tomorrow and can have it paid through her bank with an expedited overnight electronic payment, is there a value in that? Probably. It would save the consumer from paying a bill late, or taking the time to drive to the company (if possible) to pay it in person. She might incur a late fee or face other consequences. Is an expedited payment fee of \$5 reasonable? Maybe. \$100? Probably not.

Airline baggage fees are another example. If a consumer is traveling with enough belongings that he wants to check a bag, is there value in being able to check that bag and not lug it around the airport? Probably. What's the value of that? Some airlines don't charge anything extra. Some airlines charge \$25 or \$30. Some charge close to \$100. Upfront disclosure gives a consumer the opportunity to evaluate his options with different airlines before booking a flight and consider the Total Price.

These are examples of the reason the Commission shouldn't attempt to determine whether a fee provides any value or significant value to the consumer. It's personal. The Commission should not explicitly prohibit fees that it believes provide little or no value to the consumer in exchange for the charge.

The rule should require that all fees – mandatory and optional – be truthful and transparent in description and who they're being paid to. As long as Total Prices are

disclosed, and fees are described accurately and they note who the fees are being paid to, we believe the issue of “worthless fees” will largely take care of itself. Sunlight is great for exposing bad actors.

In addition, some talk about banning fees that are far in excess of a company’s *actual costs* for internal line items. We at PIRG believe this is an enforcement quagmire. The Commission should just require an accurate description without trying to get into a company’s labor costs, utilities, profits, etc. The distinction here is internal costs vs. third-party costs. To reiterate the point made above, a company must not be allowed to say it has a third-party cost to buy supplies or pay for shipping that exceeds the actual cost.

This applies to both mandatory fees and optional fees. If an airline wants to try to charge \$300 to check one regular-sized suitcase, let the customer decide whether that seems reasonable, *as long as this cost is known and affirmatively selected up front*. If a company wants to charge \$100 to process and ship a small \$50 item through regular USPS delivery, not expedited, not a package that requires special handling, and it’s clear it’s *not* all going to the USPS, then let the customer decide whether that seems reasonable, *as long as this cost is known and affirmatively selected up front*.

CONCLUSION

Pre-CFPB, the Federal Reserve Board of Governors had primary responsibility for writing rules affecting insured depository institutions (banks). The FTC enforced the same laws over non-banks, but had little money or power. Following its late 1970s investigations into firms ranging from insurance companies to funeral homes to tobacco companies, and its effort to regulate children’s television advertising, it had been shackled by limits on its rulemaking authority, cuts to its funding and limits on its remedial powers.⁷

The FTC generally can only impose penalties on a wrongdoer found in violation of an existing consent order.⁸ Nevertheless, even with one hand tied behind its back,

⁷ “When the Senate takes up an FTC funding bill next month, a proposal will be considered to sharply curtail the commission’s powers in the inquiry. In fact, the Senate Commerce Committee already has sent to the Senate an amendment to the funding bill that effectively would terminate the commission’s rulemaking proceeding,” in Brown, Merrill, “Head of FTC Withdraws From Kidvid Investigation,” Washington Post, February 8, 1980, available at <https://www.washingtonpost.com/archive/business/1980/01/08/head-of-ftc-withdraws-from-kidvid-investigation/9bebb3f7-ed9e-4318-a440-074850b8515c/>

⁸ National Law Review, “On Notice: Procedural Overview of the FTC’s Section 5 Penalty Offense Authority,” October 29, 2021, available at <https://www.natlawreview.com/article/notice-procedural-overview-ftc-s-section-5-penalty-offense-authority>

and its own phalanx of opponents, the FTC is pushing back hard on junk fees and other unfair marketplace practices.

It has taken a series of actions against non-bank junk fees, primarily in the travel and entertainment sectors as well as against unfair online subscription practices.⁹ Again, entrenched fees often result from UDAP practices. Low-balling the cost of a hotel or airfare or concert ticket¹⁰ is enabled by both dark patterns¹¹ and/or DRIP fees¹² and/or what the FTC calls “associated junk fee practices.”

As noted above, junk fees are a death of a thousand cuts for consumers. This brief treatment does not even discuss in detail many other fees.

For example, consumers are deluged by debt collector pay-to-pay fees;¹³ surprise medical billing fees triggered by out-of-network treatment;¹⁴ the dozens of fees imposed on tenants by some landlords;¹⁵ purported “inflation adjustment” fees at

⁹ Mierzwinski, PIRG blog, “FTC investigates consumer junk fees, especially by hotels, ticket sellers,” October 20, 2022, available at

<https://pirg.org/updates/ftc-investigates-consumer-junk-fees-especially-by-hotels-ticket-sellers>

¹⁰ Concert ticket add-on fees have been a flashpoint since the band Pearl Jam tried to fight back in the 1990s. More recently, Bruce Springsteen, Taylor Swift and British band The Cure have fought back. See Holpuch, Amanda, Article, “The Cure Says Ticketmaster Will Issue Refunds After Fee Complaints: The band said it wanted to make its North American tour “affordable for all,” but after tickets went on sale this week, fans said that fees had ratcheted up the price,” The New York Times, March 17, 2023, available at

<https://www.nytimes.com/2023/03/17/arts/ticketmaster-cure-ticket-refund.html>

¹¹ Release, “FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers: Tactics Include Disguised Ads, Difficult-to-Cancel Subscriptions, Buried Terms, and Tricks to Obtain Data,” September 15, 2022, available at

<https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers>

¹² Release, Event on “The Economics of Drip Pricing,” FTC, May 21, 2021, available at

<https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing/>

¹³ Release, “CFPB Moves to Reduce Junk Fees Charged by Debt Collectors: Advisory opinion explains that most ‘pay-to-pay’ fees charged by debt collectors violate federal law,” CFP, June 29, 2022, available at

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-moves-to-reduce-junk-fees-charged-by-debt-collectors/>

¹⁴ Kelmar, Patricia, Article, “Patient Guide: Surprise medical billing protections you can use now,” PIRG, March 3, 2023, available at

<https://pirg.org/edfund/articles/patient-guide-surprise-medical-billing-protections-you-can-use-now/>

¹⁵ Comment letter, NCLC & NHLP Comments to the Consumer Financial Protection Bureau Regarding Fees Imposed by Providers of Consumer Financial Products or Services, National Consumer Law Center, April 22, 2022, available at

<https://www.nclc.org/resources/nclc-nhlp-comments-to-the-consumer-financial-protection-bureau-regarding-fees-imposed-by-providers-of-consumer-financial-products-or-services/>

some restaurants;¹⁶ fees charged by correctional facilities;¹⁷ campus fees to access student loans and grants;¹⁸ tax preparer fees;¹⁹ and many others. Finally, it would be remiss of us not to call out the telephone and cable guys; anti-competitive oligopolies that pioneered the use of deceptive fees and services.²⁰

Congress, federal agencies and the president have joined the fight against unfair, deceptive and even illegal fee practices. It's a bad look for companies to hit their customers in the wallet with surprise fees. It's time to cut the death of a thousand cuts.

The marketplace is a two-way street, or at least it's supposed to be. Oftentimes, however, that's not the case. Consumers who are applying for a bank loan must disclose all pertinent information to the bank up front, such as income, liabilities, etc. It would be considered fraudulent to withhold information. A consumer seeking an estimate for a home remodeling project should tell the contractor exactly what they want to have done. The homeowner can't add to the scope of work and expect the price to remain unchanged.

The same should be true in reverse. Companies should not be permitted to advertise or portray a specific price for a particular service or product, and then add on other costs for the same service or product, or even add costs for additional services or products without consent.

¹⁶ Moore, Jack, "Deceptive fee tacked onto your restaurant bill? DC attorney general issues consumer alert," WTOP News, March 8, 2023, available at <https://wtop.com/dc/2023/03/deceptive-fee-tacked-onto-your-restaurant-bill-dc-attorney-general-issues-consumer-alert/>

¹⁷ "Incarcerated people and their families are really the only ones in America who pay to send and receive email. An email "stamp" costs around 50 cents per message...with some as high as \$1.25." in an excellent overview of junk fees across all markets. See Dayen, David, "The Junk Fees Biden Hasn't Talked About: Hidden and deceptive fees are seen across consumer transactions, from rental housing to prisons," The American Prospect, February 27, 2023, available at <https://prospect.org/power/2023-02-27-biden-junk-fees/>

¹⁸ Mierzwinski, Ed, Statement, "New CFPB report raises concerns about banking cards on U.S. campuses," PIRG, October 13, 2022, available at <https://pirg.org/media-center/statement-new-cfpb-report-raises-concerns-about-banking-cards-on-u-s-campuses/>

¹⁹ Tax preparers had a good deal going for many years; they convinced the IRS to let them run a "Free File" program for lower-income taxpayers, advertised it on the IRS's own website, convinced Congress not to let other taxpayers file online directly, and used the relationship to sell ancillary products to the "free" filers. The programs were largely funded from the taxpayers' Earned Income Tax Credits (EITC). The non-profit investigative website ProPublica has looked into the Free File program and several tax preparers. See Elliott Justin, Release, "The FTC Is Investigating Intuit Over TurboTax Practices: The probe, spurred by ProPublica reporting, centers on whether Intuit tricked customers into paying for tax filing when they should have been able to file for free," ProPublica, September 8, 2020, available at <https://www.propublica.org/article/the-ftc-is-investigating-intuit-over-turbotax-practices>

²⁰ Fact sheet, "Consumer Deception and Fraud," Federal Communications Commission, December 7, 2015, available at <https://www.fcc.gov/general/consumer-deception-and-fraud-0>

Transparency is a moral obligation. When businesses don't abide by that, it becomes the responsibility of regulators to make sure that consumers aren't victims of gotcha junk fees.

In conclusion, we welcome the Commission's rulemaking on junk fees. Consumers and business customers deserve transparency and fairness in pricing.

Respectfully submitted,

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