FEDERAL TRADE COMMISSION

16 CFR Part 464

Trade Regulation Rule on Unfair or Deceptive Fees

AGENCY: Federal Trade Commission

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission commences a rulemaking to promulgate a trade regulation rule entitled "Rule on Unfair or Deceptive Fees," which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The Commission finds these unfair or deceptive practices relating to fees to be prevalent based on prior enforcement, the comments it received in response to an Advance Notice of Proposed Rulemaking, and other information discussed in this proposal. The Commission now solicits written comment, data, and arguments concerning the utility and scope of the trade regulation rule proposed in this Notice of Proposed Rulemaking to prevent the identified unfair or deceptive practices.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section in this preamble. Write "Unfair or Deceptive Fees NPRM, R207011" on your comment and file your comment online at https://www.regulations.gov. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the

Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Janice Kopec or Stacy Cammarano**,** Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 202-326-2550 (Kopec), 202-326-3308 (Cammarano), jkopec@ftc.gov, scammarano@ftc.gov**.**

SUPPLEMENTARY INFORMATION:

The Federal Trade Commission ("FTC" or "Commission") invites interested parties to submit data, views, and arguments on the proposed Rule on Unfair or Deceptive Fees and, specifically, on the questions set forth in Section X of this Notice of Proposed Rulemaking ("NPRM"). The comment period will remain open until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].[1] To the extent practicable, all comments will be available on the public record and posted at the docket for this rulemaking on https://www.regulations.gov. The Commission will provide an opportunity for an informal hearing if an interested person requests to present their position orally. *See* 15 U.S.C. 57a(c). Any person interested in making a presentation at an informal hearing must submit a comment requesting to make an oral submission, and the request must identify the person's interests in the proceeding and indicate whether there are any disputed issues of material fact that need to be resolved during the hearing. *See* 16 CFR 1.11(e). The comment should also include a statement explaining why an informal hearing is warranted and a summary of any anticipated testimony. If the Commission schedules an informal hearing, either on its own initiative or in response to request by an interested party, a separate notice will issue. *See id.* 1.12(a).

[1] The Commission elects not to provide a separate, second comment period for rebuttal comments. *See* 16 CFR 1.11(e) ("The Commission may in its discretion provide for a separate rebuttal period following the comment period.").

I. Background

The Commission published, on November 8, 2022, an Advance Notice of Proposed Rulemaking ("ANPR") under the authority of Section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a(b)(2); the provisions of Part 1, Subpart B, of the Commission's Rules of Practice, 16 CFR 1.7–1.20; and 5 U.S.C. 553.[2] This authority permits the Commission to promulgate, modify, or repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The ANPR described the Commission's history of taking law enforcement action against, and educating consumers about, unfair or deceptive practices relating to fees, and it asked a series of questions to inform the Commission about whether such practices are prevalent and, if so, whether and how to proceed with a NPRM.[3] The Commission took comments for 60 days, extended the comment period,[4] and received over 12,000 comments, which it has thoroughly considered.

Based on the substance of these comments, as well as the Commission's history of enforcement and other information discussed in this preamble, the Commission has reason to believe that unfair or deceptive practices relating to fees are prevalent[5] and that proceeding with this rulemaking is in the public interest. After discussing the comments and explaining its

[2] Fed. Trade Comm'n, ANPR: Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011, 87 FR 67413 (Nov. 8, 2022), https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011 or https://www.regulations.gov/document/FTC-2022-0069-0001.
[3] *Id.*
[4] 88 FR 4796 (Jan. 25, 2023).
[5] *See* 15 U.S.C. 57a(b)(3) ("The Commission shall issue a notice of proposed rulemaking pursuant to paragraph (1)(A) only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.").

considerations in developing the proposed rule, the Commission poses specific questions for comment and provides the text of its proposed rule.

II. Summary of Comments to the ANPR

The Commission received over 12,000 comments in response to the ANPR. Publicly posted comments are available on this rulemaking's docket at *https://www.regulations.gov/docket/FTC-2022-0069/comments*.[6] The majority of comments expressly supported government action or described negative experiences relating to fees that suggested support for such action. The comments generally supported a rulemaking to improve pricing transparency—including requiring advertised prices to include mandatory fees— and to prohibit misrepresentations about the nature, purpose, or amount of fees. The Commission has carefully considered the views expressed in the comments, and proposes the rule described in Section XIV.

As discussed in this preamble, the comments raised concerns about widespread deceptive practices in connection with fees. In particular, they raised concerns that sellers do not advertise the total amount consumers will have to pay, and disclose fees only after consumers are well into purchasing transactions, harming both consumers and businesses. They also stated that sellers misrepresent or do not adequately disclose the nature or purpose of fees, leaving consumers wondering what they are paying for or believing that fees are arbitrary, and that they are getting nothing for the fees charged.[7]

[6] For Docket ID FTC-2022-0069, Regulations.gov lists the "Number of Comments Posted to this Docket" as 6,166 out of a total "Number of Comments Received" of 12,046. As noted in the responses to Frequently Asked Questions at Regulations.gov, "Not every comment is made publicly available to read. Comment counts that refer to 'comments posted' reflect the number of comments that an agency has posted to Regulations.gov to be publicly viewable. Agencies may choose to redact or withhold certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. Therefore, the number of comments posted may be lower than the comments received." In connection with this docket, over 5,700 comments were a part of a single mass-mail campaign, which is represented in the posted comments by comment FTC-2022-0069-5989.

[7] The comments also stated in large numbers that the amounts of fees charged are often excessive, increasing prices by large percentages and making purchases unaffordable, particularly in the live-event ticketing industry. The rule proposed by the FTC does not limit the amount that businesses may charge for goods or services.

Commenters provided examples of these practices related to a wide array of goods and services, such as hotels, short-term lodging, ticket sales, rental housing, financial services, auto sales, internet service providers, and other market sectors. Many commenters addressed multiple sectors in a single comment. In this section, we discuss comments from individual commenters and other stakeholders, including consumer, policy, and industry groups, about these widespread practices. The breadth and number of comments strongly support a rule to tackle the harm caused to consumers and businesses from these practices across various industries, by requiring all-in pricing and other measures to prevent false and misleading representations about fees.

A. Overview of Prevalent Unfair or Deceptive Fee Practices Identified in Comments

1. Comments on Bait-and-Switch Tactics: Misrepresenting Total Costs by Omitting Mandatory Fees from Advertised Prices

Commenters stated that businesses routinely engage in deceptive bait-and-switch pricing tactics by advertising prices that fail to include mandatory fees and that end up misrepresenting total prices because fees imposed later increase total prices significantly.[8] In many comments, mandatory add-on fees omitted from an initial offer were not disclosed until checkout,[9] and some comments raised concerns about advertisements that omitted key terms that required consumers to

[8] FTC-2022-0069-1046 ("Consumers should not have to guess what their total outlay for a purchase will be. . . . Not revealing the true cost of something is deceptive and anti-competitive (How can you comparison-shop if you don't know the price?)"); FTC-2022-0069-1481 ("the price advertised is significantly less then [sic] the final price once convenience fees and other hidden fees with vague justifications are added to the cost"); FTC-2022-0069-2582 ("These fees serve to mask the true price of any service."); FTC-2022-0069-3420 (delayed disclosures "artificially lower prices"); FTC-2022-0069-3498 ("[O]nline businesses . . . advertise a low cost to attract attention, then add on a fee at checkout that eliminates any benefit from the initial advertised price."); FTC-2022-0069-4064 ("In a time when information is readily available to hide it when it comes to costs is nefarious."); FTC-2022-0069-4120 ("If the fees are not optional, they need to be included in the initial price; otherwise, it's false advertising[.]"); FTC-2022-0069-4724 ("It has gotten to the point that fees mis-represent [sic] the true cost of the product or service until after the purchase."); FTC-2022-0069-6104 ("Advertising low prices and tacking on various fees is nothing more than bait and switch.").

[9] FTC-2022-0069-0040 (describing additional mandatory fees disclosed at the checkout page in a live-event ticket purchase); FTC-2022-0069-0103 (describing additional mandatory fees disclosed at the hotel checkout); FTC-2022-0069-0120 (same); FTC-2022-0069-0116 (describing additional mandatory fees disclosed at the rental car checkout); FTC-2022-0069-0842 (describing late-disclosed fees in a variety of industries); FTC-2022-0069-1437 (describing late-disclosed fees in delivery applications and vacation rentals).

pay more to fully use the good or service.[10] They stated that fees can inflate advertised prices by amounts that are large percentages of the base prices of goods or services.[11] Commenters described this bait-and-switch practice as misrepresenting the total costs consumers must pay and as false advertising that is deceptive and unfair to consumers, and asked the FTC to take action.[12]

2. Comments on Misrepresenting the Nature and Purpose of Fees

Commenters stated that consumers often do not know what fees are for because businesses routinely do not clearly or conspicuously disclose the nature or purpose of fees, including the identity of the goods or services for which the fees are charged.[13] Commenters explained that

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[10] FTC-2022-0069-1622 (describing subscription models to use features that are already part of a product); FTC-2022-0069-1915 (same); FTC-2022-0069-5913 ("We need to ban having subscription services attached to vehicle features, requiring you to pay monthly fees for items already installed in the vehicle."); FTC-2022-0069-1638 (complaining of a video subscription service with undisclosed limitations on the shows included and requiring additional payments); FTC-2022-0069-5434 (describing recurring fees for rental apartments disclosed after the lease application was submitted); FTC-2022-0069-5419 (describing a gym membership with a late-disclosed policy of add-on fees, including extra charges to access classes); FTC-2022-0069-5353 (describing a security camera that requires additional purchases to use).

[11] FTC-2022-0069-0048 ("I've seen situations where the resort fee can be 2-3 times the 'room rate.'"); FTC-2022-0069-1862 ("Norwegian Cruise Line recently increased their service charge to $20 per person per day. That's $560 for a week-long cruise for a family of four and accounts for 17% of the total cost of a cruise. It's clear that cruise lines have been increasing these fees to pay their workers more without increasing the base fare they advertise."); FTC-2022-0069-2154 ("Often times these fees are a considerable percentage of the advertised price, and there is no obvious rationale for how they quantify these massive and varying amounts."); FTC-2022-0069-3434 ("[C]ompanies should not be allowed to advertise one price and then tack on enough fees to almost double the cost to consumers."); FTC-2022-0069-5892 ("a 'Processing fee' of $299.11, which is more than the total quoted price for a year's supply of contact lenses, is added to the order, increasing the total purchase price from $271.92 to $579.98. This clearly shows how these deceptive junk fees more than double the advertised price of a year's supply of contact lenses.").

[12] FTC-2022-0069-3415 ("false advertising at best"); FTC-2022-0069-0111 ("a way to falsely advertise a lower price"); FTC-2022-0069-3435 ("Advertising one price when you know there is more to it, or more that you as a business will have to pay, is deceptive and unfair to the consumer[.]"); FTC-2022-0069-6167 ("Please put a STOP to this deceptive, dishonest practice").

[13] FTC-2022-0069-0489 ("it is unclear what purpose they serve"); FTC-2022-0069-0493 ("fee system" is "clouded in secrecy"); FTC-2022-0069-0603 ("what are they for?"); FTC-2022-0069-1301 ("These fees are terrible, they're an added cost with no apparent purpose or meaning."); FTC-2022-0069-1748 ("Besides ticketing sites, utilities have service fees, banks have statement fees, retail stores may have convenience fees, ride sharing apps have service fees, food delivery apps have service fees, and many other business types have fees that the consumer is expected to pay for without clarity to their purpose."); FTC-2022-0069-1794 ("[h]aving a name for a fee [that] doesn't really describe what it does or why I have to pay it"); FTC-2022-0069-2187 ("[I]t seems too easy for companies across the spectrum to both 'hide' fees from the consumer in the initial pricing, but then also avoid explain [sic] to the purchaser what those fees are actually for."); FTC-2022-0069-2189 ("it's often unclear what these fees are for"); FTC-2022-0069-2346 ("A reasonable person can't fathom what these 'fees' are for and most times these fees are not explicit in their purpose."); FTC-2022-0069-3784 ("Not only are the fees added later, their [sic] is no insight as to what these fees are."); FTC-2022-0069-2566 ("it has never been clear what they are actually for"); FTC-2022-0069-3148 ("Fees are going up and up and it's never clear what, exactly, they're being charged for."); FTC-2022-0069-3686 ("organizations do not make

businesses employ vague names like convenience fees, economic impact fees, or improvement fees that do not adequately disclose to consumers what they are paying for.[14] Commenters also noted that prices are sometimes advertised as "free," but are not in fact free when fees are added.[15]

Commenters stated that, even when businesses purport to disclose the nature or purpose of fees, the disclosures may not be truthful. Commenters described fees as arbitrary and not bearing any reasonable relationship to the costs of goods or services provided.[16] Commenters stated that fees provided them with little or no value, were not for goods or services they received, and were merely revenue sources for businesses.[17]

B. The Comments Show the Identified Deceptive Practices Are Widespread

The FTC received comments regarding a wide range of industries from individual commenters and consumer, policy, and industry groups. Individual commenters frequently raised concerns about these practices in connection with more than one industry in a single comment, with some describing the existence of mandatory, hidden, or misrepresented fees across the

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the knowledge of what the fees are used for public, or at least accessible/obvious"); FTC-2022-0069-4067 ("It would be better also if an explanation of the fees and what their purpose is was present.").

[14] FTC-2022-0069-1477 ("some secret convenience fee pushing the actual cost up"); FTC-2022-0069-1612 ("The fees are vague and there's not [sic] reason for them to not be included in the advertised price, unless the company is utilizing a marketing strategy with the intention of deceiving the customer."); FTC-2022-0069-1947 ("Why are companies allowed to charge an abstract 'convenience fee' with no further explanation of what the fee is for?"); FTC-2022-0069-3766 ("restaurant . . . deceptively adds a 20% 'equity fee' to every bill instead of fairly displaying a price"); FTC-2022-0069-3880 (commenter wrote about a fluctuating "Economic Impact Fee"); FTC-2022-0069-4405 ("From hotels to online delivery companies to service providers, it seems that nearly all companies are tackling [sic] on additional costs without explaining why they are necessary to provide the service.").

[15] FTC-2022-0069-1676 ("Turbo tax. Waiting until I've done all of my paperwork to tell me that I need to upgrade my package to file."); FTC-2022-0069-2986 ("the cruise line included room service at no charge," but "they added a $9,95 [sic] plus 18% gratuity charge to all room service services"); FTC-2022-0069-0688 ("During on-line Christmas shopping, one company offered 'Free Shipping' as a promotion. At checkout, even though there was a $0 charge for 'Shipping', I was charged $2.99 for 'Shipping Service Fees'. How is this considered FREE shipping?").

[16] FTC-2022-0069-2433 ("These fees are not representative of any actual cost of processing an electronic payment or other transaction and without regulation any price can be set arbitrarily resulting in extra cost to the consumer for no reason at all."); FTC-2022-0069-2558 ("whatever fees they decide to make up"); FTC-2022-0069-3492 (Consumers are under the impression that "fees do not cover any actual costs").

[17] FTC-2022-0069-0605 ("just an unfair profit markup, there is not benefit or service for the ticket transaction"); FTC-2022-0069-0443 ("Pure income generation scams"); FTC-2022-0069-3664 ("fee is used merely to generate profit rather than cover a cost").

economy.[18] Although many individual commenters wrote about online purchases, they also noted that stores with physical locations also engage in advertising prices that do not include mandatory fees, and only later disclose fees using names that do not clearly inform consumers of the nature or purpose of fees.[19] Individual commenters noted that businesses also face undisclosed fees for which the nature or purpose is not clear.[20]

Consumer groups—the Consumer Federation of America, Consumer Reports, Truth in Advertising, UnidosUS, and the Institute for Policy Integrity—expressed support for rulemaking.[21]

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[18] FTC-2022-0069-0450 ("As a consumer, I despise being duped with advertised pricing only to be alarmingly surprised at checkout that there are ancillary fees, convenience charges, special handling charges, resort fees, extended warranty charges, restocking fees, waste disposal fees, entry fees, exit fees, toll charges, health mandate fees, CRV fees, upgrade fees, downgrade fees, overweight baggage fees, extra baggage fees, additional BBQ sauce fees, monthly service fees if your balance falls below $xxx, overdraft fees, mystery gasoline tax for winter blends and/or summer blends, to-go bag and container fees, delivery fees, etc."); FTC-2022-0069-0688 ("These fees in various forms, are appearing everywhere: through entertainment ticket sales, hotels and resorts, banks, credit card companies, car dealerships, on-line retail companies, etc."); FTC-2022-0069-1634 ("Unduly forcing frivolous and intentionally vague monetary fees on anything, whether necessary (utility payments, rent, phone bills, etc.) or recreational (concerts, hotels, short-term rental properties, etc.) is unethical); FTC-2022-0069-1940 ("This is everything from Ticketmaster, ticket processing fees, doordash/food delivery, convenience fees, bank fees, landlords charging admin fees, restaurants charging a service surcharge, and many more. These hidden fees that are not upfront greatly affect consumers and do not give them the proper knowledge of the true cost upfront."); FTC-2022-0069-3323 ("Hidden fees just feel way too common nowadays. Credit cards, software, subscriptions, travel, and the vast majority of other industries are making it too difficult for consumers to find the right business to work with."); FTC-2022-0069-3374 ("Lately most companies are using hidden fees to falsely advertise low prices. Delivery companies, Ticketmaster, telecommunications companies, car dealerships, airbnb, rentals, hotels, credit card companies, banks, convenience fees for payment types, airlines, and others."); FTC-2022-0069-3932 ("Consumers across so many industries are increasingly subject to fees that are not conveyed at the time of the purchase... surprise service fees in hospitality, surprise interest fees in financial services, surprise charges in healthcare that even insurance providers cannot explain"); FTC-2022-0069-5743 ("The FTC needs to regulate the transparency of prices for EVERYTHING, online and in person.").

[19] FTC-2022-0069-0427 (Pottery shop "receipt said C19 surcharge. What? I had to look it up. Never heard of it before now. . . .There was no signage about this extra surcharge. The sales clerk didn't say there would be extra fees."); FTC-2022-0069-2242 (Grocery "store charges a .5% 'improvement fee' that no employee can give me a straight answer as to why it exists."); FTC-2022-0069-5616 ("there are some areas that have a 'Public improvement fee.' These are nice areas that I have no issue shopping at, but why do I not know what the fee is or where it is applied? These fees and taxes should be included in the listing price. Stores have price guns, so I know they can set the price on each item in the store.").

[20] For example, individual commenters noted that merchant account payment processors charged previously undisclosed fees for no clear purpose. *See*, *e.g.*, FTC-2022-0069-1922 ("without warning or justification, we have been charged $149 for an 'annual compliance fee' and $169 for an 'annual member fee.' I assure you that these fees were not part of our original contract."); FTC-2022-0069-6159 ("These, often bogus, fees go by many names and in some cases there are 'duplicate' fees for the same purpose only under different names on the same monthly statements.").

[21] FTC-2022-0069-6077 (The Institute for Policy Integrity at New York University School of Law ("Policy Integrity") submitted a comment in support of rulemaking); FTC-2022-0069-6095 (The Consumer Federation of America ("CFA") submitted comments from 42 national and state consumer advocates, supporting FTC rulemaking); FTC-2022-0069-6042 (Truth in Advertising, Inc. ("TINA.org") supports FTC rulemaking); FTC-2022-0069-6099 (Consumer Reports ("CR") supports FTC rulemaking relating to junk fees, and joins the comment of CFA); FTC-

Although the U.S. Chamber of Commerce and the Association of National Advertisers ("ANA") argued that the FTC has not presented evidence that unfair or deceptive practices related to fees are prevalent, and opposed rulemaking,[22] consumer groups raised concerns shared by individual commenters and provided information about existing regulations and legislation,[23] enforcement actions,[24] and studies and surveys,[25] demonstrating (along with other evidence described in this NPRM) that it is a prevalent practice for businesses to advertise prices that fail to disclose mandatory fees.[26]

The information presented by consumer groups shows that false advertising of total prices occurs across industries. Consumer Reports' 2018 WTFee?! Survey "found that at least 85% of Americans have experienced a hidden or unexpected fee for a service in the previous two years, and 96% found them highly annoying" and that "[n]early two-thirds of those surveyed by

2022-0069-6113 (UnidosUS, the nation's largest Hispanic civil rights and advocacy organization, submitted a comment in support of rulemaking, and endorsing the comment of the CFA.).

[22] FTC-2022-0069-6047 (The U.S. Chamber of Commerce ("the Chamber") did not support rulemaking, argued that fees rulemaking should be based on whether practices are unfair or deceptive under Section 5 of the FTC, not on a lack of remedies, such as monetary relief after AMG, and recommended that the FTC withdraw from rulemaking); FTC-2022-0069-6093 (ANA also did not support rulemaking.).

[23] Consumer groups noted that the Consumer Financial Protection Bureau, the Department of Transportation, and the Federal Communications Commission are tackling junk fees through regulation, and that the states are also tackling deceptive junk fees through legislation. *See*, *e.g.*, FTC-2022-0069-6095 (CFA discussed efforts by other federal agencies (*e.g.*, CFPB, DOT, FCC) and New York legislation related to junk fees.).

[24] FTC-2022-0069-6095 (CFA cited enforcement actions that addressed deceptive practices relating to junk fees); FTC-2022-0069-6042 (TINA.org has tracked and published information about class-action lawsuits related to fees in various industries in its Class Action Tracker); FTC-2022-0069-6113 (UnidosUS cited enforcement actions regarding auto-dealer fees and subprime installment lending fees as evidence of problematic fees and unfair or deceptive practices.).

[25] FTC-2022-0069-6099 (CR discussed its *WTFee?! Survey, 2018 Nationally-Representative Multi-Mode Survey* of hidden fees in multiple sectors of the economy and the prevalence of unfair or deceptive fees practices in specific "priority economic sectors," including telecommunications, travel, banking and financial services, automotive sales and services, utilities, retail sales and e-commerce, and live entertainment and sporting events.); FTC-2022-0069-6095 (CFA noted that the Washington Attorney General's Hidden Fee Survey showed that consumers experienced unexpected fees in a wide range of industries.); FTC-2022-0069-6113 (UnidosUS cited surveys or studies by UnidosUS, the Financial Health Network, and the Center for Responsible Lending that documented the impact of fees related to financial services products.).

[26] FTC-2022-0069-6095 (CFA provided information relating to the prevalence of unfair or deceptive practices relating to junk fees); FTC-2022-0069-6042 (TINA.org stated that its "work tracking and exposing junk and hidden fees makes clear that it is a pervasive problem that causes real financial harm to consumers"); FTC-2022-0069-6113 (UnidosUS endorsed the comment by the Consumer Federation of America in connection with that comment's discussion of evidence of how junk fees in connection with financial products and transactions, such as overdraft, auto-buying fees, mortgage delinquency-related fees, education tuition and loan fees, and installment loan fees, disproportionally harm low-income consumers, consumers of color, and those who are limited English proficient.).

[Consumer Reports] said they were paying more now in surprise charges than they did five years ago."[27] Truth in Advertising noted that hidden fees are a prevalent problem related to internet apps, automobile rentals, communications companies, event ticket sellers, carpet cleaners, auto dealers, dietary supplement sellers, restaurants, airlines, moving companies, credit unions and banks, payday lenders, gyms, hotel and travel companies, outlet stores, sports betting, and online auctions.[28] Some of the market sectors about which the FTC received comments are discussed in this section of the preamble.[29]

1. Hotel and Short-Term Lodging Fees

Individual commenters stated that hotels, online travel agencies ("OTAs"), and vacation rental providers often do not include fees, such as hotel resort fees and vacation rental fees such as cleaning fees, in advertised nightly rates, artificially lowering the true cost of hotel rooms and rentals vis-a-vis competitors.[30] Other comments stated that fees may be misrepresented, for

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[27] FTC-2022-0069-6099 (CR submitted its *WTFee?! Survey,* a related 2019 article, *Protect Yourself from Hidden Fees*, and "consumer stories collected by CR in January 2023" detailing many personal experiences with hidden fees). Another survey was published after the close of the comment period showed that a significant percentage of consumers encountered unexpected or hidden fees across a variety of industries, including telecommunications, utilities, auto loans and purchases, financial services, college tuition, hotels, rental cars, and live entertainment. Consumer Reports, *American Experiences Survey: A Nationally Representative Multi-Mode Survey* (April 2023), available at https://article.images.consumerreports.org/image/upload/v1682544745/prod/content/dam/surveys/April_2023_AES_Toplines.pdf.

[28] FTC-2022-0069-6042 (TINA.org).

[29] In addition to these market sectors, the FTC also received comments about many other market sectors, such as healthcare, subscriptions, electronic payment services, and utilities, and from other industry groups. For example, one industry commenter reported that remittance fees are often hidden in artificially inflated exchange rates and that the nature of these fees is not disclosed to consumers who do not have an adequate opportunity to comparison shop among different methods to transfer money. FTC-2022-0069-2523 (Wise supported rulemaking and recommended that any rule address pricing practices in cross-border payments (remittances)). Another industry commenter stated that chain Fixed-Base Operators ("FBOs"), which are businesses or organizations which provide commercial aeronautical services, "might disclose pricing for their services only after an aircraft has arrived at the Chain FBO or, even more troubling, after rendering the services[,]" and therefore supported enhancing pricing transparency by requiring chain FBOs, to disclose pricing for their services before aircrafts arrive at airports. FTC-2022-0069-2615 (The Aircraft Owners and Pilots Association ("AOPA") also stated that some chain FBOs may also charge fees that "often offer little or no added value or discernable benefit[.]").

[30] FTC-2022-0069-0084 ("[Y]ou have hotels around the country that are now adding in destination fees, resort fees, etc. Not only are these fees hidden, they also add these fees to 'free' night stays."); FTC-2022-0069-2350 ("Vacation accommodation platforms are becoming increasingly misleading with the listed price on the initial search nearly doubling by the time you reach checkout for fees that, by explanation, dont [sic] seem to differ from what you are already paying for; 'destination fee' and 'property service fee'. This practice seems to be common with most booking

example, fees charged as vacation rental cleaning fees when hosts require renters to clean accommodations.[31] Consumer Reports commented that hotels and OTAs have continued to charge hidden resort fees after the FTC issued warning letters in 2012.[32]

Comments from the lodging industry generally argued that further regulation is not necessary because resort fees provide value to consumers[33] and the industry already engages in pricing transparency.[34] However, these comments do not dispute that resort fee disclosures routinely occur after base room rates are advertised.[35] Some industry members cautioned that

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sites but I specifically use Booking.com so I will keep my complaint specific to their hidden fees. . . . [O]nce I reach checkout, the price has been increased by 78% to $853.10. This makes it impossible to search by cost on this site because these final hidden fees differ between accommodations and are not clearly explained why they exist in the first place. . . . I have called and discussed this with Booking.com and lodged a formal complaint but their response was that they have no control over this. I believe all of these fees should be listed up front as the final price when conducting a search comparing cost."); FTC-2022-0069-3459 ("Lodging: Both hotels (including travel agencies) and short term private lodging (like AirBnB) falsely advertise low 'nightly rates' to appear better on upfront/initial comparison screens than alternatives. However, once you select them the fees can be 2x what the base rate is. This is blatant misrepresentation; they know the total cost and are hiding it."); FTC-2022-0069-3469 ("Hotel 'Resort Fees' = When comparing prices online, calling, etc - If a hotel subtracts a fraction of the true cost and hides it in the back end (fees), it suddenly looks a lot more affordable in reservations searches."); FTC-2022-0069-3484 ("Hotel hidden fees are insidious. They allow hotels to 'compete' with seemingly low rates, then use fees to increase the actual amount paid after you've already booked. . . . This results in significant increase in consumer burden to avoid fees or eat the additional cost, and stifles competition and innovation.").

[31] FTC-2022-0069-1759 (commenter complained about "mandatory charges that are not initially disclosed in listed pricing, cleaning fees for vacation home rentals after mandatory cleaning by the renter"); FTC-2022-0069-2131 ("Cleaning Fees for Airbnb; these fees significantly increase the price of the room, and it often involves hosts essentially charging guests to clean the room they stayed in."); FTC-2022-0069-3470 ("Homes often ask you to clean before you go but then add several hundred dollars in cleaning fees.").

[32] FTC-2022-0069-6099 (CR).

[33] FTC-2022-0069-6037 (American Hotel and Lodging Association ("AHLA") stated that resort fees at hotel properties provide guests with value that includes various goods and services); FTC-2022-0069-6057 (American Gaming Association ("AGA") contended that resort fees provide value to consumers). The AHLA stated that some of the data about resort fees that the FTC provided in the ANPR were incorrect. AHLA stated that "only 6% of hotels nationwide charge a mandatory resort/destination/amenity fee, at an average of $26 per night[,]" and that "80% of hotel-goers are willing to pay additional fees if doing so will provide access to certain amenities or better service." FTC-2022-0069-6037.

[34] FTC-2022-0069-6037 (AHLA stated that "[t]he hotel industry embraces a competitive business model that is driven by transparency and customer satisfaction" and that hotels "disclose resort and amenity fees at or before the time of booking."); FTC-2022-0069-6111 (Travel Technology Association (Travel Tech) stated that its members "publish, disclose and share . . . rates, terms, and fees" provided to them by accommodation suppliers and other travel service providers "in a clear and conspicuous manner . . . prior to consumers completing their bookings."); FTC-2022-0069-6057 (AGA stated that businesses properly disclose "how much and what the resort fee pays for").

[35] FTC-2022-0069-6057 (AGA stated that the disclosures occur after the base room rate is advertised (i.e., "typically no more than one screen following the base room rate, and at least one web page before consumers commit to the room and before any payment is required or made.").

requiring all-in pricing may have unintended consequences,[36] and recommended that, if the FTC decides to proceed with a rulemaking, any rule apply across the board, online and offline, to all short-term lodging providers to provide a level playing field.[37]

2. Live-Event Ticket Fees

In connection with tickets for live entertainment, individual commenters noted that it is nearly impossible to obtain tickets at advertised prices because ticket sellers inflate these prices with fees.[38] Consumer Reports noted that hidden fees can increase the price of tickets by as much as 30% to 40%.[39] Individual commenters questioned the meaning of fees that are vaguely

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[36] FTC-2022-0069-6057 (AGA stated that companies may roll resort fees into base room rates and not itemize fees to the detriment of consumers' ability to review amenities and services on offer and compare them with competitors and to the detriment of businesses' ability to distinguish themselves from competitors, for example, through loyalty programs that waive resort fees, a practice that the comment claimed would be difficult if itemized pricing were eliminated or limited).

[37] FTC-2022-0069-6037 (AHLA urged that any rule requirements proposed by the FTC apply to all industry participants, including "the short-term rental market, metasearch sites, and online travel agencies ('OTAs')"); FTC-2022-0069-6111 (Travel Tech recommends that any regulation adopted by the FTC "apply to any entity that supplies or advertises travel pricing information to consumers, including, for example, travel provider direct sites, metasearch, and both online and offline advertisements.").

[38] FTC-2022-0069-0448 ("My wife and I regularly attend metal and punk concerts, and sometimes we cannot justify attending a show we thought we were going to attend because, rather than pay the amount we expected to pay, we are sometimes looking at $50 or more of additional costs and fees."); FTC-2022-0069-0530 ("They wait until a buyer has waited in queues for long, stressful delays and spring substantial (nonsense) fees on them last minute knowing they are more likely to pay them than if they had been upfront with the cost of the purchase to begin with."); FTC-2022-0069-1323 ("I personally am always very frustrated when I go to buy so something, like a concert ticket, and try to get the advertised price. It has never, in my entire life, been as simple as handing over $100 for a $100 ticket. It always ends up costing much more, whether through a fee to hand them the money, soem [sic] contrived surcharge, or simply outright undisclosed and wholly newly made up miscellaneous charges."); FTC-2022-0069-2086 ("Time and time again, as a consumer I and many I know have been discouraged from purchasing things we like or going to events we wanted to, simply because the amount we had allocated based on the cost was not enough in the end due to hidden fees."); FTC-2022-0069-2144 ("I also feel that it is deception to say a ticket is price X. Then when all the fees collapse on top of you that the total price is now $80-$100 more than price X PER ticket."); FTC-2022-0069-2154 ("It is incredibly deceptive that a company can advertise a particular price for a ticket but then stack substantial fees at the end of the check-out process onto the consumer. Often times these fees are a considerable percentage of the advertised price, and there is no obvious rationale for how they quantify these massive and varying amounts."); FTC-2022-0069-3128 ("A face value ticket can have fees that nearly equal the original price, making the end consumer cost nearly double the advertised price. This is unfair and deceptive practice."); FTC-2022-0069-3595 ("It is uncommon to find tickets at advertised prices as [sic] Ticketmaster"); FTC-2022-0069-5435 ("Ticketmaster, StubHub, & other ticket retailers: These companies abuse the fact that there's limited competition in their industry, and tack on predatory fees during check out that can double or triple the originally advertised price of the ticket."); FTC-2022-0069-5886 ("It is very disheartening to be told that the price of a ticket is one thing and then be met by service fees, convenience fees, and additional unknown fees that bring the price up to almost 2 times what the original price was listed at."); FTC-2022-0069-5971 ("Ticketmaster routinely and repeatedly pulls a bait-and-switch with ticket pricing - and the size of their final price inflations are egregious, reaching 50%.").

[39] FTC-2022-0069-6099 (CR).

identified, such as "convenience" fees,[40] and the stated purposes of ticket fees. For example, individual commenters questioned whether processing fees really pay for ticket processing and whether delivery fees really pay for delivery expenses.[41] The comments opined that fees appear to be arbitrary.[42]

One ticket seller argued that state and federal laws prohibiting unfair or deceptive trade practices already adequately address any problems with unfair or deceptive fees,[43] but most comments received from ticket sellers or entities representing them,[44] and from entities representing the interests of musicians, artists, managers, agents;[45] independent venues, promoters, festivals;[46] and audience groups;[47] expressed concerns about deceptive practices and supported a rulemaking with some conditions. Some of these comments noted that ticket sellers routinely do

[40] FTC-2022-0069-0226 ("The 'convenience' fees and processing fees charged by Ticketmaster and others, are not only inconvenient but excessive and provide no benefit."); FTC-2022-0069-2281 ("These fees are often labeled as 'convenience fees', however they serve no real purpose and the consumer is often left with no other option.").
[41] FTC-2022-0069-0603 ("How much money does it take for a computer to process a ticket order?"); FTC-2022-0069-2123 ("Ticketmaster is not printing physical tickets, yet charges a significant delivery fee"); FTC-2022-0069-2665 ("'order processing fee'.....fine. Whatever. Even though this is an automated software system that requires no additional time or effort for a human to process"); FTC-2022-0069-3500 ("ensure the scam of 'processing fees' is ended, because its [sic] all digital, there are no fees on their end"); FTC-2022-0069-3592 ("there is no reason for it to cost more to process a more expensive ticket").
[42] FTC-2022-0069-1972 ("Something has to be done to protect consumers from runaway ticket prices and these unbelievable fees with no discernable or knowable purpose."); FTC-2022-0069-2970 ("fees were added with no detail of why or for what purpose"); FTC-2022-0069-3571 ("fees often feel completely arbitrary . . . . the fees vary wildly depending on what show I'm purchasing tickets for"); FTC-2022-0069-0489 ("Although the fees are disclosed, it is unclear what purpose they serve.").
[43] FTC-2022-0069-3347 (AXS opposed all-in pricing, arguing that it would be less transparent to consumers, and recommended that any rule require sellers to disclose to consumers whether the ticket is being sold "from the artist/venue's official ticket seller, at the face price set by the artist or venue, or, alternatively, from a ticket broker or resale marketplace where ticket prices are set by the reseller.").
[44] The following ticket sellers support rulemaking: FTC-2022-0069-6089 (National Association of Ticket Brokers ("NATB"); FTC-2022-0069-6078 (TickPick, LLC); FTC-2022-0069-6079 (StubHub). AXS Group LLC does not support a rulemaking. FTC-2022-0069-3347.
[45] FTC-2022-0069-6162 (Recording Academy recommends that any rule include strong protections for artists); FTC-2022-0069-6048 (Future of Music Coalition ("FMC")); FTC-2022-0069-6041 (National Independent Talent Organization ("NITO")).
[46] FTC-2022-0069-6046 (National Independent Venue Association); FTC-2022-0069-0501 (Annual International Ballet Festival of Miami and Cuban Classical Ballet of Miami).
[47] FTC-2022-0069-6110 (Sports Fans Coalition described harm to consumers from drip pricing); FTC-2022-0069-2581 (Dunsmoor Law, P.C.).

not disclose the total cost of tickets in advertising,[48] and that the nature and purpose of fees is not always clear.[49] The comments emphasized that ticket fees raise competition issues separate from the deceptive advertising practices and recommended that the FTC address alleged anticompetitive practices that result in fees consumers consider excessive.[50]

[48] FTC-2022-0069-6162 (The Recording Academy believes that the majority of concerts listed for sale in the United States do not disclose the total cost or mandatory fees in advertising, but that some sellers advertise a base cost "plus fees"); FTC-2022-0069-6048 (FMC noted that "pervasive problems currently exist where ticketing fees are not disclosed"); FTC-2022-0069-6078 (TickPick stated that other jurisdictions have taken action against drip-pricing, including Canada which enacted a law providing that "the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees" are imposed by the Canadian federal government or a provincial government (e.g., taxes).").

[49] FTC-2022-0069-6048 (FMC stated that it "can be challenging to distinguish between a fee that can reasonably be connected to an actual expense, and what is just tacked on to the ticket base price to provide a venue or ticketing company with an additional revenue stream.")

[50] FTC-2022-0069-6065 (The Break Up Ticketmaster Coalition argued that Ticketmaster's market dominance, including in secondary markets, has resulted in excessive fees that consumers cannot reasonably avoid.); FTC-2022-0069-6162 (The Recording Academy recommended strong enforcement and improved regulation of the secondary ticket market, including requiring disclosure by resellers that tickets are resale tickets and that fees do not go to artists); FTC-2022-0069-6041 (NITO raised concerns that ticket fees are excessive, often as a result of the secondary market, and asked the FTC to take all measures within its authority to stop the growth of ticket fees for live events); FTC-2022-0069-6048 (FMC noted that it is a part of the Break Up Ticketmaster coalition and that it also broadly shares the concerns expressed in the comments by NITO and the Recording Academy, relating to problems stemming from secondary ticketing companies, and the importance of considering cultural diversity and community health, including the music community); FTC-2022-0069-0501 (Annual International Ballet Festival of Miami and Cuban Classical Ballet of Miami commented that Ticketmaster adds "exorbitant fees . . . in some cases more than 20%" to its ticket prices, resulting in many people not being able to afford tickets, "particularly those with children or elderly" and reducing ticket sales and profits); FTC-2022-0069-6110 (SFC noted a lack of competition among ticket sellers and problematic behavior in the secondary ticket marketplace, including transferability restrictions, disclosures of holdbacks, speculative ticket disclosures, and the use of bots, and recommended that the FTC conduct a 6(b) study of Ticketmaster/Live Nation's business conduct, and that the FTC support federal and state legislation to address harm to consumers in ticket sales); FTC-2022-0069-2581 (Dunsmoor Law stated that Ticketmaster's practices are harmful to artists and consumers, including dynamic pricing which "makes it nearly impossible to comparison shop," and recommended that the FTC consider limiting fees and addressing Ticketmaster's monopolistic behavior.); FTC-2022-0069-6046 (NIVA stated that apart from practices related to fees, secondary markets use predatory and deceptive practices in connection with ticket resales); FTC-2022-0069-6089 (NATB described the practice of holding back tickets or "slow ticketing" to be a deceptive marketing tactic that distorts the market and urged the FTC to require disclosures of how many tickets are available for sale, but argued that the transferability of tickets should be protected in any rulemaking.); FTC-2022-0069-6079 (StubHub expressed concerns regarding the lack of competition in the live events industry, and requested that the FTC investigate anticompetitive and anti-consumer behaviors in the industry brought about by the merger of Live Nation and Ticketmaster.).

Although entities in the ticketing sector argued that ticket fees are not "junk" fees, but provide value to consumers[51] and are already adequately disclosed,[52] a ticket seller in the secondary market, TickPick, disagreed. TickPick stated that other members of the secondary market, including all of TickPick's larger peers, have gained a competitive advantage by omitting mandatory fees from the total cost of tickets in advertising and luring consumers with deceptively low prices only to impose substantial back-end fees, sometimes after customers provide payment information.[53] TickPick also noted that ticket sellers misrepresent the nature or purpose of their mandatory fees when fees do not provide anything of value to consumers and are used only to generate additional profit.[54]

Comments related to ticket sales supported greater pricing transparency with most supporting all-in pricing that specifies the full final cost to consumers including mandatory, but not optional, fees.[55] Most comments from ticket sellers supported all-in pricing if the requirement would apply to all ticket sellers to establish a level playing field.[56] They argued that, without a

[51] FTC-2022-0069-6046 (NIVA stated that many fees add value, such as facilities fees charged by independent venues and promoters to pay for overhead costs such as staffing, rent, insurance, heating and cooling, repairs and maintenance, and property taxes, but notes that there are differences between facilities fees charged by independent venues and promoters and fees charged on secondary resale exchanges that do not support venues); FTC-2022-0069-6089 (NATB recommended that any rule differentiate between types of ticket fees, arguing that fees imposed by secondary ticket brokers account for a valuable service, while fees imposed by the original ticket sellers may not); FTC-2022-0069-6079 (StubHub objected to the characterization of fees it charges as "junk" or "hidden" fees because its service fees enable it to provide valuable services to StubHub users and partners); FTC-2022-0069-3347 (AXS argues that its fees provide value to consumers).

[52] FTC-2022-0069-6079 (StubHub stated that its fees are transparent and fully disclosed before it collects payment information and before consumers complete transactions); FTC-2022-0069-3347 (AXS argued that its fees are adequately disclosed).

[53] FTC-2022-0069-6078 (TickPick).

[54] *Id*.

[55] FTC-2022-0069-6110 (Sports Fans Coalition); FTC-2022-0069-6041 (NITO): FTC-2022-0069-6046 (NIVA); FTC-2022-0069-6089 (NATB); FTC-2022-0069-6078 (TickPick); FTC-2022-0069-2581-A2 (Dunsmoor Law recommended that the FTC "evaluate all possible legal outcomes from the disclosing of fees."); FTC-2022-0069-6078 (TickPick supported model rule language proposed by the Institute for Policy Integrity with minor modifications, and proposed definitions for "all-in price," "unavoidable fee or charge," and "avoidable fee or charge."); FTC-2022-0069-6048 (FMC described music royalty fees that are a part of a subscription music service as an example of unavoidable or mandatory fees); FTC-2022-0069-6079 (StubHub supported Policy Integrity's recommendation to exclude fees for optional add-on purchases that are fully disclosed to consumers prior to payment).

[56] FTC-2022-0069-6089 (NATB commented that it will only be effective if applicable to all ticket sellers); FTC-2022-0069-6078 (TickPick); FTC-2022-0069-6079 (StubHub).

level playing field, businesses that display all-in pricing would be at a competitive disadvantage.[57] Many of these comments recommended that itemization of fees should also be required so consumers see a breakdown of the fees charged,[58] but one comment argued that itemization of fees harms consumers.[59] Some of these comments recommended an industry-neutral rule while others did not express an opinion.[60] The comments also noted the importance of FTC guidance and enforcement action relating to fees.[61]

3. Fees Related to Restaurants and Prepared Food and Grocery Delivery Apps

Individual commenters submitted many observations about restaurants and prepared food and grocery delivery services. They noted that restaurants routinely add fees to bills that were not previously disclosed, using various names (*e.g.*, "service fee," "hospitality fee," "kitchen fee," "equity fee," "economic impact fee," "temporary inflation fee") that do not clearly or

[57] FTC-2022-0069-6078 (TickPick stated that its all-in pricing has not caused competitors to engage in the practice, that a competitor temporarily adopted all-in pricing but abandoned the practice after losing market share, and that regulatory intervention is necessary to establish an even playing field); FTC-2022-0069-6079 (StubHub stated that in 2014 it voluntarily began displaying all-in pricing to buyers, but this practice put StubHub at a disadvantage in comparison to competitors who did not display all-in pricing, causing StubHub to discontinue the practice).
[58] FTC-2022-0069-6162 (The Recording Academy recommended that any rule require the disclosure of the face value of tickets to avoid consumer misperception that artists are responsible for any increase in total cost that results from the rule); FTC-2022-0069-6048 (FMC recommended requiring full fee itemization so consumers can still see the base price so artists are not blamed for fees and can identify increases in fees); FTC-2022-0069-6041 (NITO's support for rulemaking is conditioned on requiring that ticket fees are clearly separated and itemized from the face value of the ticket); FTC-2022-0069-6046 (NIVA recommends requiring itemization of the face value of tickets and all fees so that consumers know what they are paying for); FTC-2022-0069-3347 (AXS recommended, if the FTC determines that a new rule is necessary, that instead of all-in pricing, the FTC require sellers to disclose all components of the ticket price).
[59] FTC-2022-0069-6078 (TickPick opposed itemization of fees and recommends that the all-in price be the only price a consumer sees in all advertising and marketing materials; itemization of fees is not helpful to consumers because the fees are contrived and only serve to mislead consumers and inhibit competition).
[60] FTC-2022-0069-6079 (StubHub supported an industry-neutral rule establishing price transparency across market sectors. StubHub supported a federal solution, consistent enforcement of a rule with sufficient specificity to avoid varying interpretations.); FTC-2022-0069-6078 (TickPick reserved judgment on whether the rule should be industry-neutral or specific to the ticketing industry).
[61] FTC-2022-0069-6078 (TickPick recommended that the FTC create a procedure to provide staff interpretations and guidance regarding what constitutes an unavoidable fee); FTC-2022-0069-6048 (FMC recommended that the FTC take enforcement action in connection with live-event ticketing, and other instances of problematic fee practices); FTC-2022-0069-6089 (NATB commented that a rule will only be effective if the FTC undertakes rigorous enforcement).

conspicuously identify their nature or purpose.[62] Commenters expressed particular concern about the true purpose of restaurant "service" charges, which they expected would go entirely to wait staff.[63] As these comments imply, while a restaurant's management may not keep tips received by its employees for any purposes,[64] no such prohibition exists for service fees imposed by a restaurant.[65] In connection with food delivery, individual commenters similarly stated that delivery apps charge fees that are not reflected in advertised food prices,[66] and that the nature or purpose of these fees is not always clear or is misrepresented, for example, when fees identified as delivery fees do not go to delivery personnel.[67] The Consumer Federation of America noted that prepared

[62] FTC-2022-0069-3423 ("I don't know what the "HOSPITALITY FE" [sic] is for, but it doesn't appear anywhere on the menu of this restaurant we attended."); FTC-2022-0069-3459 (restaurants "started adding a 'kitchen fee' in the small foot notes of the menu. Why not just include this in the cost of the food. Otherwise all menu items can be misrepresented as very low and high fees added in the foot notes."); FTC-2022-0069-3766 (restaurant "deceptively adds a 20% 'equity fee' to every bill instead of fairly displaying a price."); FTC-2022-0069-3880 (restaurant "started putting an undisclosed 'Economic Impact Fee' on their bills"); FTC-2022-0069-3885 ("local businesses have been tacking on 'service fees' when ringing up at the register. This is most noticeable at restaurants, for dine-in, takeout, and delivery. The fees are not disclosed on the menu or anywhere at the physical establishments or on their websites before placing an order."); FTC-2022-0069-4428 ("I would like to add that lately, I've seen the restaurant industry adding-on junk fees to post-meal restaurant bills named 'temporary inflation fee' or similar which are not disclaimed prior to eating. It's difficult to un-eat a meal if you disagree with these fees."); FTC-2022-0069-5999 ("And restaurants that charge a surcharge fee for various things at the final bill which ate [sic] not disclosed on the menu or stated by the wait staff or posted at the door!").

[63] FTC-2022-0069-0244 ("Another, more recent, development has been the addition of a 'service charge' on a restaurant check, calculated as a percent of the check total. Is this in place of a tip? Who receives it?"); FTC-2022-0069-1988 ("I visited a bar that had a sign which stated 'we add on a 20% service fee to all transactions which goes directly to the staff as a tip.' Then, on the payment screen, I was prompted AGAIN to tip for 15%, 20%, or 25% by the software."); FTC-2022-0069-2131 ("Service Charges at restaurants. I am fine with these when 100% of the charge goes to the waiter, but it's not always clear and I've heard that many restaurants hold it for themselves.").

[64] 29 CFR 531.52(b).

[65] *See* 29 CFR 531.52(a) (distinguishing tips—which are entirely at the discretion of the customer—from the payment of a charge made for service).

[66] FTC-2022-0069-2089 ("Many food delivery services, are deceptive in their pricing. . . . They are advertising a price much lower than it truly is"); FTC-2022-0069-2997 ("these companies add multiple different fees and charges to the final bill that are not seen until check-out"); FTC-2022-0069-4617 ("Doordash, Ubereats, Postmates, and every other food delivery app uses hidden fees to somehow make a $10 order double in price through several different fees that have no explanation as to what they are and there is no transparency on how much they will be when the customer is building their order.").

[67] FTC-2022-0069-0581 ("Delivery app services similarly charge fees which are not clearly related to a service or function of the business"); FTC-2022-0069-1545 ("it isn't plainly clear that the fees are non refundable even when the company fails to properly provide the service they are charging you a fee to perform"); FTC-2022-0069-1672 ("why am I being charged a delivery fee for my food, when the fee doesn't go to the driver?"); FTC-2022-0069-2190 ("Charges extra fees without explanation. How are there 2 delivery fees?"); FTC-2022-0069-2316 ("The delivery fee I pay to the national pizza chain that doesn't go to the delivery person, instead I still have to tip the delivery driver because the fee doesn't go to him/her"); FTC-2022-0069-4400 ("I have to pay unexplained additional fees for delivery services that don't seem to have a good explanation when there is already a base fee and travel fee.").

food and grocery delivery apps have been the subject of law enforcement actions challenging misrepresentations relating to fees.[68]

4. Transportation Fees

Individual commenters made similar observations about transportation-related goods and services. They noted that airlines fail to include mandatory fees in advertised prices and misrepresent fees.[69] They also described advertising for car rentals[70] and car sales[71] that misrepresented total costs to consumers by delaying the disclosure of mandatory fees that inflated amounts consumers had to pay. The Consumer Federation of America noted that rental car companies impose fees that are not always clearly disclosed up front,[72] and that "[d]ishonest auto dealers have an established history of failing to clearly disclose mandatory fees in their advertised prices." It noted that numerous state attorneys general have taken related enforcement action.[73]

[68] FTC-2022-0069-6095 (CFA).
[69] FTC-2022-0069-0084 ("Airlines, if they are offering a 'free' flight, should ONLY charge you the fees charged by governments or airports. They shouldn't be taking on junk fees, fuel surcharges, etc."); FTC-2022-0069-1676 ("Airline fees for bags, seats etc. Its [sic] not transparent until you get to the last page. Last minute fees for changes."); FTC-2022-0069-3724 ("Airlines obscure the true price of tickets until the very end of the purchase process wasting customer's time in a cynical effort to leverage sunk cost biases so we just buy the misleading ticket price because we've spent the last 30 minutes filling in every detail."); FTC-2022-0069-2055 ("I recently paid a 'plane usage' fee on plane ticket, purchased directly from the airline's website. This fee implies there's a possible travel option I could have booked that didn't involve flying, which is deceptive.").
[70] FTC-2022-0069-0013 ("I recently reserved a rental car with a 'total' of $856. When I got to the final booking page, the total was $600 more. 'Total' should mean exactly that, all-in, no further charges."); FTC-2022-0069-3459 ("Renting either a car or a moving van; they advertise $10/day. After all the fees which are standard and they are already aware of (nothing dependent on your choices) the actual cost is $40/day."); FTC-2022-0069-3785 ("For my rental car, I got charged a tourism commission fee, county bus license fee, customer facility charge, airport tram fee, vehicle license recovery fee, and concession recovery fee in addition to the base rate. Prices jump up to 30% higher when fee after fee is added.").
[71] FTC-2022-0069-0688 ("It wasn't until we sat down to fill out the contract, that we were informed of an additional mandatory fee of $3,000 for a clear-coat finish."); FTC-2022-0069-5435 (auto dealers "tack on a number of fees during the contract process such as 'dealer fees' and 'transportation fees' that were not included in price discussions").
[72] FTC-2022-0069-6095 (CFA).
[73] *Id*.

Industry comments related to auto sales, including ancillary goods and services, did not support a rulemaking.[74] These comments stated that the definition of junk fees is too vague,[75] and questioned whether fees that are not mandatory because they relate to voluntary ancillary products offered as part of auto sales transactions (*e.g.*, voluntary protection products) would be covered by the ANPR definition of "junk" fees.[76] The comments stated that fees for ancillary goods and services provide value to consumers.[77]

The comments from auto industry representatives stated that the law already prohibits failing to disclose mandatory fees, and that fees are adequately disclosed.[78] Commenters stated that "total cost" often varies in negotiated sales transactions and there is no clear reason why the disclosure of fees later in purchasing transactions should be deemed categorically deceptive or

[74] FTC-2022-0069-6043 (The National Automobile Dealers Association (NADA) stated that rulemaking is not necessary, and recommended advertising guidance and business education); FTC-2022-0069-6106 (American Property Casualty Insurance Association (APCIA) stated that fees rulemaking would impact several industries and business activities, and suggested that the FTC engage in more stakeholder engagement and analysis of the marketplace before moving forward); FTC-2022-0069-6058 (The Service Contract Industry Council (SCIC), the Motor Vehicle Protection Products Association (MVPPA), and the Guaranteed Asset Protection Alliance (GAPA)); FTC-2022-0069-5983 (The Motorcycle Industry Council (MIC), the Specialty Vehicle Institute of America (SVIA), and the Recreational Off-Highway Vehicle Association (ROHVA)); FTC-2022-0069-0124 (The National Association of Mutual Insurance Companies (NAMIC) objected that the ANPR created a false impression that junk fees are a problem in the property casualty insurance market, including automobile insurance, and argued that the FTC may not have the jurisdiction to regulate fees in insurance). All of these commenters, except NAMIC, referenced comments they previously submitted in connection with the Motor Vehicle Dealers Trade Regulation Rule matter.

[75] FTC-2022-0069-6043 (NADA stated that the scope of the ANPR requires clarification regarding the definition of "junk" fees, and proposed defining a "junk" fee as one that "is mandatory and yet provides no additional benefit of any kind beyond that included in the advertised price of the specific good or service and does not have any other business justifications."); FTC-2022-0069-6058 (SCIC, MVPPA, and GAPA argued that the definition of junk fees is too vague to provide any notice as to what the FTC may seek to regulate.).

[76] FTC-2022-0069-6106 (APCIA expressed concern that the definition of "junk fees" in the ANPR could unintentionally include products such as voluntary protection products (i.e., VPPs) that have proven to be beneficial to consumers and are sold in a transparent manner); FTC-2022-0069-6058 (SCIC, MVPPA, and GAPA argued that fees for VPPs in auto sales do not meet the definition of junk fees.)

[77] FTC-2022-0069-6106 (APCIA stated that VPPs that motor vehicle dealers make available at the time of auto sales provide valuable services and benefits to consumers); FTC-2022-0069-6058 (SCIC, MVPPA, and GAPA argued that VPPs provide value to consumers by facilitating the filing of product claims and providing financial security). *See also supra* nn. 33, 51.

[78] FTC-2022-0069-6043 (NADA stated that failing to disclose mandatory fees is already prohibited and opined that the FTC's desire to obtain authority for monetary relief is not a legally adequate basis for rulemaking.).

unfair because there are often good reasons why certain fees cannot be disclosed earlier in sales transactions.[79]

Comments noted that a fees rule could overlap or conflict with state and federal laws and regulations.[80] Commenters recommended excluding auto dealers from a rule on unfair or deceptive fees because fees related to auto sales transactions are already the subject of the FTC's rulemaking in the Motor Vehicle Dealers Trade Regulation Rule ("proposed Motor Vehicle Dealers Rule") matter.[81]

One commenter, the National Automobile Dealers Association ("NADA"), urged that, if the FTC proceeds with rulemaking, such a rulemaking should have "a strict focus with clear rules on how to adequately disclose so as to avoid consumer harm." Any rule should not go beyond addressing the failure to disclose mandatory costs.[82]

5. Telecommunications Fees

Individual comments about telecommunications, including internet, television, and telephone services, noted that consumers are confronted with advertised rates that do not include mandatory fees, which are only disclosed after consumers contract for services and in ways that consumers find difficult to understand.[83]

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[79] FTC-2022-0069-6043 (NADA); FTC-2022-0069-5983 (MIC, SVIA, and ROHVA argued that it would be burdensome for smaller powersports dealers to implement disclosure requirements); FTC-2022-0069-6058 (SCIC, MVPPA, and GAPA argued that the disclosure of all-in prices at the beginning of auto sale transactions is impracticable and likely impossible).

[80] FTC-2022-0069-6106 (APCIA noted that VPPs are subject to Truth in Lending Act Regulation Z as well as state lending laws similar to other voluntary products sold in connection with vehicle loans, and that an Unfair or Deceptive Fees rule would be duplicative and conflict with existing federal and state laws and regulations); FTC-2022-0069-0124 (NAMIC noted that casualty insurance payments are strictly regulated by state insurance codes).

[81] FTC-2022-0069-6043 (NADA recommended that auto dealers be exempt from any fees rule "given that the Proposed Vehicle Shopping Rule addresses this type of disclosure in a more comprehensive, and vastly different, manner."); FTC-2022-0069-5983 (MIC, SVIA, and ROHVA recommended exempting powersports vehicle dealerships, including motorcycles, ATVs, and ROVs, from the rule and adopting an incremental response to regulation).

[82] FTC-2022-0069-6043 (NADA).

[83] FTC-2022-0069-0138 (cable "fees do not appear on their advertised rates . . . to appear cheaper than they really are. In actuality it is impossible to subscribe at advertised rates."); FTC-2022-0069-2124 ("Cell phone companies, advertise

Citing a Consumer Reports study and its own research, New America's Open Technology Institute ("OTI") stated that internet service providers routinely do not include internet service fees, such as installation and activation fees, equipment fees, penalties for exceeding data caps, and early termination fees, in advertised prices, and that these fees should be considered as part of the true monthly cost of internet service that should be incorporated into advertised prices or prohibited when they are arbitrary or do not reflect added value.[84] OTI supported a rulemaking to increase price transparency and eliminate junk fees that provide no value to consumers, particularly in connection with wireless and wired internet connections, and urged the FTC to consider standardized price disclosures across industries.[85] The Consumer Federation of America cited a review of internet bills by Consumer Reports that showed providers using terminology such as "network enhancement fee," "internet infrastructure fee," "deregulated administration fee," and "technology service fee," that made fees look like government-imposed, mandatory fees.[86]

The Rural Broadband Association ("NTCA") noted that many internet service provider fees are related to mandatory government programs that provide value to consumers.[87] It argued that the FTC does not have jurisdiction over common carriers, and that broadband internet providers, while not common carriers, are already regulated by the FCC, and should be exempt from a fees rule.[88]

$69 dollars unlimited, my bill has never been under $100, carrier fees, service fees, premium data charges. If its [sic] impossible to access the $69 dollar charge then thats [sic] false advertising."); FTC-2022-0069-2892 ("The advertised price from my cable package is $99.99 a month, so why am I paying $160 a month? I can understand the equipment rental fees, but the broadcasting and regional fees make no sense and seem to go up every time I turn around."); FTC-2022-0069-2382 ("Often, consumers are not aware that their cable or internet bill includes a monthly 'rental' fee for the hardware modem that is provided by the cable or telephone company."); FTC-2022-0069-5435 ("Spectrum, Comcast, Verizon, & other internet/cable/phone providers: The advertised price becomes bloated with unnecessary surcharges such as 'economic adjustment' fees and recurring charges to use their mandated hardware."); FTC-2022-0069-5631 (telecommunication company "charged a mandatory $9.95 'Technology Service Fee' and a $4.95 'Billing Fee' on top of their normal rates. It is absolutely a ploy to artificially advertise a lower monthly payment for service even though it's guaranteed to be no less than $14.90 higher every month than they say it's going to be.").

[84] FTC-2022-0069-6087 (New America's Open Technology Institute ("OTI")).

[85] *Id*.

[86] FTC-2022-0069-6095 (CFA).

[87] FTC-2022-0069-3393 (NTCA-The Rural Broadband Association ("NTCA")).

[88] *Id*.

NTCA acknowledged, however, that certain types of retransmission fees that are opaque to consumers because broadcasters' confidentiality terms preclude transparent explanation of the fees could be examined to determine whether greater transparency can be achieved without imposing burdens in the generation of invoices.[89]

6. Rental Housing Fees

Comments from individual consumers about rental housing fees stated that leasing companies advertise monthly rents that do not include fees for mandatory ancillary services that unexpectedly and significantly increase renters' monthly expenditures.[90] The comments stated that leasing companies do not always identify the purpose of these fees.[91]

Consumer and policy groups noted that landlords do not adequately disclose many unavoidable fees or fail to explain the purpose of fees,[92] and supported a rulemaking pertaining to fees in connection with rental housing, including apartments, house rentals, and manufactured housing communities ("MHCs").[93] The National Consumer Law Center ("NCLC") conducted a survey of legal services and nonprofit attorneys that identified many unavoidable fees faced by

[89] *Id.*
[90] FTC-2022-0069-1391 (landlord "charges for extra programs that I was not informed about nor able to opt out easily"); FTC-2022-0069-1677 ("In the realm of rental housing, any and all fees should be included into advertised rental prices."); FTC-2022-0069-1717 ("when looking for apartment rentals, they are never honest about upfront costs until you sign a lease and get your first bill."); FTC-2022-0069-1782 ("When we started getting the bills, we were being charged electric, common area, utility admin, and pest fees that were not disclosed upfront."); FTC-2022-0069-2242 ("When renting my unit we were told the cost was $1500 utilities included and were completely strong armed at lease signing with the new cost of $1650 'to cover the utilities', and given 0 wiggle room or time to work out an alternate place to live."); FTC-2022-0069-2858 ("Property management companies include excessive hidden fees that are not included in base rent and can make the cost of rent several hundred dollars more than what is advertised."); FTC-2022-0069-4455 ("I am writing about the practice of apartment companies advertising misleading prices and including hidden fees for renters. . . .It is extremely widespread. I looked for a new apartment around north Dallas twice in the past year, and every single one I visited had mandatory monthly fees not included in the monthly rate and not listed at all on their website (at least not anywhere I saw).").
[91] FTC-2022-0069-3129 ("Junk fees have become fundamentally ridiculous, especially as these companies cannot even describe what the fee is for. In my monthly rent, I have a $34 service fee (that the . . . rental management company . . . has not been able to identify the reason for)").
[92] FTC-2022-0069-6091 (NCLC argues that landlords fail to explain the purpose of fees.).
[93] FTC-2022-0069-6085 (Michigan Law School endorses NCLC's recommendations in connection with the rental housing market generally and recommends that the FTC investigate and regulate junk fees in the manufactured housing industry.)

tenants,[94] and recommended that the FTC require that online platforms for rental advertisements disclose all fees, including fees charged before and after signing rental leases.[95] Private Equity Stakeholder Project supported enhanced fee disclosure requirements and upfront disclosure of the costs of goods and services to protect consumers and the economy at large.[96] The comments also recommended that the FTC investigate unfair or deceptive practices related to housing fees[97] and provide guidance on fees.[98]

The comments also recommended that a rule prohibit certain rental-related fees as invalid per se because they are exploitative[99] and target captive renters who often come from vulnerable groups.[100] The comments stated that fees make rental housing even more unaffordable and jeopardize access to future housing and financial stability.[101]

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[94] FTC-2022-0069-6091 (NCLC noted that the survey was conducted between November and December of 2022, and showed that tenants face an array of unavoidable fees, including rental application fees, sometimes charged even if landlords know applications will never be approved, excessive late fees, utilities-related fees, processing or administrative fees, convenience fees, insurance fees, notice fees, trash fees, pest control fees, technology fees, common area and amenity-related fees, inspection fees, and mail sorting fees.).
[95] FTC-2022-0069-6091 (NCLC).
[96] FTC-2022-0069-6094 (Private Equity Stakeholder Project ("PESP")).
[97] FTC-2022-0069-6091 (NCLC recommends that the FTC investigate deceptive or unconscionable practices by corporate and large landlords that impose unavoidable and exploitative fees).
[98] FTC-2022-0069-6091 (NCLC recommends that the FTC develop guidance).
[99] FTC-2022-0069-6091 (NCLC stated that corporate and large landlords often impose fees that are excessive in amount or greater than the cost to the landlord of providing a service, that are for services not provided, that are for services that landlords are legally obligated to provide as part of renting habitable premises, or that prevent competition); FTC-2022-0069-6094 (PESP recommended that the FTC identify specific fees charged by landlords that would be invalid per se and take strong enforcement action, and referred to the comment of the NCLC (FTC-2022-0069-6091) in identifying fees that should be invalid, including fees that are excessive in amount or greater than the cost to the landlord of a service, fees for services not provided, and fees for services that landlords are legally obligated to provide as part of renting habitable premises); FTC-2022-0069-6085 (Michigan Law School stated that additional fees faced by tenants of MHCs include application fees that may violate or attempt to circumvent state laws that prohibit MHCs from imposing entrance fees, community rule violation fees, and unilateral increases in lot rent.).
[100] FTC-2022-0069-6085 (Michigan Law School notes that tenants in manufactured housing communities (MHC) are disproportionately low-income, disabled, and elderly, and are a captive audience of the owners of the land on which mobile homes sit.).
[101] FTC-2022-0069-6091 (NCLC).

7. Education Fees

The comments further noted that institutions of higher learning often charge mandatory fees that are not included in advertised tuition fees.[102] The Consumer Federation of America noted that the rate of fees is increasing faster than the cost of tuition and non-transparent tuition and fee pricing models particularly affect Black and Indigenous communities and other communities of color.[103]

8. Financial Services Fees

Individual commenters argued that fees charged in connection with bank accounts, credit cards, and other financial products are excessive and not adequately disclosed.[104] Consumer

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[102] FTC-2022-0069-2288 ("This rule should apply to 'non-profit' institutions such as colleges and universities as they use them [fees] in the same predatory ways as for profit companies but have the advantage of exploiting a captive consumer population that is younger and naive."); FTC-2022-0069-2616 ("Tuition bills for higher education have also added increasing amounts of charges with no opt-out's."); FTC-2022-0069-4375 (University charged "miscellaneous' fees that aren't included in the tuition cost. When looking at the price of tuition it is not included and is only seen on the final bill. When confronted they couldn't give an itemized list for the charge.").

[103] FTC-2022-0069-6095 (CFA). *See also* FTC-2022-0069-6113 (UnidosUS endorsing the comment of the CFA).

[104] FTC-2022-0069-0450 ("monthly service fees if your balance falls below $xxx, overdraft fees"); FTC-2022-0069-0488 ("Then there are the account fees, service fees, and atm fees at banks, which are ridiculous considering they loan out your money and pay a half a percent interest to you."); FTC-2022-0069-0550 ("Junk fees manifest in markets ranging from auto financing to international calling cards and payday loans."); FTC-2022-0069-1676 ("Banks charging overdraft fees and then when you link a credit card to cover the overdraft, the credit card charges you a fee. This can be for every single overdraft! Ridiculous!"); FTC-2022-0069-1974 ("I also am charged $12 anytime my savings account goes below 1500 dollars by chase bank."); FTC-2022-0069-2131 ("'Convenience' fees for paying bills online. A literal scam. It's more convenient for businesses to take electronic payments."); FTC-2022-0069-5995 ("Fees to pay with a credit card when the fee wasn't posted or disclosed anywhere. Usually at least 3 to 5% of the total transaction and that would include taxes. It's insane. Prices not posted. Fees added. Consumers are being robbed at will."); FTC-2022-0069-2262 ("Convenience fees in general are outrageous. It's 2023, credit cards and online payments aren't novel, they're the norm. Cable/internet companies do it (xfinity/Comcast and Cox). Cell phone companies do it, Verizon. It's outrageous."); FTC-2022-0069-2312 ("Fees should also be collected in one place and easy to read. Some places like banks list fees but they're usually not collected in one place. You have to go looking for them. This feels a little hidden and anti-consumer."); FTC-2022-0069-2729 ("When I opened a bank account at a small local bank they charged a monthly fee for even opening a savings account. They claimed this fee for 'maintenance' of the account."); FTC-2022-0069-3052 ("My employer opened an HSA account for me at First Financial Bank. I started receiving statements in the mail that they took a monthly $3 paper statement fee out of my account, which I had not consented to. When I went online to change it to email statements, the first thing they made me do is accept an agreement saying that I acknowledge the validity of paper statement fees."); FTC-2022-0069-3675 ("You know how sometimes you get those visa style gift cards that work as debit cards with the pre-loaded amounts? Some of those companies will charge you a monthly fee on those types of cards that isn't mentioned literally anywhere and that you won't know about until you go to check the balance and find out that they've literally been robbing you of your own money."); FTC-2022-0069-3681 ("Some examples of companies that include hidden fees at significant cost to the consumer include: . . . USBank/Wells Fargo/BoA/WaFD Bank - Monthly maintenance fees/overdraft fees (These also disproportionately impact the poor)."); FTC-2022-0069-3932 ("Consumers across so many industries are increasingly subject to fees that are not conveyed at

Reports noted that "[a]ccording to the 2018 Consumer Reports national survey, 37% of consumers said they had received a hidden fee for personal banking in the previous two years, while 36% had received a hidden fee for credit cards and 24% for investment services."[105] Consumer groups noted that financial services fees are particularly burdensome to vulnerable, low-income, Black, and Latino consumers.[106]

Some comments from the consumer financial services industry supported a rulemaking to create a more transparent financial services sector and to address bad actors who mislead consumers about fees.[107] Other comments opposed a rulemaking.[108]

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the time of the purchase... surprise service fees in hospitality, surprise interest fees in financial services, surprise charges in healthcare that even insurance providers cannot explain and are unwilling to pay themselves. Consumers should simply not be required to pay fees that were not agreed to and understood in advance."); FTC-2022-0069-5652 ("Banks disclose their fees for 'overdraft protection' or 'insufficient funds fees' buried in a massive packet of information and on their websites. Meanwhile advertisements excitedly talk about interest rates or joining bonuses. Most banking customers find out about these fees when they are the most vulnerable: low on funds. They then have to pay nearly $30 for being poor."); FTC-2022-0069-5896 ("Fees should be disclosed. Misleading ads that lure consumers in. Hidden disclosures that change to benefit financial is [sic] institutes and further burden consumers should be disclosed in larger print, and announced more than advertisements.");

[105] FTC-2022-0069-6099 (CR also noted that, in March 2022, it asked its member to share experiences regarding junk financial fees, and collected over 1,800 comments identifying hidden financial fees, including overdraft and insufficient fund fees, account maintenance fees, late fees, dormancy and inactivity fees, check cashing fees, fees for minimum purchase transactions, fees for paper statements, and fees to pay bills).

[106] FTC-2022-0069-6095 (CFA noted that fees represent a disproportionately high cost to low-income consumers and may destabilize household budgets and "ultimately push consumers out of mainstream financial products and into fringe financial services and predatory financial products."); FTC-2022-0069-6113 (UnidosUS referenced a comment it submitted to the Consumer Financial Products Bureau, highlighting ways that junk fees in the financial system disproportionately impact Latinos and lower-income people.)

[107] FTC-2022-0069-6044 (The American Fintech Council ("AFC") acknowledged and supported the FTC's jurisdiction over the issues raised in the ANPR and supported regulation that will create a fairer and more transparent financial services ecosystem to provide for sustainable access to credit and to foster responsible practices and fair lending in consumer financial markets); FTC-2022-0069-2623 (The American Land Title Association ("ALTA") supported the FTC rulemaking to address bad actors who mislead consumers about fees). Some commenters framed their comments within the context of previous comments they submitted in connection with Motor Vehicle Trade Regulation Rule – Rulemaking, No. P204800. See FTC-2022-0069-6045 (The Credit Union National Association ("CUNA") submitted a comment that referred to and incorporated its comment to Motor Vehicle Trade Regulation Rule – Rulemaking, No. P204800, in which it stated that it supports "the FTC's effort to develop a rule that addresses bad actors in the auto dealer market"); FTC-2022-0069-6114 (The Consumer Credit Industry Association ("CCIA") similarly referred the FTC to its comments submitted in response to the Motor Vehicle Dealers Trade Regulation Proposed Rule).

[108] FTC-2022-0069-6090 (The American Financial Services Association ("AFSA") opposed rulemaking and argued that the unfair or deceptive practices on which the FTC sought comment in the ANPR are not widespread in the consumer financial services market.).

Industry comments recommended that the FTC clearly define or clarify the meaning of "junk fees,"[109] and objected that fees in the consumer financial sector are for legitimate services that add value to consumers[110] and are already adequately regulated by state and federal laws.[111] For example, AFSA argued that there is already sufficient regulation of fees in the financial services sector, including through the Truth in Lending Act ("TILA"), the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Savings Act ("TISA"), and the Consumer Financial Protection Act of 2010 ("CFPA")).[112] Comments also stated that competitive pressures within the industry tend to reduce fees.[113]

The comments stated that fees in the consumer financial services market cannot be equated with fees charged in other markets, such as live event or resort fees.[114] They stated that there may be legitimate reasons for disclosing fees other than at the beginning of sales transactions.[115] The

[109] FTC-2022-0069-2623 (ALTA recommended that the FTC clearly define what "junk" fees are because the definition in the ANPRM is too broad); FTC-2022-0069-6114 (CCIA suggested that there is no objective standard for identifying junk fees for goods or services that have little or no added value to consumers); FTC-2022-0069-6045 (CUNA strongly urged the Commission to further clarify the definition of the term "junk fee.").

[110] FTC-2022-0069-2623 (ALTA noted that title insurance and settlement services fees commonly charged in real estate transactions are for legitimate services); FTC-2022-0069-6090 (AFSA argued that junk fees are misnamed because they provide value to consumers who are in the best position to determine whether fees add value to them through their purchasing decisions, and that such fees compensate financial services providers, including when they are placed in a worse position as a result of subsequent consumer action); FTC-2022-0069-6114 (CCIA commented that ancillary products offered in conjunction with auto financing loans provide value to consumers by protecting auto financing loans and consumer credit); FTC-2022-0069-6040 (Online Lenders Alliance ("OLA") argued that three types of fees, mandatory fees, misconduct fees, and enhancement fees, have been mislabeled as junk fees by the Consumer Financial Protection Bureau); FTC-2022-0069-6045 (CUNA argued that describing fees as "junk fees" does a disservice to responsible actors like credit unions and their partners that charge well-disclosed fees to recoup costs and encourage positive behavior.).

[111] FTC-2022-0069-2623 (ALTA noted that title insurance and settlement services fees are highly regulated to provide protection for consumers and ensure that fees are adequately disclosed); FTC-2022-0069-6045 (CUNA); FTC-2022-0069-6114 (CCIA commented that federal and state regulations adequately protect consumers by ensuring that their purchase of ancillary products is voluntary and express); FTC-2022-0069-6040 (OLA noted that the financial services sector is already heavily regulated and numerous types of fee disclosures are already required.).

[112] FTC-2022-0069-6090 (AFSA).

[113] FTC-2022-0069-6044 (AFC).

[114] FTC-2022-0069-6045 (CUNA stated that fees in the heavily regulated consumer financial services market cannot be equated with opaque fees for live-event tickets or hotel resorts); FTC-2022-0069-6040 (OLA criticized oft-cited studies on fees, particularly, "The Impact of Price Frames on Consumer Decision Making Experimental Evidence" and "The Competition Initiative And Hidden Fees," arguing that they are not applicable to fees in the financial services industry.).

[115] FTC-2022-0069-6114 (CCIA objected that fees are not hidden or deceptive if they are offered to consumers at

comments noted that regulating fees in the consumer financial services sector could have negative consequences such as limiting services and raising prices.[116] The comments stated that the FTC should coordinate with other agencies to harmonize rules.[117]

9. Correctional Services Fees

Consumer and policy groups also commented on a number of unfair or deceptive practices regarding fees imposed on incarcerated people and supported rulemaking.[118] These comments stated that incarcerated people are a captive audience who are forced to pay excessive fees by monopolistic or oligopolistic service providers in connection with private correctional services.[119] Commenters stated that these fees are often deceptive because service providers fail to comply with federal disclosure requirements, omit fee information, and present pricing information in confusing ways that are likely to mislead consumers, for example, by bundling services that make identifying fees difficult.[120] Commenters also stated that these fees are often unfair because they cause

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different steps of the sales process because disclosing fees later in the process may be necessitated by the fact that consumers must first be approved for loans); FTC-2022-0069-6045 (CUNA noted that late fees are disclosed on fee schedules and only levied if payments are not rendered by their due dates.); FTC-2022-0069-6090 (AFSA argued that the FTC should not seek comments about how widespread certain unfair or deceptive practice are but should instead identify such widespread problems on its own.).

[116] FTC-2022-0069-6090 (AFSA claimed that limiting fees in the financial services sector would cool competition, raise prices, and harm consumers who do not use services but may be required to pay fees that are built into overall costs.); FTC-2022-0069-6045 (CUNA urged the FTC to avoid adopting regulatory changes that will negatively impact the ability of credit unions or their system partners from serving members.).

[117] FTC-2022-0069-6044 (AFC noted that the CFPB has jurisdiction over several topics addressed in the ANPR, as reflected in the CFPB's "Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services," and recommended that the FTC coordinate with the CFPB and other relevant agencies to ensure that any rule fit within the FTC's jurisdictional authority and is not duplicative or contradictory of CFPB rules.).

[118] FTC-2022-0069-6088 (National Consumer Law Center submitted a comment on behalf of a group of civil rights, consumer rights, faith-based, criminal justice, and reentry organizations supporting rulemaking.); FTC-2022-0069-6082 (Fines and Fees Justice Center ("FFJC"), "a national center for advocacy, policy, information, and collaboration on effective solutions to the unjust and harmful imposition and enforcement of fine and fees in the criminal legal system," submitted a comment in support of rulemaking, and noted that the CFPB and FCC are considering fees imposed on incarcerated persons.).

[119] FTC-2022-0069-6088 (NCLC noted that these services include money-transfer services, release cards, and various technology services, including technologies incarcerated people use to communicate with loved ones, such as electronic messaging services.); FTC-2022-0069-6082 (FFJC noted that these correctional services include money transfers, release cards, and technology services, such as phone calls, emails, tablets, and music and e-book subscriptions, and that providers often charge fees far in excess of the cost of the services to the companies providing them.).

[120] FTC-2022-0069-6088 (NCLC); FTC-2022-0069-6082 (FFJC).

substantial harm to incarcerated people who are the least able to afford them, cannot reasonably be avoided because the consumers are captive to private companies with exclusive contracts, provide little or no added value to consumers, and do not benefit competition.[121]

C. Comment Recommendations

Many commenters argued that the prevalence of hidden fees cannot be effectively addressed by tools currently available to the FTC without a rulemaking.[122] The Consumer Federation of America argued that a rulemaking is necessary to address "the root cause of the 'junk fee' problem—rampant deceptive advertising and impaired competition."[123]

[121] *Id*.
[122] FTC-2022-0069-6095 (CFA noted that AMG prevents the FTC from seeking monetary relief under Section 13(b) of the FTC Act, and that consumer contracts requiring arbitration would not deter misconduct or provide appropriate remedies for unfair and deceptive junk fee conduct.); FTC-2022-0069-6042 (TINA.org stated that the prevalence of junk and hidden fees cannot be effectively addressed by tools currently available to the FTC, particularly in the wake of the AMG decision, and that a junk fees rule would be in the public's best interest.).
[123] FTC-2022-0069-6095 (CFA noted that advertising deceptively low prices then tacking on mandatory fees harms honest businesses and consumers, and disproportionately impacts vulnerable consumers, limited English-speaking consumers, and consumers with disabilities.).

The comments broadly supported FTC action to address the identified deceptive practices by requiring price transparency. Many individual commenters,[124] consumer groups,[125] and

[124] FTC-2022-0069-0032 ("I agree with the proposed rule and requiring all unavoidable fees, including taxes, be included in the published price."); FTC-2022-0069-0117 ("I wholeheartedly support the FTC's proposal to force companies to show ALL mandatory fees and charges in the initial price search or quote."); FTC-2022-0069-0457 ("Forcing all fees to appear in any advertised price would be a help. Prohibition of those fees would be even better!"); FTC-2022-0069-1087 ("Except with respect to taxes and voluntary add-ons which exceed normal expectations, no one should be able to legally charge more than the price they advertise."); FTC-2022-0069-2144 ("Not just for ticket master but for all companies. Put the real price up front and don't hide behind other fees you earmark 2/3rds of the way down the page."); FTC-2022-0069-2178 ("All fees and charges should always be clear and upfront in the price. Nothing should be hidden. It is deceptive to state otherwise."); FTC-2022-0069-3017 ("[T]he rule should require all-in pricing, because that is the simplest and most honest way to disclose the actual cost to the consumer."); FTC-2022-0069-3083 ("MAKE ALL BUSINESSES SHOW THE REAL TRUE PRICE (TAX INCLUDED) ON THE LABEL AT EVERY STORE AND BUSINESS IN THE UNITED STATES."); FTC-2022-0069-3423 ("I urge the FTC to act to bring these business practices in line with the customary way business has been conducted in our society in stores for a very long time by banning the practice and requiring listed and/or advertised prices to include all costs, beginning with the first time the price is presented to customers."); FTC-2022-0069-3459 ("Please move towards upfront pricing, for all taxes, service charges and other charges that are standard should be included in the first price you see."); FTC-2022-0069-3469 ("The only way, in my opinion, to solve this problem is to implement a rule/law where the ONLY additional charges allowed for an invoice or service is GOVERNMENT fees and taxes. . . . There would be no additional costs incurred by a business/service to change to this rule, just a change forcing them to advertise the TRUE COST for using their service or business."); FTC-2022-0069-3659 ("Please have merchants show the actual final cost of a product or service as opposed to providing a sale price and then adding additional charges."); FTC-2022-0069-3708 ("Companies should be required to show the TOTAL price, including all applicable fees, on any advertisements or listings on their website."); FTC-2022-0069-3746 ("The total cost of an e-commerce purchase should be required to be displayed alongside the listing for the item."); FTC-2022-0069-3859 ("Corporations should be mandated to advertise full-prices including fees."); FTC-2022-0069-4151 ("Every company in every scenario possible should be forced to advertise only the true combined total cost."); FTC-2022-0069-4176 ("Please step up and make retailera [sic] at all levels advertise the real true cost of their goods and services so consumers can make reasonable choices without being lured or baited and switched."); FTC-2022-0069-4252 ("Everyday, I am lured into a transaction, told I am going to pay one price, only to have it raised by a large percentage at checkout due to 'fees' that are non-negotiable or part of processing. If these are standard fees, they need to be added to the price of the item, service etc. These are a bait and switch tactic that I don't know how became legal."); FTC-2022-0069-4253 ("What's the point of a price if that's not the price? Advertised price should be the finial [sic] price. Nothing more nothing less."); FTC-2022-0069-4255 ("Fees should be transparent and included in advertised prices. This should go for everything from airbnb rentals, to airfare, to concert tickets, to retail, to grocery stores. The price you see advertised should be the price you pay."); FTC-2022-0069-5144 ("All business should be legally required to post the all-in or 'total' price of goods, including taxes and fees. Many other countries practice this, promoting transparency and allowing the consumer to shop with clear pricing."); FTC-2022-0069-5332 ("[T]he advertised/shown price should be the price."); FTC-2022-0069-5517 ("We need price transparency for the services we buy. I advocate for requiring all services to be forced to advertise and display FINAL prices, after all fees."); FTC-2022-0069-5692 ("Taxes and fees should be included in the listed price every time. This is for every service and every good everywhere in the country. This should be for every label, advertisement, coupon, and other reasonable statement of price.").

[125] FTC-2022-0069-6095 (CFA supports an industry-neutral rule requiring disclosure of all-in pricing, including all fees that are unavoidable or mandatory, at the beginning of transactions to allow consumers to comparison shop and foster competition); FTC-2022-0069-6099 (CR recommended, as an alternative to prohibiting fees, requiring the clear, upfront disclosure of fees, stated that consumers "would greatly benefit from a comprehensive national rule to ban hidden and surprise junk fees and improve the transparency and comparability of any truly optional add-on services," and advocated for a "strong economy-wide initiative" to create "marketplace standards and ethical norms . . . in all or most economic sectors"); FTC-2022-0069-6113 (UnidosUS endorsed the recommendation of the CFA for a rule that requires "all-in" pricing for goods and services at the beginning of purchase transactions, and that the rule identify prohibited unfair and deceptive conduct relating to junk and hidden fees).

industry members[126] recommended an industry-neutral rule requiring the disclosure of all-in pricing that includes all mandatory fees.

Many individual commenters and consumer groups, concerned with the cumulative impact of fees, also recommended that the FTC prohibit or limit fees, such as fees that are of little to no value to consumers,[127] or require that fees bear a reasonable relationship to the cost of the services provided.[128] Some consumer groups recommended that the rule incorporate a reasonable consumer standard and that the FTC develop model fee disclosures.[129]

The U.S. Chamber of Commerce and the Association of National Advertisers argued that Congress has not authorized comprehensive unfair or deceptive fees rulemaking, and that the ANPR is too broad to comply with rulemaking procedures.[130] They acknowledged that existing FTC rules include disclosure requirements related to pricing, citing the Telemarketing Sales Rule, the Restore Online Shoppers' Confidence Act, and the Funeral Rule, but objected that the FTC has not shown that existing rules are insufficient to protect consumers or explained how a proposed rule would work with other rules.[131] They also objected to an economy-wide rule because it would

[126] *See* Section II.B.
[127] FTC-2022-0069-6095 (CFA recommended that fees that provide little or no value to consumers or which consumers reasonably believe would be included in advertised prices should be prohibited); FTC-2022-0069-6099 (CR commented that junk fees that add little or no value or would reasonably be included in the base price of goods or services should be reduced or banned).
[128] FTC-2022-0069-6099 (CR recommended, as an alternative to prohibiting fees, that fees "bear a reasonable and proportionate relationship to the underlying costs of providing the particular service for which they are charged.").
[129] FTC-2022-0069-6095 (CFA recommended that the FTC develop model fee disclosures); FTC-2022-0069-6113 (UnidosUS recommended that a rule require disclosures that take into account consumers' language proficiency, include model fees disclosures, and incorporate a reasonable consumer standard).
[130] FTC-2022-0069-6047 (The Chamber stated that the proposed rulemaking implicates the Major Questions Doctrine, Congress has not clearly authorized comprehensive unfair and deceptive fees rulemaking, and the proposed rulemaking does not meet the requirements of the FTC Act and would constitute unauthorized competition rulemaking to the extent it relates to concerns about monopoly and anticompetitive behavior. The Chamber also stated that the FTC has not shown practices related to fees are unfair because requiring extensive fee disclosures upfront would harm businesses without countervailing benefits to consumers.).
[131] FTC-2022-0069-6047 (The Chamber stated that the FTC has not explained how existing rules are "insufficient from a deterrence or consumer-protection standpoint."); FTC-2022-0069-6093 (ANA stated that the ANPR fails to discuss how the proposed rulemaking will apply when it overlaps with existing regulations related to advertising and disclosures.). The Commission addresses and seeks comment on other rules with disclosure requirements related to pricing information in Sections IX.C and X.

overlap with industry-specific rules and recommended that the FTC narrowly tailor rulemaking to specific industries engaging in unfair or deceptive practices.[132] ANA recommended alternatives to rulemaking, such as industry-specific workshops, consumer and business education, and individual enforcement actions.[133]

Other commenters disagreed. For example, Policy Integrity argued that the FTC has clear congressional authority to tackle deceptive or unfair practices through rulemaking, and that doing so would not supersede that authority.[134] Policy Integrity pointed out that FTC rulemaking relating to all-in pricing would be in keeping with other FTC rules that relate to unfair or deceptive fee disclosure practices, such as the Unavailability Rule or Raincheck Rule, the Funeral Rule, the Negative Option Rule, the Mail, Internet, or Telephone Order Merchandise Rule, and the Cooling-Off Rule.[135] Policy Integrity pointed out that these FTC rules "imposed disclosure requirements targeting unfair and deceptive fee-disclosure practices that apply to a vast number of entities across numerous industries, similar to its present effort to regulate junk fees and hidden fees."[136]

III. Prevalence of Unfair and Deceptive Fee Practices

This proposed rule addresses prevalent fee practices that are unlawful under Section 5 of the FTC Act, 15 U.S.C. 45, because they are unfair or deceptive to consumers. The Commission has identified two practices that, for the reasons described herein, are unfair or deceptive practices under Section 5 of the FTC Act: (1) practices that misrepresent the total costs by omitting

[132] FTC-2022-0069-6047 (The Chamber stated that an economy-wide rule would likely overlap with existing sectoral rules); FTC-2022-0069-6093 (ANA urged the FTC to identify specific industries engaging in unfair or deceptive practices and narrowly tailor rulemaking to those industries.).
[133] FTC-2022-0069-6093 (ANA).
[134] FTC-2022-0069-6077 (Policy Integrity argued that the FTC has clear congressional authorization in the FTC Act to tackle deceptive practices related to fees under Section 5(a) and unfair practices under Section 5(n), and that regulating junk fees, hidden fees, and related practices would not implicate the Major Questions Doctrine because FTC regulatory and enforcement antecedents demonstrate that FTC action in this area would not be "unheralded" and would not represent a "transformative" change in the FTC's authority, under *West Virginia v. EPA*.).
[135] FTC-2022-0069-6077 (Policy Integrity argued that FTC rulemaking related to all-in pricing would not be "unheralded" under *West Virginia v. EPA* given prior rulemaking related to pricing disclosures.).
[136] FTC-2022-0069-6077 (Policy Integrity).

mandatory fees from advertised prices, and (2) practices that misrepresent the nature and purpose of fees or charges. The comments received in response to the ANPR and the Commission's history of enforcement actions and other complementary work, discussed in Section III.C, demonstrate the prevalence of these practices.[137]

As shown in the comments received, advertising misrepresentations and unlawful practices related to pricing and added fees are chronic problems confronting consumers. These problems are prolific and occur across industries affecting a large majority of the population.[138] The FTC uses its authority under Section 5 to stop deceptive or unfair acts or practices. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers—that is, it would likely affect the consumer's conduct or decisions with regard to a product or service.[139] False and misleading statements are unlawful regardless of an intent to deceive.[140] Some deception cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.[141] A practice is considered unfair under Section 5 if: (1) it causes, or is likely to cause, substantial injury; (2) the injury is not reasonably avoidable by consumers; and, (3) the injury is not outweighed by benefits to consumers or competition.[142]

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[137] The Commission can support a finding that practices are prevalent by showing that it has issued cease and desist orders or by providing information that indicates a widespread pattern of unfair or deceptive acts or practices. 15 U.S.C. 57a (b)(3).
[138] FTC-2022-0069-6095 (describing a survey in which 85% of respondents encountered fees that were not initially disclosed and listing a range of industries in which the fees occurred); *supra* Section II.B.
[139] *See* Fed. Trade Comm'n, *FTC Policy Statement on Deception*, 103 F.T.C. 174, 175 (1984) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 183 (1984)), (hereinafter "Deception Policy Statement"), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf .
[140] *In re Sears, Roebuck & Co.*, 95 F.T.C. 406, 517 n. 9 (1980) (citing *Regina Corp. v. FTC*, 322 F.2d 765, 768 (3d Cir. 1963)).
[141] *Id*. at 175 & 175 n. 4, 176–77.
[142] 15 U.S.C. 45(n).

A. Bait-and-Switch Tactics: Misrepresenting Total Costs by Omitting Mandatory Fees from Advertised Prices

The comment record supports a finding that bait-and-switch pricing practices are prevalent. Specifically, commenters identified pricing structures that do not disclose the total price for goods or services, but instead advertise a lower cost to consumers that is ultimately inflated by mandatory charges.[143] These pricing structures take a variety of forms, including pure misrepresentations through initial advertisements displaying a lower price, advertisements that inadequately disclose mandatory add-on charges,[144] tactics that disclose mandatory add-on charges late in the purchasing process, and sales that omit material terms such as requiring an additional purchase to make full use of the good or service.[145] All of these practices render the quoted price misleading because they lead consumers to believe that the cost for the good or service is lower than it actually is—put another way, the advertised good or service is not actually attainable for the quoted price.

Pricing structures that do not initially disclose the total cost of a good or service are deceptive even if the total cost is disclosed at some point during the transaction. It has long been the FTC's position that misleading door openers are deceptive.[146] Further, numerous courts have recognized that it is a violation of the FTC Act if a consumer's first contact is induced through deception, even if the truth is clarified prior to purchase.[147] Thus, when the initial contact with a

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[143] *See* discussion, *supra* Section II.A.1.

[144] This practice would include advertisements where additional charges are not disclosed clearly and conspicuously—for example, they appear only in fine print—and advertisements that partition the total cost into various components without displaying the total price most prominently.

[145] *See* discussion, s*upra* Section II.A.1. & n. 9.

[146] Fed. Trade Comm'n, *Enforcement Policy Statement on Deceptively Formatted Advertisements* at 7 (2015), https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf (hereinafter "*Policy Statement on Deceptive Ad Formats*") (describing the FTC's enforcement actions against misleading door openers since at least 1976). *See also*, *Intuit, Inc.*, Docket No. 9408 (FTC Initial Decision Sept. 6, 2023) (finding that Respondent's advertisements employed a deceptive door opener claiming that consumers can file their taxes for free with TurboTax and that Respondent's later disclosures did not clearly and conspicuously disclose material facts explaining the limitations on the free offer).

[147] *Policy Statement on Deceptive Ad Formats* at 7 & n. 25 (collecting cases before 2015); *FTC v. FleetCor Techs., Inc.*, 620 F. Supp. 3d 1268, 1298–99 (N.D. Ga. 2022); *FTC v. Elegant Sols., Inc.*, No. SACV 19-1333 JVS (KESx), 2020 WL 4390381, at *9–10 (C.D. Cal. July 6, 2020), aff'd, No. 20-55766, 2022 WL 2072735 (9th Cir. June 9, 2022);

consumer shows a lower or partial price without disclosing the total cost, it violates the FTC Act even if the total cost is later disclosed.

It is also well established that it is deceptive to sell a product that is not fit for the purpose for which it is sold.[148] By offering a good or service, a seller impliedly represents that it is fit for the purpose for which it is sold.[149] As a result, it is deceptive when a good or service cannot be used for its intended purpose without an additional purchase.

The pricing structures described in this section are material where they are likely to affect consumers' choices or conduct regarding the goods or services at issue. Material facts are those that are important to consumers' choices or conduct regarding a product, and certain categories of information are presumptively material.[150] The Commission has previously recognized that price is a material term,[151] and that it is a deceptive practice to misrepresent the price of a product.[152]

Pricing structures that do not clearly and conspicuously disclose the total price are also unfair under Section 5 because they are likely to cause substantial injury, they are not reasonably avoidable by consumers, and the injury is not outweighed by benefits to consumers or competition. Unfair or deceptive fee practices can cause significant consumer harm and reduce competition.[153]

FTC v. Am. Fin. Benefits Ctr., No. C 18-00806 SBA, 2018 WL 11354861, at *9 (N.D. Cal. Nov. 29, 2018); *FTC v. All. Document Preparation*, 296 F. Supp. 3d 1197, 1209 (C.D. Cal. 2017); *FTC v. OMICS Grp. Inc.*, 302 F. Supp. 3d 1184, 1190 (D. Nev. 2017).

[148] *Deception Policy Statement*, 103 F.T.C. at 175 n.4, 177; *In re Int'l Harvester Co.*, 104 F.T.C. 949, 1058 & n.35 (1984); *Tomasella v. Nestle USA, Inc.*, 962 F.3d 60, 72 & n.11 (1st Cir. 2020).

[149] *Deception Policy Statement*, 103 F.T.C. at 175 n.4, 177; *In re Int'l Harvester Co.*, 104 F.T.C. at 1058 & n.35; *Tomasella*, 962 F.3d at 72, 72 n.11.

[150] *Deception Policy Statement*, 103 F.T.C. at 182.

[151] *Id.* at 182 & 182 n.55 (listing claims or omissions involving cost among those that are presumptively material); *see also FleetCor Techs.*, 620 F. Supp. 3d at 1303–04 (finding that representations about transaction fees and discounts were material).

[152] *Deception Policy Statement*, 103 F.T.C. at 175 (listing "misleading price claims" among those claims that the FTC has found to be deceptive); *see , e.g.*, *Resort Car Rental Sys., Inc. v. Fed. Trade Comm'n*, 518 F.2d 962, 964 (9th Cir. 1975) (upholding the Commission's order finding that using the name "Dollar-A-Day" misrepresented the price of car rentals in violation of Section 5 of the FTC Act).

[153] *See, e.g.*, Mary Sullivan, Fed. Trade Comm'n, *Economic Analysis of Hotel Resort Fees* 4 (2017) https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf; Alexander Rasch et al., *Drip Pricing and its Regulation:*

When sellers advertise prices that are artificially low because they do not include mandatory fees that are disclosed only later in the purchasing transaction, consumers end up transacting with those sellers under false pretenses. Injury to consumers can occur even when all fees are disclosed up front, but separately from the base price.[154] Businesses that accurately represent the total amount consumers will pay up front are at a competitive disadvantage to those that do not.[155]

Often, these harms disproportionately impact consumers who are already targets of discrimination. The Consumer Federation of America, along with ten other organizations, submitted a comment that compiled examples of how unfair or deceptive fees uniquely harm low-income, Black, Latino, limited English-speaking, and disabled consumers.[156] For example, unfair or deceptive fees represent a disproportionately high cost for low-income consumers and can have cascading effects that destabilize their budgets and push them to rely on predatory financial products.[157] Black and Latino consumers often pay a disproportionate amount of junk fees in

Experimental Evidence, 176 J. Econ. Behav. & Org., 353, 362–63 (2020) ("[E]xperimental evidence suggests that consumers indeed strongly and systematically underestimate the total price under drip pricing and make mistakes when searching."); Shelle Santana et al., *Consumer Reactions to Drip Pricing*, 39 Mktg. Sci. 1, 188 (2020), https://doi.org/10.1287/mksc.2019.1207 ("Across six studies, we find that when optional surcharges are dripped (versus revealed up front) consumers are more likely to initially select a lower base priced option which, after surcharges are included, is often more expensive than the alternative."); Howard A. Shelanski et al., *Economics at the FTC: Drug and PBM Mergers and Drip Pricing*, 41 Rev. Indus. Org., 314–16 (2012). https://doi.org/10.1007/s11151-012-9360-x; Tom Blake et al., *Price Salience and Product Choice*, 40 Marketing Science 4, 619–36 (2021), https://doi.org/10.1287/mksc.2020.1261; Steffen Huck et al., *The Impact of Price Frames on Consumer Decision Making: Experimental Evidence*, at 4 (2015), https://www.ucl.ac.uk/~uctpbwa/papers/price-framing.pdf; Ellison & Ellison, *Search and Obfuscation in a Technologically Changing Retail Environment: Some Thoughts on Implications and Policy*, 6 NBER Innovation Pol'y & Econ. 18, 2–6 (2018); Busse, M., & Silva-Risso, J., *"One Discriminatory Rent" or "Double Jeopardy": Multi-component Negotiation for New Car Purchases*, 100 Am. Econ. Rev. 2, 470–74 (2010).

[154] *E.g.*, Sullivan, *supra* n. 153, at 22, 24–25 (describing empirical studies on partitioned pricing); Vicki G. Morowitz et al., *Divide and Prosper: Consumers' Reactions to Partitioned Prices*, 35 J. Mktg. Rsch., 455 (1998) (on average, subjects shown partitioned pricing underestimated the total price relative to subjects who received the total price up front); Bertini, M., & Wathieu, L., *Attention Arousal through Price Partitioning*, 27 Mktg. Sci. 2, 236, 239–41 (2008) (showing that when prices are partitioned, subjects give outsized attention to attributes associated with mandatory surcharges rather than the primary product).

[155] *See, e.g.*, FTC-2022-0069-6095 (describing harm to competition and honest businesses through price obfuscation).

[156] FTC-2022-0069-6095 at 7–11.

[157] *Id.* at 7, 9.

banking,[158] have been targeted with junk fees in auto-lending, and because of inequities in generational wealth are more likely to be harmed more severely by foreclosure.[159] Fees that are not clearly and conspicuously disclosed, such as those that are obscured in fine print, while affecting all consumers, can be especially difficult to spot for consumers whose English proficiency is limited.[160] Finally, the comment provided examples of disabled consumers being charged extra fees to accommodate the consumers' disabilities while providing the agreed upon services.[161]

Injury to consumers comes in the form of higher prices and search costs. Several studies have shown that consumers spend more money on the same goods when they are not shown the total price up front.[162] For example, a study by the live-event ticket seller StubHub found that consumers spent more money—they purchased more tickets and upgraded to more expensive seats—when the total price was not displayed at the beginning of the transaction.[163] One laboratory experiment examined, among other things, how consumers reacted when the total price was divided into three parts, with each part being revealed at different points in the transaction.[164] This experiment found that a measurement of consumer savings was reduced by 22%.[165] Further, the monetary cost to consumers is significant. For example, in 2018 resort fees generated an estimated

[158] Although the Commission generally does not have jurisdiction over banks and Federal credit unions for purposes of Section 5(a), 15 U.S.C. 45(a), other financial services entities are covered under its authority. *See generally, e.g.*, *FTC v. FleetCor Techs., Inc.*, 620 F. Supp. 3d 1268 (N.D. Ga. 2022); Stipulated Order, *FTC v. Beam Financial Inc.*, No. 3:20-cv-08119-AGT (N.D. Ca. Mar. 30, 2021); Compl., *FTC v. LendingClub Corp*., No. 3:18-cv-02454 (N.D. Cal. filed Apr. 25, 2018); Stipulated Order, *FTC v. Avant, LLC*, No. 19-cv-2517 (N.D. Ill. May 19, 2019); Stipulated Order, *FTC v. Western Union Co.*, No. 1:17-cv-0110 (M.D. Pa. Jan. 20, 2017).
[159] FTC-2022-0069-6095 at 7–8.
[160] *Id.* at 9.
[161] *Id.* at 10–11 (describing wait time fees for disabled passengers who needed more time to get to rideshare vehicles, and paper statement fee for a consumer with cognitive disabilities).
[162] Rasch, *supra* n. 153, at 6–8, 20–22, 30–31; Santana, *supra* n. 153, at 197; Blake, *supra* n. 153, at 16; Huck & Wallace, *supra* n. 153, at 2; Busse & Risso, *supra* n. 153, at 474.
[163] Blake, *supra* n. 153, at 16.
[164] Huck & Wallace, *supra* n. 153, at 2.
[165] *Id.* Specifically, the experiment examined "consumer surplus," which is the difference between the highest price a consumer is willing to pay and the price they ultimately pay.

$2.9 billion in revenue for the hotel industry,[166] and in the most recent fiscal year, "service" fees for Live Nation Entertainment, the largest business in the live-event ticket market, accounted for over $2.2 billion in revenue.[167] Many consumer comments in response to the ANPR stated that they paid more as a result of businesses failing to disclose the total price up front.[168]

In addition, consumers who wish to compare prices incur additional search costs to make direct comparisons of products when the full price is not disclosed up front.[169] For example, in an online transaction, consumers cannot simply view the first price displayed on each website, but instead need to navigate to subsequent pages or even enter all their payment information and reach the checkout page for each website to determine the total price.[170] Such search costs that result

[166] Beth Braverman, *Avoid Sneaky Hotel Fees on Your Next Vacation*, Consumer Reports (May 29, 2019), https://www.consumerreports.org/fees-billing/how-to-avoid-sneaky-hotel-fees/.
[167] LYC 10K at 37, 60 (showing $2,238,618,000 in Ticketing Operations revenue and explaining that such revenue "primarily consists of service fees . . . ."). The scale of such fees is not new. In 2015, resort fees reportedly accounted for $2.04 billion in revenue while ticket service fees accounted for more than $1.6 billion. Nat'l Econ. Council, *The Competition Initiative and Hidden Fees* (Dec. 2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.
[168] FTC-2022-0069-3260 ("It's just extremely frustrating and I always end up spending more than I would like because of these practices"); FTC-2022-0069-6168 ("By the time I've done my research and chosen a product or service and I'm checking out, if a fee comes up, it's often too late to make a different choice."); FTC-2022-0069-3631("Fans have no choice but to pay these fees if they want to see their favorite performers and acts."); FTC-2022-0069-4056 ("Hidden additional fees cost me over four HUNDRED dollars for just a three-night stay, about 38% of the total cost.")
[169] Sullivan, *supra* n. 153, at 4; Fed. Trade Comm'n, *"That's the Ticket" Workshop: Staff Perspective*, 4 (May 2020), https://www.ftc.gov/reports/thats-ticket-workshop-staff-perspective; *see also* Hong, H. & Shum, M. *Using Price Distributions to Estimate Search Costs*, RAND J. Econ. 37:2 (2006) (describing methods of estimating search costs); Huck & Wallace, *supra* n. 153, at 13 (applying search costs in economic models); *and discussion, infra,* Section VII.
[170] *E.g.* FTC-2022-0069-2005 ("The number of times I have wanted to go to a concert or book an Airbnb only to get to the last page before entering in my payment details, only to find out that the expected price is suddenly up to 50% higher due to various fees tacked on at the last second is absolutely ridiculous."); FTC-2022-0069-6099 at 424 (including a complaint from a consumer who went through various "fill-in forms, adding my name, address, credit card number," and chose a printed ticket for delivery, but was charged an $8.95 "delivery fee" and a $231.88 "Service Fee" on the last page of the transaction); FTC-2022-0069-1331 ("Turbo tax has a lot of hidden fees that make you spend hours of time to fill out information and then if you don't pay you lose hours of input data."); FTC-2022-0069-6095 at 20 ("Consumers are required to fill out forms, provide personal information, click through unrelated and difficult to understand links, and sometimes spend several hours at a dealership or loan store to obtain sufficient information to enable comparison shopping.").

from unfair or deceptive practices are legally cognizable injuries under the FTC Act.[171] Consumer comments also describe harms in the form of search costs.[172]

Where mandatory fees are disclosed at the same time as but separately from the base price, consumers are nevertheless harmed. The practice of dividing the price into multiple components without disclosing the total, generally referred to as partitioned pricing, distorts consumer choice.[173] Consumers confronted with partitioned pricing, on average, underestimate the total cost of the good or service, likely because they use mental shortcuts to estimate the price that do not fully account for each component.[174] Partitioned pricing also leads consumers to pay disproportionate attention to secondary features of a product associated with ancillary fees, which impedes consumers' ability to accurately compare products.[175]

Consumers cannot reasonably avoid these injuries. First, as explained in this section, the search costs necessary to avoid the harm of paying higher prices are themselves a harm to consumers. As the Institute for Policy Integrity explained in its petition for a rulemaking on these practices, also called drip pricing, "either the consumer must spend additional time searching for full pricing information to engage in comparison shopping, or must make an uninformed

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[171] *See, e.g.*, *FTC v. Amazon.com, Inc.*, No. C14-1038-JCC, 2016 U.S. Dist. LEXIS 55569, at *17 (W.D. Wash. Apr. 26, 2016) (finding consumer injury included "time spent pursuing those refunds"); *In re LCA-Vision*, No. C-4789 (Decision & Order entered Mar. 13, 2023) (settling allegations that deceptive practices caused consumers to "waste[] 90 minutes to two hours of their time," Compl. at 17), https://www.ftc.gov/system/files/ftc_gov/pdf/1923157-lca-vision-consent-package.pdf.

[172] *E.g.*, FTC-2022-0069-0032 ("In some markets, this makes it nearly impossible to find the actual hotels within my price range since I have to go through the process of attempting to book each hotel to find the actual, final cost. What should be a 5 minutes search can turn into hours or days."); FTC-2022-0069-6095 (describing, on behalf of constituent consumers, the difficulty of searching for prices and incorporating fees into price comparisons); FTC-2022-0069-6082 at 12 (describing the difficulty of comparing price for electronic messaging services in prisons); FTC-2022-0069-4424 ("The consumer is left vulnerable and with two options. Proceed with the transaction and pay a higher cost than originally anticipated. Or decline the transaction and have wasted time and effort."); FTC-2022-0069-4773 ("It is impossible to compare prices online for so many things now.").

[173] Sullivan, *supra* n. 153, at 21–25;

[174] *Id.* at 22–24; Morwitz, *supra* n. 154 at 455.

[175] Bertini & Wathieu, *supra* n. 154 at 239–41.

decision."[176] Moreover, studies suggest that cognitive biases may exist that prevent consumers from avoiding injury. Several psychological theories explain why consumers make errors when the total price is not revealed up front: (1) under the anchoring theory, consumers who first learn of a lower price do not properly adjust their calculations when additional fees are added, thereby underestimating the total cost;[177] (2) under the endowment theory, consumers attach value to things they perceive to be theirs and when consumers begin the purchase process their perception shifts so that stopping the transaction feels like a loss;[178] and (3) under the sunk cost fallacy, consumers who have already invested in an endeavor, such as by taking time to make selections on a website or travel to a store, continue that endeavor even if it would benefit them more to begin again elsewhere.[179] In addition, the market cannot correct for these injuries because the practice of displaying incomplete initial prices is so prevalent that honest businesses cannot compete.[180] For example, after StubHub unilaterally adopted an all-in pricing model in 2014, it soon reverted back to its original model after it lost significant market share when customers incorrectly perceived StubHub's prices to be higher.[181]

Finally, consumer injury is not outweighed by benefits to consumers or competition. The practice of advertising prices that are not the full price does not benefit consumers or competition. Consumers do not receive any benefit from the misleading price presentation.[182] Even where the undisclosed fees are used to pay for something of value to consumers, omitting that fee from the initial price does not benefit consumers. Nor does this practice benefit competition, as it acts as a

[176] Inst. for Policy Integrity, *Pet. for Rulemaking Concerning Drip Pricing* at 17 (2021), https://www.regulations.gov/docket/FTC-2021-0074/document.
[177] *Id.* at 18.
[178] Huck & Wallace, *supra* n. 153, at 32.
[179] David A. Friedman, *Regulating Drip Pricing*, 31 Stan. L. & Pol'y Rev. 51, 55 n.13 (2020)
[180] FTC-2022-0069-6088 at 13; FTC-2022-0069-6095 at 3, 6; FTC-2022-0069-6082 at 12.
[181] Fed. Trade Comm'n, *"That's the Ticket" Workshop: Staff Perspective*, *supra* n. 163, at 4 & n.15.
[182] Inst. for Policy Integrity, *Pet. for Rulemaking Concerning Drip Pricing* at 20 (2021), https://policyintegrity.org/documents/Petition_for_Rulemaking_Concerning_Drip_Pricing.pdf.

hindrance to businesses that opt to disclose the true price, as illustrated by real-world examples.[183] This price obfuscation, in turn, undermines the ability of businesses to compete on price and inhibits the market from driving down prices overall.

B. Misrepresenting the Nature and Purpose of Charges

The comment record supports a finding that practices that misrepresent the nature and purpose of fees are prevalent. Specifically, commenters identified pricing structures that misrepresented information about the nature and purpose of fees and charges.[184] These complaints included instances in which consumers were misled about the identity of the good or service for which a fee was charged, such as a "cleaning fee" for a vacation rental where the consumer was also required to conduct extensive cleaning,[185] or a "convenience fee" to purchase a ticket when the purchasing method is not more convenient to the consumer than any alternative.[186] They also included instances in which consumers were misled about other material aspects of the fee or charge. For example, consumers complained that businesses led them to believe a charge was a mandatory tax on consumers imposed by the government when it was actually a charge the business chose to impose to offset increased costs to the business.[187] Consumers also commented that they were misled about the amount of fees, particularly when a service was advertised as

[183] Friedman, *supra* n. 179, at 65–66; U.K. Off. Fair Trading, Advertising of Prices at 25 (2010), https://webarchive.nationalarchives.gov.uk/20140402173016/http://oft.gov.uk/shared_oft/market-studies/AoP/OFT1291.pdf.
[184] More than 250 comments identified misrepresentations across many industries about the nature and purpose of fees.
[185] *E.g.*, FTC-2022-0069-2389; FTC-2022-0069-0874; FTC-2022-0069-1571; FTC-2022-0069-2359; FTC-2022-0069-5078; *see also* FTC-2022-0069-5665 (describing a daily cleaning fee for cleaning services that were not provided until the end of the stay).
[186] *E.g.*, FTC-2022-0069-6166; *see also* FTC-2022-0069-0634 (describing misleading fees for "maintenance" that do not correspond to the actual maintenance of a product); FTC-2022-0069-0700 (describing a "service" fee that a business claimed covered water and other services but the consumer was not provided water); FTC-2022-0069-0729 (describing "amenity" fees for amenities that were not available because of COVID-19); FTC-2022-0069-5991 (describing resort fees to cover services that were already provided through a consumer loyalty plan); FTC-2022-0069-1746 (describing an apartment rental fee for valet trash services that were not usually provided).
[187] FTC-2022-0069-6095 at 14; FTC-2022-0069-0138; FTC-2022-0069-0765; FTC-2022-0069-1600; FTC-2022-0069-2387; FTC-2022-0069-0637; FTC-2022-0069-2338; FTC-2022-0069-3036.

"free" but nevertheless incurred a fee.[188] Consumers also complained that they believed certain charges for goods or services were refundable and discovered only after the purchase that they were either not refundable at all or that a portion of the fees was not refundable.[189]

Charges that misrepresent their nature and purpose are deceptive because they mislead reasonable consumers. False claims and those that lack a reasonable basis are inherently likely to mislead consumers.[190] Further, the nature and purpose of charges are core characteristics that affect the value to consumers of the goods or services being offered. A representation is material if it conveys information "'that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.'"[191] Whether a consumer is required to pay a charge, and what goods or services they will receive in exchange for the charge, necessarily affect a consumer's choice whether to pay a charge.[192] Other characteristics included in the nature and purpose of a charge, such as the amount of the charge and whether it is refundable, are also material.[193]

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[188] FTC-2022-0069-1676 ("Turbo tax. Waiting until I've done all of my paperwork to tell me that I need to upgrade my package to file."); FTC-2022-0069-2986 ("the cruise line included room service at no charge," but "they added a $9,95 [sic] plus 18% gratuity charge to all room service services"); FTC-2022-0069-0688 ("During on-line Christmas shopping, one company offered 'Free Shipping' as a promotion. At checkout, even though there was a $0 charge for 'Shipping', I was charged $2.99 for 'Shipping Service Fees'. How is this considered FREE shipping?").

[189] *E.g.*, FTC-2022-0069-0556; FTC-2022-0069-1545; FTC-2022-0069-2096; FTC-2022-0069-2190.

[190] *Deception Policy Statement*, 103 F.T.C. at 175 n.5; *FTC v. Direct Mktg. Concepts, Inc.*, No. 04-11136-GAO, 2004 U.S. Dist. Lexis 11628, *13 (D. Mass. June 23, 2004) (citing *In re Thompson Med. Co*., 104 F.T.C. 648, 788, 818–19 (1984)).

[191] *FTC v. Cyberspace.com*, 453 F.3d 1196, 1201 (9th Cir. 2006) (quoting *Cliffdale Assocs., Inc*., 103 F.T.C. 110, 165 (1984)).

[192] *See, e.g.*, *FleetCor Techs.*, 620 F. Supp. at 1310 (finding it was deceptive to charge fees with different names that were functionally transaction fees after stating that consumers would not be charged transaction fees).

[193] *See FTC v. Windward Mktg., Ltd.*, No. Civ. A. 1:96-CV-615F, 1997 WL 33642380, at *10 (N.D. Ga. Sept. 30, 1997) ("[A]ny representations concerning the price of a product or service are presumptively material."); *see, e.g.*, *FTC v. MOBE Ltd.,* No. 6:18-cv-862-Orl-37DCI, 2020 WL 3250220, at *4 (M.D. Fla. Mar. 26, 2020), *adopted by*, 2020 WL 1847354 (M.D. Fla. Apr. 13, 2020) (finding that representations about the availability of refunds and money-back guarantees were presumptively material); *FTC v. Ewing*, No. 2:14-cv-00683-RFB-VCF, 2017 WL 4797516, at *6 (D. Nev. Oct. 24, 2017) (finding that "100% no strings-attached refund policy" was presumptively material); *FTC v. Lead Express, Inc.*, No. 2:20-cv-00840-JAD-NJK, 2020 WL 2615685, at *7 (D. Nev. May 19, 2020) (prohibiting misrepresentations about material terms, including fees and payment amounts); *FTC v. BlueHippo Funding, LLC*, 762 F.3d 238, 246 (2d Cir. 2014) (stating that refund information would have influenced consumer purchasing decisions and remanding to the district court to determine whether to apply a presumption of reliance in calculating damages); *FTC v. Lucaslaw Ctr. Inc.*, No. SACV 09-0770 DOC (ANx), 2010 WL 11506885, at *6 (C.D. Cal. June 3, 2010) (finding that the representations that a large up-front fee was refundable if a loan modification was not approved were material), *aff'd sub nom*. *FTC. v. Lucas*, No. 10-56985, 483 F. App'x 378 (9th Cir. 2012).

Moreover, it is unfair for businesses to misrepresent the nature and purpose of charges. Charging consumers under false pretenses causes substantial injury, including where the injury is a "small harm to a large number of people" or "where it raises a significant risk of concrete harm."[194] Where businesses obscure information about the nature and purpose of fees or provide false information to consumers, injury from the misrepresentations is not reasonably avoidable.[195] Such practices have no countervailing benefits to consumers and competition—they simply make it more difficult for consumers to comparison shop and for truthful businesses to compete on price.

To prevent the misrepresentations described in this section, it is necessary for businesses to clearly and conspicuously disclose the nature and purpose of any amount a consumer may pay that is excluded from the total price. Where charges are excluded from the total price, disclosures of the nature and purpose of such charges are necessary to determine whether such fees are truly optional and properly excluded from the total price, and for the consumer to decide whether to accept the optional charge.

The FTC has brought many cases concerning misrepresentations of the total price of goods or services and the nature and purpose of charges, which are described in greater detail in Section III.C.

C. Law Enforcement Actions and Other Responses

The Commission's prior work, and complementary actions by state and private actors, further support a finding that the unfair or deceptive practices identified in Sections III.A. and III.B. are prevalent. To address these unfair or deceptive practices, the Commission has brought enforcement actions and engaged in other efforts to address unfair or deceptive fee practices. The

[194] *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 972 (D.C. Cir. 1985); *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988).
[195] *E.g.*, *FleetCor Techs.*, 620 F. Supp. 3d at 1334 (N.D. Ga. 2022) (finding that fees that were not listed, "obscured by vague language and tiny print" in the terms and conditions, or described vaguely in billing statements, were not unavoidable).

Commission has brought numerous cases alleging that businesses have misrepresented the total costs of goods and services because their prices do not include all mandatory fees.[196] Among the challenged fees were undisclosed fees that increased the total cost to consumers[197] and fees that diminished the value of the good or service the consumer received.[198] For example, in *United States v. Funeral & Cremation Group of North America, LLC*, the Department of Justice brought suit on behalf of the Commission alleging that the defendants misrepresented the price of funeral services by listing low prices on websites that were later inflated with various fees.[199] The case resulted in a settlement requiring, among other things, that the defendants provide accurate price lists during or immediately after their first interaction with consumers and pay a civil penalty.[200] Similarly, in *FTC v. FleetCor Technologies, Inc.*, the FTC alleged that the defendant misrepresented the cost of its fuel cards when it "charged customers at least hundreds of millions of dollars in unexpected fees."[201] In *FTC v. LendingClub Corp*., the FTC charged that the loan

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[196] Compl. ¶¶ 42–44, 50, *United States v. Funeral & Cremation Grp. of N. Am., LLC ("Legacy Cremation Servs.")*, No. 0:22-cv-60779 (S.D. Fla. filed Apr. 22, 2022) (alleging defendants advertised artificially low prices for cremation services which ultimately included undisclosed additional charges and, in some cases where consumers contested these charges, defendants refused to return remains); Compl. ¶ 9, *FTC v. Liberty Chevrolet, Inc. ("Bronx Honda")*, No. 1:20-cv-03945 (S.D.N.Y. filed May 21, 2020) (alleging defendants advertised low sales prices but later told consumers they were required to pay additional charges including certification charges); Compl. ¶ 13, *FTC v. NetSpend Corp.*, No. 1:16-cv-04203 (N.D. Ga. filed Apr. 11, 2017) (alleging in part that defendant charged maintenance and usage fees to consumers who were unable to use all, or even a portion of, the funds of their prepaid debit cards); *see also* Compl. ¶¶ 24–25, 40–42, *FTC v. AT&T Mobility LLC*, No. 3:14-cv-04785 (N.D. Cal. filedOct. 28, 2014) (alleging defendant did not adequately disclose the limitations of defendant's data plan offerings and subsequently charged high cancellation fees for consumers who chose to end their contracts); Compl. ¶¶ 1, 26, 39–40, *FTC v. Millennium Telecard, Inc.*, No. 2:11-cv-02479 (D.N.J. filed May 2, 2011) (alleging defendants deceptively marketed prepaid credit calling cards by failing to adequately disclose fees that substantially limited the number of minutes consumers had purchased); Compl. ¶ 15, *FTC v. CompuCredit Corp.*, No. 1:08-cv-01976 (N.D. Ga. filed June 10, 2008) (alleging in part that defendants misrepresented the credit limits on various credit cards and failed to disclose fees charged upfront); Compl. ¶¶ 15–17, *FTC v. Nationwide Connections, Inc.*, No. 06-cv-80180 (S.D. Fla. filed Feb. 27, 2006) (alleging in part that defendants crammed unauthorized charges for long distance service onto consumers' phone bills).

[197] *E.g.* Compl. ¶¶ 42–44, 50, *Funeral & Cremation Grp. of N. Am.*, No. 0:22-cv-60779, *supra* n. 196; Compl. ¶¶ 39–46, *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-6435 (D.N.J. filed Nov. 3, 2022).

[198] *E.g.* Compl. ¶ 13, *NetSpend Corp.*, No. 1:16-cv-04203, *supra* n. 196 (N.D. Ga. filed Apr. 11, 2017); Compl. ¶¶ 1, 26, 39–40, *Millennium Telecard*, No. 2:11-cv-02479, *supra* n. 196.

[199] Compl. ¶¶ 42–57, *Funeral & Cremation Grp. of N. Am., LLC*, No. 0:22-cv-60779, *supra* n. 196.

[200] Stipulated Order at 7–10, *U.S. v. Funeral & Cremation Grp. of N. Am., LLC*, No. 0:22-cv-60779 (S.D. Fla. Apr. 6, 2023).

[201] Compl. ¶¶ 10, 29–31, 36, 96–98, 102–04, *FTC v. FleetCor Techs., Inc.*, No. 1:19-cv-05727, 2019 WL 13081514 (N.D. Ga. filed Dec. 20, 2019). The Court granted summary judgment on the FTC's claims, among others, that

company offered loan applicants specific loan amounts with "no hidden fees," but actually deducted hundreds or even thousands of dollars of hidden upfront fees from consumers' loan disbursements.[202] And in *FTC v. Millennium Telecard, Inc.*, the Commission alleged that the defendants advertised prepaid calling cards, including a specified dollar value for a certain number of minutes, but failed to disclose numerous fees that reduced the number of available minutes.[203]

The Commission has similarly brought numerous cases alleging that businesses have mispresented the nature and purpose of fees.[204] For example, in *The Matter of Amazon.com*, the

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FleetCor falsely represented that customers would not pay transaction fees. *FleetCor Techs.*, 620 F. Supp. 3d at 1307–10.

[202] Compl. ¶¶ 9, 10, 12–16, 22-25, *FTC v. LendingClub Corp*., No. 3:18-cv-02454 (N.D. Cal. filed Apr. 25, 2018).

[203] Compl. ¶¶ 1, 26, 39–40, *Millennium Telecard*, No. 2:11-cv-02479, *supra* n. 196.

[204] Compl. ¶¶ 39–46, *Vonage Holdings*, No. 3:22-cv-6435, *supra* n. 197 (alleging in part that defendant charged undisclosed large cancellation fees); Compl. ¶¶ 61–63, *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-1794 (M.D. Fla. filed Aug. 8, 2022) (alleging in part that defendants bundled and charged fees for unwanted products with sham health insurance plans); Compl. ¶¶ 17-20, *FTC v. Passport Auto Grp., Inc.*, No. 8:22-cv-02670 (D. Md. filed Oct. 18, 2022) (alleging in part that defendants advertised vehicle prices that did not include redundant fees ranging from hundreds to thousands of dollars for inspection, reconditioning, preparation, and certification); Compl. ¶¶ 3, 33, 41, *FTC v. N. Am. Auto. Serv., Inc. ("Napleton Auto")*, No. 1:22-cv-01690 (E.D. Ill. filed Mar. 31, 2022) (alleging defendants charged consumers for additional products and services without their consent and misrepresented the fees as mandatory, resulting in artificially low advertised prices); Final Compl. ¶¶ 50–51, *In re Amazon.com, Inc. ("Amazon Flex")*, No C-4746 (F.T.C. filed June 10, 2021) (alleging that respondents falsely represented that 100% of tips would go to the driver in addition to the pay respondents offered drivers); Compl. ¶¶ 37–39, *FTC v. Lead Express, Inc.*, No. 2:20-cv-00840 (D. Nev. filed May 11, 2020) (alleging in part that defendants did not clearly and conspicuously disclose material information related to the total amount of payments related to loans and also withdrew significantly more than the stated total cost of the loan from consumers' accounts); Compl. ¶¶ 9–10, *FleetCor Tech.*, No. 1:19-cv-05727, 2019 WL 13081514 (alleging defendants charged consumers arbitrary and unexpected fees related to pre-paid fuel cards without consumers' consent); Compl. ¶¶ 4, 30–32, 36–37, *FTC v. BCO Consulting Servs., Inc.*, No. 8:23-cv-00699 (C.D. Cal. filed Apr. 24, 2023) (alleging defendants enticed consumers with false promises to alleviate student loan debt despite not applying any payments to the student loan balances and collecting illegal advance fees without providing any services); Compl. ¶¶ 31–36, *FTC v. OMICS Grp. Inc.*, No. 2:16-cv-02022 (D. Nev. filed Aug. 25, 2016) (alleging in part defendants misrepresented the publishing process of academic papers and only disclosed large publishing fees after notifying consumers that their papers had been approved for publication); Compl. ¶¶ 12, 23–25, *FTC v. LendingClub Corp.*, No. 3:18-cv-02454 (N.D. Cal. filed Apr. 25, 2018) (alleging defendant charged consumers an upfront fee based on a percentage of the loan requested that was not clearly and conspicuously disclosed; this hidden fee caused loans received to be substantially smaller than advertised); Compl. ¶ 37, *FTC v. T-Mobile USA, Inc.*, No. 2:14-cv-00967 (W.D. Wash. filed July 1, 2014) (alleging defendant added unauthorized third-party charges to the telephone bills of consumers); Am. Compl. ¶¶ 21–22, *FTC v. Websource Media, LLC*, No. 4:06-cv-01980 (S.D. Tex. filed June 21, 2006) (alleging defendants placed charges on consumer telephone bills despite representations that there would be no charges or obligations); *FTC v. Mercury Mktg. of Del., Inc.*, No. 00-cv-3281, 2004 WL 2677177, *1 (E.D. Pa. Nov. 22, 2004) (finding defendants billed consumers without their consent after misleading consumers about introductory internet packages); Compl. ¶¶ 25–27, *FTC v. Stewart Fin. Co.*, No. 1:03-cv-02648 (N.D. Ga. filed Sept. 4, 2003) (alleging in part that defendants package undisclosed add-on products with consumer loans and in some cases describe those add-on products as mandatory); Compl. ¶¶ 19–21, 24*, FTC v. Hold Billing Serv., Ltd.*, No. SA-98-CA-0629-FB (W.D. Tex. filed July 16, 1998) (alleging defendants had previously added third-party charges to consumers' phone bills without permission by using sweepstakes entry forms as contracts to authorize charges); Compl. ¶¶ 18, 33,

Commission alleged that Amazon made unlawful misrepresentations in violation of Section 5 of the FTC Act when it claimed that it would give to Amazon Flex drivers, in addition to their regular pay, 100% of tips consumers elected to leave.[205] Instead, the FTC alleged, Amazon used the tips to subsidize its own pay to drivers.[206] The case, which was brought under the FTC's Section 19 administrative procedure, resulted in a settlement through which the FTC returned nearly $60 million to Amazon Flex drivers.[207] The Commission similarly addressed misrepresentations about what charges were for in *FTC v. Benefytt Technologies Inc.,* alleging in part that the defendants misled consumers about whether ancillary products were included in the price of an insurance plan, using dark patterns in the enrollment process and a single bill to obscure the boundaries of each separate product.[208] The parties agreed to a settlement, providing $100 million in redress to consumers and prohibiting defendants from misrepresenting the nature of their products, among other terms.[209]

The Commission also addressed misrepresentations about the nature and purpose of fees, including their amount and whether they were mandatory, in *FTC v. Stewart Finance Company Holdings*. The Commission alleged in part that defendants misrepresented optional ancillary products as mandatory and misrepresented the cost of a direct deposit option as free when it

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56–58, *FTC v. Lake*, No. 8:15-cv-00585-CJC-JPR (C.D. Cal. filed Apr. 14, 2015) (alleging that defendants misrepresented that trial loan payments or reinstatement fee payments would be held in escrow and refunded to the consumer if the loan modification was not approved); *FTC. v. Hope for Car Owners, LLC*, No. 2:12-CV-778-GEB-EFB, 2013 WL 322895, at *3–4 (E.D. Cal. Jan. 24, 2013) (finding that the FTC sufficiently stated a claim for misrepresentation of the refundability of vehicle loan modification fees and entering default judgment); Am. Compl. ¶¶ 38–39, 58–60, *FTC v. U.S. Mortg. Funding, Inc.*, No. 9:11-cv-80155-JIC (S.D. Fla. filed July 26, 2011) (alleging that defendants misrepresented that an upfront loan modification fee was refundable); *FTC v. Nat'l Bus. Consultants, Inc.*, 781 F. Supp. 1136, 1143 (E.D. La. 1991) ("The defendants' misrepresentations regarding the ease with which the 'performance deposit' could be refunded composed a large part of the various and sundry misrepresentations.").

[205] Final Compl. ¶¶ 7–8, 12–20, 26–34, 50–52, *Amazon Flex*, No. C-4746, *supra* n. 204.

[206] *Id.* at ¶¶ 26–34.

[207] Press Release, Fed. Trade Comm'n, *FTC Returns Nearly $60 Million to Drivers Whose Tips Were Illegally Withheld by Amazon* (Nov. 2, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-returns-nearly-60-million-drivers-whose-tips-were-illegally-withheld-amazon.

[208] Compl. ¶¶ 20–24, 60–70, *Benefytt Techs.*, No. 8:22-cv-1794, *supra* n. 204.

[209] *E.g.*, Stipulated Order against corporate defendants at 8–9, 26, 27, *Benefytt Techs.*, No. 8:22-cv-1794 (M.D. Fla. Aug. 11, 2022).

incurred a monthly charge.[210] The case, which was resolved before the Supreme Court's decision in *AMG Capital Management v. FTC* limited avenues for the Commission to obtain monetary relief,[211] resulted in a settlement that provided monetary redress to consumers and, among other terms, prohibited the defendants from misrepresenting the cost, benefit, or optional nature of any ancillary loan products and from misrepresenting direct deposit as a "free" service, or misrepresenting its costs and terms.[212] Similarly, in *FTC v. Websource Media, LLC*, the Commission addressed misrepresentations about the amount of fees when it alleged that defendants offered a free trial for a website design but added fees for the website to consumers' telephone bills.[213] Settlements reached in 2007 and 2009 provided monetary redress to consumers and prohibited the defendants from making various misrepresentations.[214] In *FTC v. U.S. Mortgage Funding, Inc.*, the Commission alleged that the defendants violated Section 5 of the FTC Act when they misrepresented that large upfront fees charged to homeowners to negotiate loan modifications would be refunded if a modification was not obtained.[215] The case resulted in default judgments against two defendants and settlements with the remaining four defendants that included monetary judgments and bans on providing mortgage relief services, among other things.[216]

To complement its law enforcement efforts, the FTC has engaged with the public through a variety of measures over more than a decade to address unfair or deceptive practices related to fees. For example, in 2012, the FTC's Bureau of Economics held a conference designed to "examine the

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[210] Compl. ¶¶ 25–27, 54–56, *Stewart Fin. Co.*, No. 1:03-cv-02648, *supra* n. 204.
[211] *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021)
[212] Stipulated Final J. against defendants and relief defendant 12–16, *Stewart Fin. Co.*, No. 1:03-cv-02648 (N.D. Ga. Oct. 28, 2003).
[213] Am. Compl. ¶¶ 20–21, *Websource Media*, No. 4:06-cv-01980, *supra* n. 204.
[214] *E.g.*, Stipulated Final J. against Websource Media, et al. 7–12, *Websource Media*, No. 4:06-cv-01980 (S.D. Tex. July 17, 2007); Stipulated Final J. against Steven L. Kennedy 6–9, *Websource Media,* No. 4:06-cv-01980 (S.D. Tex. July 29, 2009).
[215] Am. Compl. ¶¶ 38–39, 58–60, *U.S. Mortg. Funding*, No. 9:11-cv-80155-JIC, *supra* n. 204.
[216] Press Release, Fed. Trade Comm'n, *FTC Action Leads to Ban on Alleged Mortgage Relief Scammers Who Harmed Thousands of Consumers* (Feb. 14, 2012), https://www.ftc.gov/news-events/news/press-releases/2012/02/ftc-action-leads-ban-alleged-mortgage-relief-scammers-who-harmed-thousands-consumers.

theoretical motivation for drip pricing and its impact on consumers, empirical studies, and policy issues pertaining to drip pricing."[217] The conference brought together a variety of experts including economists and policy experts to give an overview of drip pricing and look at its impact on the market. Following the workshop, Commission staff sent warning letters to hotels and online travel agents, stating that they were not adequately disclosing resort fees or including those fees in the total price.[218] Likewise, in 2017, the Commission published a report that reviewed the existing literature on shrouded pricing and examined the costs and benefits of disclosing resort fees.[219] In 2019, the Commission hosted a workshop that examined pricing and fee issues in the live-event tickets market and subsequently issued a staff report on the subject.[220]

The Commission's law enforcement partners have also brought actions addressing unfair or deceptive practices relating to fees. For example, State Attorneys General have brought cases

[217] Fed. Trade Comm'n, *The Economics of Drip Pricing* (May 21, 2012), https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing.
[218] Press Release, Fed. Trade Comm'n, *FTC Warns Hotel Operators that Price Quotes that Exclude "Resort Fees" and Other Mandatory Surcharges May Be Deceptive* (Nov. 28, 2012), https://www.ftc.gov/news-events/news/press-releases/2012/11/ftc-warns-hotel-operators-price-quotes-exclude-resort-fees-other-mandatory-surcharges-may-be.
[219] Sullivan, *supra* n. 153. As used in this NPRM, the term shrouded pricing includes practices related to both drip pricing and partitioned pricing, which the Commission has previously defined as follows: "Partitioned pricing entails dividing the price into multiple components without disclosing the total. Drip pricing is the practice of advertising only part of a product's price upfront and revealing additional charges later as consumers go through the buying process." *Id.* at v.
[220] Fed. Trade Comm'n, *"That's the Ticket" Workshop: Staff Perspective*, 4 (May 2020).

against hotel chains and delivery apps involving unfair or deceptive fees.[221] Numerous private lawsuits have involved unfair or deceptive fees across various industries.[222]

Some states have also taken legislative or regulatory action involving unfair or deceptive fees. For example, California[223] and Pennsylvania[224] legislators have introduced legislation prohibiting advertising prices that do not include all mandatory fees, with some exceptions. In June 2022, New York passed legislation directed at increasing transparency during the ticket-buying

[221] *See, e.g.*, Assurance of Voluntary Compliance ¶ 2, *Texas v. Marriott Int'l, Inc.*, No. 2023CI09717 (Tex. Dist. Ct. May 16, 2023) (alleging that defendant misrepresented various fees, including resort fees, and did not include all mandatory fees in the advertised room rate in violation of the Texas Deceptive Trade Practices Act); Plaintiff's Original Pet. ¶ 1, *Texas v. Hyatt Hotels Corp.*, No. C2023-0884D (Tex. Dist. Ct. May 15, 2023) (alleging defendant did not include mandatory fees in advertised room rates in violation of the Texas Deceptive Trade Practices Act); Consent Order ¶ 6, *District of Columbia v. Maplebear, Inc.*, No. 2020 CA 003777B (D.C. Super. Ct. Aug. 19, 2022) (prohibiting defendant from misrepresenting the nature and purpose of fees applied to consumers' orders); Compl. ¶¶ 2, 5–8, *District of Columbia v. Grubhub Holdings, Inc.*, No. 2022 CA 001199 B, (D.C. Super. Ct. filed Mar. 21, 2022) (alleging in part that defendants misrepresented to consumers that defendants' only fee was a "Delivery Fee" while obscuring a "Service Fee" or disclosing a "Small order fee" only at the end of the checkout process); Assurance of Voluntary Compliance ¶ 2, *Commonwealth v. Marriott Int'l, Inc.*, No. GD-21-014016 (Pa. Ct. C.P. Nov. 16, 2021) (alleging that defendant misrepresented its room rates by failing to include items such as mandatory fees in its pricing); Consent Order ¶ 3.1–3.18, *In re Drivo LLC*, N.J. Div. Consumer Aff. (Sept. 16, 2020) (prohibiting unfair and deceptive practices relating to damage fees and third party reservation fees for rental vehicles); Agreed Final J. ¶ 8, *Texas v. Guided Tourist, LLC*, No. D-1-GN-19-001618 (Tex. Dist. Ct. Mar. 26, 2019) (enjoining defendant from advertising ticket prices other than the total ticket price, including all mandatory fees); Settlement Agreement ¶¶ 8(b)–(c), *Florida v. Dollar Thrifty Auto. Grp., Inc.*, Case No. 16-2018-cv-005938, (Fla. Cir. Ct. Jan. 14, 2019) (alleging in part that defendant misrepresented optional charges as mandatory and did not sufficiently disclose toll-related fees). Additionally, Intuit recently entered into a multistate settlement of allegations that it misrepresented its tax filing products would come at no cost. *See generally,* Assurance of Voluntary Compliance, *Commonwealth v. Intuit Inc.*, No. 220500324 (Pa. Ct. C.P. May 4, 2022).

[222] *See, e.g.*, Compl. ¶¶ 4–6, *Hecox v. DoorDash, Inc.*, No. 1:23-cv-01006 (D. Md. filed Apr. 14, 2023) (alleging in part that defendant employs deceptively named fees leading consumers to mistakenly believe the fees were for delivery people or the municipality); Class Action Compl. ¶¶ 7–16, *Ramirez v. Bank of Am., N.A.*, No. 5:22-cv-00859 (N.D. Cal. filed Feb. 10, 2022) (alleging misrepresentations about the refundability of fees); Compl. ¶¶ 2–3, *Abdelsayed v. Marriot Int'l, Inc.*, No. 3:21-cv-00402 (S.D. Cal. filed Mar. 5, 2021) (alleging that defendant engaged in drip pricing by baiting consumers with lower prices and adding charges, such as resort fees, amenity fees, and destination fees, throughout the vending process); Compl. ¶¶ 1, 3–5, *Travelers United v. MGM Resorts Int'l, Inc.*, No. 2021-CA-00477-B (D.C. Super. Ct. filed Feb. 18, 2021) (alleging that defendant hid portions of daily room rates via resort fees and ultimately misled consumers); Compl. ¶¶ 18, 31, 43, *Lee v. Ticketmaster LLC*, No. 18-cv-05987 (N.D. Cal. filed Sept. 28, 2018) (alleging, in part, that defendants were unjustly enriched through service charges added to resale tickets); Second Am. Compl. ¶¶ 1–2, *Wang v. Stubhub, Inc.*, No. CGC-18564120 (Cal. Super. Ct. filed Feb. 25, 2019) (alleging that defendant intentionally hid additional fees in order to advertise artificially low ticket prices); Class Action Compl. ¶¶ 1, 33–34, *Holl v. United Parcel Service, Inc.*, No. 3:16-cv-05856 (N.D. Cal. filed Oct. 11, 2016) (alleging misrepresentations about the amount of fees); Class Action Compl. ¶¶ 27, 36, 46–51, *Cross v. Point and Pay LLC*, No. 6:16-cv-01182 (M.D. Fla. filed June 29, 2016) (same). *See also* FTC-2022-0069-6042 (tracking class action cases related to unfair and deceptive fees).

[223] Cal. S.B. 478, (2023-2024) Regular Session.

[224] H.B. 636 (2023–2024) (Pa. 2023).

process, banning hidden fees for live events, and prohibiting delivery fees on tickets delivered electronically or printed at home.[225] Similar legislation has been introduced in Massachusetts.[226]

Regulators in countries such as Canada and Australia, as well as international bodies such as the European Union, have also begun regulating unfair and deceptive fee practices. In September 2023, the United Kingdom solicited public comment on drip pricing. That numerous countries outside of the United States have addressed fees and deceptive pricing through legislation and law enforcement lends additional support to the conclusion that these types of fees are prevalent. Paragraph 74.01(1.1) of the Canadian Competition Act[227] regulates drip pricing and has resulted in actions against online ticket sellers, car rental services, and flight-booking services.[228] Similarly, the Australian Competition and Consumer Act of 2010 requires businesses to prominently display a figure that represents the single price for goods or services.[229] European Union law prohibits misleading and aggressive commercial practices toward consumers, with specific directives requiring that consumers be informed of the total price of goods and services.[230]

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[225] N.Y. Arts & Cult. Aff. Law Sec. 25.01–25.33 (McKinney 2023); *see also Governor Hochul Signs Legislation Targeting Unfair Ticketing Practices in Live Event Industry* (June 30, 2022), https://www.governor.ny.gov/news/governor-hochul-signs-legislation-targeting-unfair-ticketing-practices-live-event-industry.

[226] An Act Ensuring Transparent Ticket Pricing, H.259, 193rd Gen. Court (Mass. 2023) (would amend Massachusetts' law licensing the sale of admission tickets, Mass. Gen. Laws ch. 140, Sec. 182A, to require the truthful, non-deceptive, clear, and conspicuous disclosure of the total cost of a ticket, and what portions represent a service charge or other ancillary fee, prior to selection, and to prohibit the price from increasing, except for certain delivery fees, prior to payment).

[227] Competition Act, R.S.C., 1985, c. C-34, ¶ 74.01(1.1) (Can.), https://laws.justice.gc.ca/eng/acts/C-34/FullText.html.

[228] *See, e.g.*, several deceptive pricing cases, among others, made public by the Canadian Competition Bureau at https://ised-isde.canada.ca/site/competition-bureau-canada/en/deceptive-marketing-practices/cases-and-outcomes.

[229] *Competition and Consumer Act 2010*, Vol. 4, Sched. 2, Ch. 3, P. 3-1, Sec. 48 (Austl.), https://www.legislation.gov.au/Details/C2023C00043.

[230] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02005L0029-20220528; *see also* Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0083-20220528. Additionally, a 1998 Directive required that the selling price should be indicated for all products referred to in the Article, which means a price that is the final price for a unit of the product including VAT and all other taxes. Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01998L0006-20220528.

The UK Department for Business & Trade commissioned research demonstrating that drip pricing is prevalent across the economy and started a "consultation" soliciting public views.[231]

IV. Reasons for the Proposed Rule on Unfair or Deceptive Fees

The Commission believes that the proposed rule will substantially improve its ability to combat the most prevalent unfair or deceptive practices relating to fees and other charges and may also strengthen deterrence against these practices in the first instance. While unfair or deceptive practices relating to fees are already unlawful under Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, the proposed rule (if finalized) will allow the Commission to seek civil penalties against violators and more readily obtain monetary redress for the consumers who are harmed.

The Commission's objectives in commencing this rulemaking are to deter deceptive and unfair acts or practices involving fees, to promote a level playing field that enables comparison shopping and allows honest businesses to compete, and to expand the available remedies where such practices are uncovered. In the ANPR, the Commission described how a recent U.S. Supreme Court decision,[232] which overturned 40 years of precedent from the U.S. Circuit Courts of Appeal that uniformly held the Commission could take action under Section 13(b) of the FTC Act to return money unlawfully taken from consumers through unfair or deceptive acts or practices, has made it significantly more difficult for the Commission to return money to injured consumers.[233] Without Section 13(b) as it had historically been understood, the Commission's only means to return money

[231] UK Department for Business & Trade, Estimating the Prevalence and Impact of Online Drip Pricing (2023), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1182208/estimating-the-prevalence-and-impact-of-online-drip-pricing.pdf; UK Department for Business & Trade, Smarter Regulation: Consultation on Improving Price Transparency and Product Information for Consumers (2023), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1182962/consultation-on-improving-price-transparency-and-product-information-for-consumers.pdf.

[232] *AMG Cap. Mgmt.*, 141 S. Ct. 1341.

[233] Fed. Trade Comm'n, ANPR: Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011, 87 FR 67413 at 67415 (Nov. 8, 2022), https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011.

unlawfully taken from consumers is Section 19, which provides two paths for consumer redress. The longer path under Section 19(a)(2) requires the Commission to first obtain a final administrative order. Then, to recover money for consumers, the Commission must prove in federal court that the violator engaged in fraudulent or dishonest conduct.[234] The shorter path under Section 19(a)(1), which allows the Commission to recover consumer redress directly through a federal court action or obtain civil penalties, is available only when a rule has been violated.[235]

The proposed rule will make available the shorter path in a broader set of Commission enforcement actions so that it can more efficiently redress consumers. Currently, the Commission can directly pursue in federal court Section 19 remedies, including civil penalties and consumer redress, for unfair or deceptive practices relating to fees only if those practices violate certain other rules or statutes enforced by the Commission, such as the Commission's Telemarketing Sales Rule ("TSR"),[236] the Restore Online Shoppers' Confidence Act ("ROSCA"),[237] Negative Option Rule,[238] or Funeral Rule,[239] which prohibit unfair or deceptive pricing practices, but apply only in specific contexts. Further, the FTC has addressed unfair or deceptive fee practices through numerous enforcement actions, warning letters, workshops, and reports spanning more than a decade.[240] Despite these efforts, the issues associated with unfair or deceptive fees have persisted. Prohibiting unfair or deceptive practices relating to fees across industries expands the Commission's enforcement toolkit and allows it to deliver on its mission by stopping and deterring harmful conduct and making American consumers whole when they have been wronged. Because

[234] *See* 15 U.S.C. 57b(a)(2) ("If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief.").
[235] *Compare* 15 U.S.C. 57b(a)(1) (rule violations), *with id.* 57b(a)(2) (Section 5 violations).
[236] 16 CFR 310.
[237] 15 U.S.C. 8401–8405.
[238] 16 CFR 425.
[239] 16 CFR 453.
[240] *See* discussion *supra* Section III.C.

unfair or deceptive practices relating to fees are so prevalent and so harmful, the unlocking of additional remedies through this rulemaking, particularly the possibility of seeking civil penalties against violators as well as obtaining redress for consumers who are harmed, will allow the Commission to more effectively police unfair or deceptive fee practices.

V. Overview and Scope of the Proposed Rule on Unfair or Deceptive Fees

The Commission's proposed rule is straightforward. It borrows from existing rules and statutory definitions by declaring that unfair or deceptive practices with respect to fees are unlawful. These unfair or deceptive practices include bait-and-switch pricing and misrepresenting the nature and purpose of fees. As noted in Section III, case law, the Commission's experience, the experience of commenters, and other evidence cited herein are replete with examples of such unfair or deceptive practices.

Several commenters raised questions about jurisdiction. The Commission's enforcement of the proposed rule is subject to all existing limitations of the law: of unfair or deceptive acts or practices under the FTC Act; of the FTC's jurisdiction; and of the U.S. Constitution—the Commission cannot bring a complaint to enforce the rule if the complaint would exceed the Commission's jurisdiction or offend the Constitution.

The Commission invites written comments on the proposed Rule, and, in particular, answers to the specific questions set forth in Section X.

A. Section 464.1 Definitions

Proposed Section 464.1 contains definitions for the following terms: "Ancillary Good or Service," "Business," "Clear(ly) and Conspicuous(ly)," "Government Charges," "Pricing Information," "Shipping Charges," and "Total Price." Each of these terms is used in the proposed Rule.

"Ancillary Good or Service" is defined as any additional good(s) or service(s) offered to a consumer as part of the same transaction. This would include goods or services that are not necessary to render the primary good or service fit for its intended use but are nevertheless offered as part of the same transaction. An Ancillary Good or Service may be mandatory or optional. For example, if a hotel offers a consumer the option to purchase or decline trip insurance with a room reservation, the insurance would be an optional ancillary service. If a housing rental agreement includes a fee that the consumer cannot reasonably avoid for a trash valet service, it would be a mandatory ancillary service. If a business includes a fee that the consumer cannot reasonably avoid to process the payment for any good or service, such payment processing would be a mandatory ancillary service.

"Business" is defined as an individual, corporation, partnership, association, or any other entity that offers goods or services, including, but not limited to, online, in mobile applications, and in physical locations. This definition is industry neutral. However, this definition contains a carveout for certain motor vehicle dealers that must comply with 16 CFR 463, requiring a cash price disclosure and prohibiting misrepresentations. On July 13, 2022, the Commission published in the Federal Register a Notice of Proposed Rulemaking for a Motor Vehicle Dealers Trade Regulation Rule, which if finalized would be published at 16 CFR 463. The proposed Motor Vehicle Dealers Rule would require covered motor vehicle dealers to, among other things, disclose the true "Offering Price" of a vehicle in advertisements or communications that reference a specific vehicle or any monetary amount or financing term for any vehicle, and would prohibit dealers from making certain misrepresentations. The proposed Rule on Unfair or Deceptive Fees provides that if the Commission finalizes the proposed Motor Vehicle Dealers Rule's Offering Price and misrepresentations provisions and such rule is published and in effect at 16 CFR 463, motor vehicle dealers subject to that part would be excluded from coverage under the proposed Rule on

Unfair or Deceptive Fees. If there is no provision published and in effect at 16 CFR 463 requiring motor vehicle dealers to disclose the cash price and prohibiting misrepresentations, motor vehicle dealers would not be exempt from the definition of "Business" and therefore would be subject to the proposed Rule on Unfair and Deceptive Fees.

"Clear(ly) and Conspicuous(ly)" is defined consistently with longstanding Commission interpretation and practice.

"Government Charges" means all fees or charges imposed on consumers by a Federal, State, or local government agency, unit, or department. This definition covers only fees or charges imposed by the government on consumers and does not encompass fees or charges that the government imposes on a business and that the business chooses to pass on to consumers.

"Pricing Information" is defined as any information relating to any amount a consumer may pay.

"Shipping Charges" is defined as all fees or charges that reasonably reflect the amount a Business incurs to send physical goods to a consumer through the mail, including private mail services. This definition does not include delivery through couriers, such as those in mobile delivery applications. This definition is limited to the amount that reasonably reflects what a Business incurs to send goods. Thus, for the purposes of the provision that references Shipping Charges, a Business cannot artificially inflate the cost of shipping.

"Total Price" is defined as the maximum total of all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service, except that Shipping Charges and Government Charges may be excluded. The use of the phrase "maximum total" would allow businesses to apply discounts and rebates after disclosing the Total Price. Because the Total Price includes all charges that a consumer must pay, it covers mandatory charges. As explained in Section III.A., because there is an implied representation that a good or service offered for sale is

fit for the purposes for which it is sold, a Business cannot treat a feature as optional if it is necessary to render the good or service fit for its intended use. The Total Price need not include Shipping Charges (all fees or charges that reasonably reflect the amount a Business incurs to send physical goods to a consumer through the mail, including private mail services) and Government Charges (all fees or charges imposed on consumers by a Federal, State, or local government agency, unit, or department). Because the Shipping Charges must reasonably reflect the amount a Business incurs, a Business cannot artificially inflate the cost of shipping that is excluded from the Total Price. A Business likewise cannot artificially inflate taxes that are excluded from the Total Price because the definition of Government Charges covers only those charges imposed *by the government on consumers*.

B. Section 464.2 Hidden Fees Prohibited

The prohibition against bait-and-switch pricing in proposed Section 464.2(a) would cover unlawful conduct by Businesses that offer, display, or advertise an amount a consumer may pay without Clearly and Conspicuously disclosing the Total Price. In this rule, the Total Price includes all charges that a consumer must pay for a good or service, including any mandatory Ancillary Good or Service. As explained in Section V.A., Total Price need not include Shipping Charges and Government Charges. Proposed Section 464.2(b) clarifies that a Business that is required to disclose the Total Price in an offer, display, or advertisement under Section 464.2(a) must disclose it *more prominently* than any other Pricing Information.

The prohibition on hidden fees applies to amounts "offered, displayed, or advertised" by a Business even if a different entity provides the good or service. For example, if an online travel agent advertises a price for a hotel room provided by a hotel chain, the online travel agent must display the Total Price, inclusive of mandatory fees charged by the hotel chain. Similarly, if a Business advertises a price for a product that it provides to the consumer and requires an ancillary

good or service provided by another entity, such as payment processing, the charge for the mandatory ancillary good or service must be included in the Total Price.

The Commission anticipates the possibility of providing certain exclusions from the proposed rule, including for some financial products where the Total Price cannot practically be determined. As discussed in Section X, the Commission is seeking comment on the proper scope of any such exclusion. Further, as discussed in Section V.A., the proposed rule also contains a carveout for certain motor vehicle dealers that must comply with 16 CFR 463, which requires cash price disclosures and prohibits certain misrepresentations.

C. Section 464.3 Misleading Fees Prohibited

The prohibition against misrepresenting the nature and purpose of any amount a consumer may pay in Section 464.3(a) covers misrepresentations about a fee's nature and purpose, which includes the refundability of such fees as well as the identity of any good or service for which fees are charged.

Section 464.3 includes a preventative disclosure requirement pursuant to the Commission's Section 5 authority.[241] The preventative disclosure requirement in Section 464.3(b) requires Businesses to disclose, Clearly and Conspicuously and before the consumer consents to pay, the nature and purpose of any amount a consumer may pay that is ***excluded*** from the Total Price. An amount a consumer may pay that is excluded from the Total Price includes any Shipping Charges, Government Charges, optional fees, voluntary gratuities, and invitations to tip. As with Section 464.3(a), the nature and purpose of fees includes the refundability of such fees and the identity of any good or service for which fees are charged. By requiring disclosure of the nature and purpose of fees, this provision helps prevent Businesses from omitting mandatory fees from the Total Price

[241] 15 U.S.C. 57a(a)(1)(B) ("Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.").

in violation of Section 464.2(a) and misrepresenting the nature and purpose of fees in violation of Section 464.3(a). For example, if a Business discloses the identity of the good or service for which an additional fee is charged, it becomes apparent what benefit a consumer can reasonably expect from it and whether the feature is something that is necessary for the intended use of the primary purchase. This information is necessary for a consumer to understand what they are purchasing and to decide whether to consent to the charge.

Sections 464.3(a) and (b) operate together to prohibit Businesses from misrepresenting the nature and purpose of fees by using vague descriptions. For example, a meal delivery app that chooses to itemize a mandatory service charge as part of the Total Price cannot mislead consumers about the service for which the fee is charged. If a portion of the service charge is used to compensate a delivery driver while another portion is used to compensate the Business for providing the online application, a description that combines both portions without specifying the recipient of each portion of the service charge would violate Section 464.3(a). Similarly, a Business must disclose, and cannot misrepresent the nature and purpose of, Shipping Charges, Government Charges, optional fees, voluntary gratuities, and invitations to tip that are excluded from the Total Price. If a delivery application includes an invitation to tip a delivery driver without disclosing that a portion of the tip is allocated to offset the delivery driver's base wages or benefits, it would violate Sections 464.3(a) and (b), in addition to any other laws or regulations relating to the distribution of tips.

D. Section 464.4 Relation to State Laws Provision

The relation to state laws provision in Section 464.4 would prevent the rule from superseding state laws unless there is an inconsistency.

VI. The Rulemaking Process

The Commission can decide to finalize the proposed rule if the rulemaking record, including the public comments in response to this NPRM, supports such a conclusion. The Commission may, either on its own initiative or in response to a commenter's request, engage in additional processes, which are described in 16 CFR 1.12 and 1.13. If the Commission on its own initiative decides to conduct an informal hearing, or if a commenter files an adequate request for such a hearing, then a separate notice will issue under 16 CFR. 1.12(a). Based on the comment record and existing prohibitions against unfair or deceptive practices relating to fees under Section 5 of the FTC Act, the Commission does not currently identify any disputed issues of material fact that need to be resolved at an informal hearing.[242]

VII. Preliminary Regulatory Analysis

Under Section 22 of the FTC Act, the Commission, when it publishes any NPRM, must include a "preliminary regulatory analysis." 15 U.S.C. 57b-3(b)(1). The required contents of a preliminary regulatory analysis are (1) "a concise statement of the need for, and the objectives of, the proposed rule," (2) "a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective," and (3) "a preliminary analysis of the projected benefits and any adverse economic effects and any other effects" for the proposed rule and each alternative, along with an analysis "of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule." 15 U.S.C. 57b-3(b)(1)(A)–(C).

A. Concise Statement of the Need for the Rule and Its Objectives

This proposed rule is needed to address the prevalent business practices of presenting incomplete pricing information that obscures the total price and misrepresenting the nature and

[242] The Commission may still do so later, on its own initiative or in response to a persuasive showing from a commenter.

purpose of fees, which are unfair or deceptive practices. The proposed rule aims to (a) prohibit and prevent these unlawful practices, (b) foreclose businesses from circumventing the purpose of the rule, such as by mischaracterizing essential components of a product as optional add-on components, shipping, or taxes, (c) promote a level playing field that enables comparison shopping and allows honest businesses to compete, and (d) empower the Commission to provide monetary redress to consumers and to seek civil penalties if warranted. Section IV provides more detail regarding the need for, and the objectives of, the proposed rule. The NPRM addresses the other requirements in this section.

B. Reasonable Alternatives and Anticipated Costs and Benefits

The Commission believes that the benefits of proceeding with the rulemaking will significantly outweigh the costs, but it welcomes public comment and data (both qualitative and quantitative) on any benefits and costs to inform a final regulatory analysis. Critical to the Commission's analysis is the legal consequence that any eventual rule would allow not only for the ability to redress consumers who are harmed by rule violations, but also for the deterrence value of the threat of civil penalties against violators. Such results are likely to provide benefits to consumers and competition, as well as to the agency, without imposing any significant costs on consumers or competition. It is difficult to quantify with precision what all those benefits may be, but it is possible to describe them qualitatively.

It is useful to begin with the scope of the problem the proposed rule would address. As discussed in the ANPR and documented in the comments received and existing literature on shrouded pricing, unfair or deceptive practices relating to fees pervade various industries, harming consumers and competition. For example, empirical and theoretical models suggest that mandatory hidden fees may lead consumers to pay more than they otherwise would in a truly transparent marketplace. This can lead to a transfer of wealth away from consumers to the firms who

successfully hide their true prices. Studies suggest that unfair or deceptive pricing strategies may also lead consumers to put less effort into searching for lower prices. Deceptive pricing may harm competition by directing consumers away from businesses with the best price and honest practices to businesses with prices that are higher, less transparent, and more deceptive. This makes it harder for the genuine price cutter to attract consumers and enables the higher-priced rival to effectively shroud its comparatively higher prices, thereby reducing real price competition.[243]

Given the proliferation of unfair or deceptive pricing practices relating to fees, it is not surprising that cases relating to unfair or deceptive fee practices have recently constituted, and are likely to constitute in the future, a meaningful share of Commission enforcement actions, and in many of those actions a rule may prove to be the only or the most practicable means for achieving consumer redress. As such, a significant anticipated benefit of a final rule is the ability to obtain monetary relief, especially consumer redress, as well as civil penalties. While such relief could also be obtained for certain fee-related practices with an existing rule or statute, such as the TSR, ROSCA, and the Negative Option Rule, by no means do all unfair or deceptive practices relating to fees implicate an existing rule or statute.

To succeed at obtaining consumer redress without a rule violation, the Commission must first obtain an administrative cease-and-desist order based on Section 5 violations. Then, to secure consumer redress for victims, the Commission must file an action in federal court under Section 19(a)(2) and persuade a court in each case that the conduct at issue is "one which a reasonable man

[243] *See, e.g.*, FTC-2022-0069-6095 (describing harm to competition and honest businesses through price obfuscation); Sullivan, *supra* n. 153, at 4; Rasch, *supra* n. 153, at 362–63 ("[E]xperimental evidence suggests that consumers indeed strongly and systematically underestimate the total price under drip pricing and make mistakes when searching"); Shelanski, *supra* n. 153, at 314–16; Blake, *supra* n. 153, at 16; Huck & Wallace, *supra* n. 153, at 4; Ellison & Ellison, *supra* n. 153, at 2–6; Busse & Silva Risso *supra* n. 153, at 470–74; National Economic Council, *The Competition Initiative and Hidden Fees*, *supra* n. 167.

would have known under the circumstances was dishonest or fraudulent."[244] Although this standard is likely to be met in some cases relating to unfair or deceptive practices relating to fees, having to prove as much in each case requires a greater expenditure of Commission resources than in cases with a rule violation, which allow the Commission to proceed directly in federal court and do not require separate proof of knowledge that the conduct was dishonest or fraudulent.

Accordingly, without a rule, the Section 19(a)(2) path often requires consumer victims to wait many years before the Commission can deliver redress to them, even six years or more.[245] The Commission's experience supports a reasonable estimate that administrative litigation can take at least twice as long as federal litigation with a rule violation. Because of the prevalence of unfair or deceptive practices relating to fees, the Commission will not have a shortage of actors to investigate. Having a rule would result in a savings of enforcement resources, which could be invested into investigating and, where the facts warrant, bringing additional enforcement actions. In sum, significant potential benefits of a rule are that the Commission could put a stop to more unfair or deceptive practices relating to fees, return money to more victims, and obtain that redress more quickly.

Another potential significant benefit is deterrence of unfair or deceptive practices relating to fees. The Commission anticipates that most companies that are subject to any eventual rule would comply with it right away, especially as their competitors would also be bound by it. And for companies that do not immediately comply, an eventual rule that makes it less likely they could

[244] 15 U.S.C. 57b(a)(2). Depending on the egregiousness of the misconduct and the harm it is causing, the Commission also may seek preliminary injunctive relief in federal court. 15 U.S.C. 53(b).
[245] *See, e.g.*, Press Release, Fed. Trade Comm'n, *Marketers of Ab Force Weight Loss Device Agree to Pay $7 Million for Consumer Redress* (Jan. 14, 2009), https://www.ftc.gov/news-events/news/press- releases/2009/01/marketers-ab-force-weight-loss-device-agree-pay-7-million-consumer-redress (describing a 2009 settlement of a follow-on Section 19 action against Telebrands Corp. that was brought after litigation finally concluded of a 2003 administrative complaint alleging violations of Section 5—in this case, the Section 19 action settled instead of being litigated to judgment, which would have taken more time).

evade redressing consumers and more likely that they have to pay civil penalties can have only helpful deterrence effects, whatever their magnitude.[246] Any eventual rule could also have the salutary effect of complementing the Commission's consumer education work by elevating public awareness of these prevalent unfair or deceptive practices relating to fees, which could increase how often they are detected and reported.

In analyzing the potential costs and benefits of the proposed rule, the Commission also considered several alternatives to the rule including terminating the rulemaking, pursuing narrower rule alternatives and pursuing broader rule alternatives. One potentially reasonable alternative to the proposed rule is to terminate the rulemaking and rely instead on the existing tools that the Commission currently possesses to combat unfair or deceptive practices relating to fees, such as consumer education and enforcement actions brought under Sections 5 and 19(a)(2) of the FTC Act. Termination of the rulemaking would offer the benefit of preserving some Commission resources that would be required to continue the rulemaking in the short term, but it would come at a significant cost. The cost that is most significant is the failure to strengthen the set of tools available in support of the Commission's enforcement program against unfair or deceptive practices relating to fees, depriving it of the benefits outlined in this section.

Other potential reasonable alternatives to the proposed rule could narrow the proposed rule's scope. As discussed in Section III, bait-and-switch pricing and misrepresentations relating to fees are prevalent across the economy. However, much media attention has been focused on fees

[246] In its comment, the National Automobile Dealers Association, FTC-2022-0069-6043, noted that "the Commission's desire for monetary penalty authority over a practice that is already impermissible under current law is not a legally adequate basis for the issuance of a trade regulation rule." This argument misses the mark because an eventual rule would not merely constitute a restatement of existing law. As noted in this preamble, the Commission has carefully analyzed the unfair or deceptive nature of failing to include mandatory fees and charges in total price quotes and misrepresenting the nature or purpose of fees. Moreover, an eventual rule would provide consumers with monetary relief in cases where the Commission is unable to allege a rule violation currently, and it would have a deterrent effect on businesses that, to date, continue to engage in these unfair or deceptive pricing practices.

related to live-event ticketing and short-term lodging, and the Commission received many comments related to these two sectors in response to the ANPR. An alternative to the proposed rule would be to propose a rule addressing pricing only in these specific sectors. The Commission believes, however, that limiting the proposed rule to specific sectors that have received extensive attention would leave the door open to widespread unfair or deceptive practices in other sectors. One benefit of the proposed industry-neutral rule is that consumers will likely have greater confidence in knowing when the rule applies to their purchases compared to a sectoral rule in which only certain industries are required to show Total Price. Further, comments received in response to the ANPR, described in Section II, noted the importance of applying a proposed rule to all market sector members to establish a level playing field and to avoid granting individual industry members competitive advantages by excluding them from rule coverage. A narrower alternative rule could fail to address the identified unfair or deceptive fee practices in large swaths of the economy and give some businesses an unfair competitive advantage.[247]

In addition, the proposed rule could have been subject to further narrowing principles, including proposing a rule that exempted small businesses or focused solely on online-only transactions. An alternative rule that exempted small businesses from the proposed requirements in Section 464.2 could have the benefit of avoiding compliance costs borne by small businesses with smaller profit margins that might cause them to be impacted disproportionately by the proposed rule. On the other hand, a rule exempting small businesses might impose more uncertainty and compliance costs for businesses to determine whether the rule applies to them and, as noted in this

[247] As part of its broader analysis, this NPRM considered the costs and benefits of the proposed rule as it applied to three specific industries: short-term lodging, live-event ticketing, and restaurants. There is a potential cost savings associated with not requiring compliance with the proposed rule for industries outside of live-event ticketing and short-term lodging. Further, there may be unintended consequences of the proposed rule on some industries. This NPRM seeks comment on these potential unintended consequences and seeks data that would facilitate further analysis of the costs and benefits of narrowing the proposed rule to specific sectors.

section, comments from industry favored a rule that applied to industry members equally to avoid the creation of competitive advantages. Narrowing the scope of the rule in this way could also reduce consumer benefits arising from increased price transparency across markets and lower consumer confidence regarding whether the rule applies to specific purchases.

Another narrower alternative rule focused on online-only transactions could preserve many benefits discussed in this section of an industry-neutral rule because it would cover many of the industries about which the Commission received a large number of comments. As a result, this alternative would likely still benefit a large number of consumers. It may also avoid unintended consequences in some industries, particularly those with complicated pricing structures. However, a rule that focused exclusively on online-only transactions could fail to address prevalent unfair and deceptive practices that occur in-person or incentivize businesses with online and in-person customer interactions to bifurcate transactions.[248] Further, it might introduce uncertainty and compliance costs for businesses that operate both online and in-person. Section X seeks comment on these potential narrowing alternatives, including requests for data not currently available to the Commission to develop a quantitative analysis of the costs and benefits.

[248] For example, many commenters flagged common practices in the hotel and car rental industries that occur at the check-in or check-out counter after the initial "online" booking. FTC-2022-0069-0821 ("Another hidden fee is the cost to park your vehicle. You're trapped at the check in desk when you're told it's $60 per night to self park."); FTC-2022-0069-1746 ("Tricky or deceptive rental car insurance packages that the companies try to sell you at a desk. These details are either not online or very difficult to find."); FTC-2022-0069-2668 (describing a "destination fee" charged in person at a hotel); FTC-2022-0069-5937 ("When I tried to check in I was told a different price for my suite than the one I had booked online. I explained to the front desk assistance that I had booked at a different price. She informed me that their prices include a 'resort fee,' which covers use of the pool, phone, and gym."); FTC-2022-0069-5944 (describing car rental fees "not even mentioned to the consumer until they reach the checkout counter"). *See also* Compl. ¶ 8, *Abdelsayed*, *supra* n. 222 ("When a consumer books online, they cannot tell . . . what they will be separately charged for upon arrival and/or at checkout, well past the point the consumer could make an informed decision."); Settlement Agreement ¶ 6, *Dollar Thrifty Auto. Grp., Inc.*, *supra* n. 221 (settling claims that defendant misrepresented toll-related fees charged after the consumers drove rental cars on toll roads); Compl. ¶¶ 1, 3–5, 8, *Travelers United*, *supra* n. 222 (describing resort fees due separately at the property); Compl. ¶ 13, *Shahar v. Hotwire, Inc. et al.*, No. 12-CV-6027 (N.D. Cal. filed Nov. 27, 2012) ("[W]hen the customer arrives at the airline ticket counter, hotel check-in desk, or car rental desk, he learns for the first time that he will be unable to obtain the promised services for the agreed upon price, but instead must pay significantly more.").

As noted in Section II, many comments to the ANPR expressed frustration with fees commenters deemed "excessive" or "worthless." An alternative to the proposed rule would be to address these fees explicitly. Such an alternative would benefit consumers who are paying excessive amounts for basic goods or services and those who are paying for goods or services that provide them little to no value by prohibiting businesses from charging such fees. This economic transfer would allow consumers to save their money or spend it elsewhere on other goods or services that *do* provide them value. However, a rule prohibiting worthless and excessive fees could incur additional costs for industry to determine whether a fee qualified as worthless or excessive under the rule. In addition, some of the benefits of an alternative rule prohibiting worthless or excessive fees may already be accomplished by the proposed rule. For example, in connection with worthless fees, the proposed rule would require all mandatory fees to be included in the Total Price whether those fees arguably add value to consumers or not. Transparency and competition on price could then disincentivize businesses from incorporating such fees into their pricing schemes altogether. In addition, consumer confusion related to the purpose of worthless fees would be addressed by the provisions in the proposed rule that prohibit misrepresenting fees and require the disclosure of the nature and purpose of optional fees. Section X requests comment on potential alternatives prohibiting fees that provide little or no value to consumers and fees that are excessive, including how to define such fees.

In sum, the alternative of terminating the rulemaking would not sufficiently accomplish the Commission's objectives. Other alternatives discussed here would accomplish some, but not all, of the Commission's objectives. The Commission seeks comment on these alternatives and any other potentially reasonable alternatives. While there may be other alternatives that could potentially accomplish the stated objectives, the Commission would benefit from additional data to conduct

preliminary analyses of projected benefits and adverse economic effects.[249] Therefore, the Commission seeks comment on whether there are other potentially reasonable alternatives, including any relevant sources of data that reflect the costs and benefits of such alternatives.

C. Economic Analysis of Costs and Benefits of the Proposed Rule

The following analysis describes the anticipated impacts of the proposed rule. Our analysis concludes that on an economy-wide basis, there are positive benefits to the proposed rule if the benefit per consumer is at least $6.65 per consumer per year over a 10-year period.[250] This NPRM discusses the proposed regulatory requirements in the following areas:

1. Prohibits offering, displaying, or advertising an amount a consumer may pay without adequate disclosure of the Total Price, as defined in the proposed rule.
2. Prohibits misrepresentations regarding the nature and purpose of any amount a consumer may pay, and requires disclosures of the nature and purpose of any amount a consumer may pay that is excluded from the Total Price. This includes disclosing the refundability of such fees, and the identity of any good or service for which fees are charged.

Where possible, the Commission quantifies the benefits and costs and notes that some potential benefits and costs are unquantified. If a benefit or cost is quantified, the sources of the data relied upon are indicated. If an assumption is needed, the text makes clear which quantities are being assumed. Because there is data available to quantify some of the potential benefits and costs in the live-event ticketing and short-term lodging industries and mandatory fees are commonplace in these industries, this preliminary analysis provides quantified benefits and costs for these specific

[249] Within the Commission's Preliminary Regulatory Analysis is a preliminary analysis of the costs and benefits of the proposed rule, which includes analyses of subsets of the proposed rule. The Commission seeks comment on whether any narrower subset of the proposed rule would constitute a better rule than the proposed rule.
[250] *See infra* Section VII.C.5.

industries separately. Mandatory fees are also common in the restaurant industry. Some of the costs for this industry are quantified, but there is insufficient data to quantify benefits for this industry.

The Commission uses 10 years for the time period of analysis because FTC rules are subject to review every 10 years. Tables 1.A and 1.B summarize the main findings of the regulatory impact analysis. Table 1.A presents the potential benefits and costs of the proposed rulemaking. Panel A summarizes the costs, benefits, and resulting net benefits for the live-event ticketing and short-term lodging industries – the two industries for which data are available to estimate both costs and benefits of the proposed rule. Quantified benefits in these industries derive from time savings consumers would experience due to greater price transparency, leading to more efficient shopping processes. Quantified costs derive from the costs to firms of complying with the proposed rule.

The quantified net benefits for both the live-event ticketing and short-term lodging industries are positive. There are also unquantified benefits and costs. Unquantified benefits may arise from a reduction in deadweight loss as consumers experience greater price transparency and make fewer mistake purchases. Unquantified costs may stem from unintended consequences of the rule, such as any adjustment costs or consumer confusion as expectations adjust.

Panel B summarizes the costs and benefits for the restaurant industry and all other remaining industries. Quantified costs derive from compliance. Due to a lack of data, all benefits, including both the increase in time savings and reduction in deadweight loss, of the proposed rule for these industries are unquantified. The inability to quantify such benefits does not indicate that such benefits are trivial; indeed, such unquantified benefits may be substantial.

For both quantified benefits and costs, we provide a range representing the set of assumptions that result in a “low-end” or “high-end” estimate. These estimates are calculated as present values over the 10-year time frame. Benefits and costs are more valuable to society the

sooner they occur. A discount rate (3% or 7%) is used to adjust estimated benefits and costs for differences in timing; a higher discount rate is associated with a greater value for benefits and costs in the present.[251]

Table 1.B presents low-end and high-end estimates of the total quantified economy-wide costs and the necessary "break-even benefit" per consumer. Since the Commission is unable to quantify the benefits of the proposed rule at the economy level, we instead calculate the minimum value the proposed rule would need to generate for the average consumer in order for the total benefits of the proposed rule to outweigh its quantified costs. Under the high-end cost assumptions with a 7% discount rate, we find that each consumer would need to experience a benefit of $6.65 per year over 10 years for the proposed rule's benefits to exceed its quantified economy-wide compliance costs.

Table 1A – Summary of Potential Benefits and Costs of Proposed Rule

		Present Value Over a 10-Year Period	
		Low-end Estimate	**High-end Estimate**
Panel A: Costs and Benefits for Ticketing and Short-Term Lodging			
Ticketing			
Quantified Benefits (Time Savings)	7% discount rate	$149,918,030	$1,776,806,284
	3% discount rate	$182,076,794	$2,157,947,183
Quantified Costs (Compliance)	7% discount rate	$14,282,177	$129,453,151
	3% discount rate	$14,282,177	$140,330,460
Unquantified Benefits		*Reduced Deadweight Loss (e.g. efficient quality/quantity purchased, fewer mistake purchases)*	
Unquantified Costs		*Unintended Consequences (e.g. adjustment costs, consumer confusion as expectations adjust)*	
		(Low Benefits – High Cost)	(High Benefits – Low Cost)
Net Benefits (10 Years)	7% discount rate	$20,464,879	$1,762,524,107
Net Benefits (10 Years)	3% discount rate	$41,746,333	$2,143,665,007

[251] We use 3% and 7%for the discount rate consistent with Office of Management and Budget's guidance. OMB, *Circular A-4* (Sep. 17, 2023), https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.

Short-Term Lodging			
Quantified Benefits (Time Savings)	7% discount rate	$4,661,731,460	$6,889,087,761
	3% discount rate	$5,661,714,710	$8,366,858,934
Quantified Costs (Compliance)	7% discount rate	$136,472,889	$413,783,170
	3% discount rate	$136,472,889	$441,071,919
Unquantified Benefits		*Reduced Deadweight Loss (e.g. efficient quality/quantity purchased, fewer mistake purchases)*	
Unquantified Costs		*Unintended Consequences (e.g. adjustment costs, consumer confusion as expectations adjust)*	
		(Low Benefits – High Cost)	(High Benefits – Low Cost)
Net Benefits (10 Years)	7% discount rate	$4,247,948,290	$6,752,614,872
Net Benefits (10 Years)	3% discount rate	$5,220,642,791	$8,230,386,045
Panel B: Costs and Benefits for Restaurants and Remaining Industries			
Quantified Costs (Compliance)	7% discount rate	$4,264,844,809	$11,525,776,514
	3% discount rate	$4,264,844,809	$12,526,501,293
Unquantified Benefits		*Increased Time Savings and Reduced Deadweight Loss*	
Unquantified Costs		*Unintended Consequences (e.g. adjustment costs, consumer confusion as expectations adjust)*	

Note: "Low-End Estimate" reflects all scenarios that jointly result in lower estimates of benefits or costs and "High-End Estimate" reflects all scenarios that jointly result in higher estimates of benefits or costs.

Table 1B – Summary of Quantified Costs and Break-Even Benefits of Proposed Rule

		Present Value Over a 10-Year Period	
		Low-end Estimate	**High-end Estimate**
Total Quantified Costs	7% discount rate	$4,415,599,874	$12,069,012,836
Total Quantified Costs	3% discount rate	$4,415,599,874	$13,107,903,673
Break-even Benefit Per Consumer Per Year	7% discount rate	$2.43	$6.65
Break-even Benefit Per Consumer Per Year	3% discount rate	$2.00	$5.95

Note: "Low-End Estimate" reflects all scenarios that jointly result in lower estimates of benefits or costs and "High-End Estimate" reflects all scenarios that jointly result in higher estimates of benefits or costs.

1. Economic Rationale for Proposed Rule

Insufficient information about or salience of mandatory fees when consumers start the purchasing process for a product may result in a market failure.[252] This incomplete information and lack of transparency leads to a market failure because the true price is shrouded for the consumer. Firms may shroud total prices through the practice of "drip pricing," which is "a pricing technique in which firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process."[253] While consumers may be able to comparison shop and discover the total price prior to final purchase by going through the checkout process across multiple sellers, this strategy involves additional search costs for the consumer. In some cases, taking the time to search for the total price at a different seller may result in the consumer losing the product at the original seller. Drip pricing and the resulting imposition of additional search costs may make it more difficult for consumers to compare prices across platforms, which may soften price competition in the market.[254]

A market failure may also occur when firms shroud total prices through non-aggregated partitioned pricing, in which all of the components of the total price (base price, fees, etc.) are presented to consumers up front but without the total price itself.[255] Non-aggregated partitioned pricing, like drip pricing, imposes costs on consumers by requiring them to spend additional time to

[252] See Section VII.A., "Concise Statement of the Need for the Rule and Its Objectives" for a discussion of the legal rationale for the proposed rule.
[253] Howard A. Shelanski et. al., *Economics at the FTC: Drug and PBM Mergers and Drip Pricing*, 41 Rev. Indus. Org., 303–19 (2012), https://doi.org/10.1007/s11151-012-9360-x.
[254]The White House, *How Junk Fees Distort Competition* (Mar. 21, 2023), https://www.whitehouse.gov/cea/written-materials/2023/03/21/how-junk-fees-distort-competition/; The White House, The President's Initiative on Junk Fees and Related Pricing Practices (Oct. 26, 2022), https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/; Glenn Ellison, *A Model of Add-On Pricing*, 120 Q.J. Econ. 2, 585-637 (2005), https://www.jstor.org/stable/25098747.
[255] Vicki G. Morwitz et al., *Divide and Prosper: Consumers' Reactions to Partitioned Prices*, 35 J. Mktg. Rsch. 4, 453–63 (1998), https://doi.org/10.1177/002224379803500404.

calculate total prices for themselves and by increasing the likelihood of suboptimal choices through erroneous total price calculations.

a. Incomplete Pricing Information and Search Costs

A well-functioning market for a good (or service) depends, in part, on its consumers having accurate information regarding the price of the good. By revealing hidden mandatory fees later in the purchasing process through drip pricing, a firm imposes additional costs on consumers of acquiring this information. By employing partitioned pricing but failing to provide an upfront total price, a firm imposes similar added costs. In either case, several harms may arise. First, keeping consumer choices fixed, the added search cost to acquire price information reduces consumer surplus with no countervailing increase of producer surplus. Second, shrouded prices make comparison shopping more difficult, leading consumers to make suboptimal consumption decisions.

Overall, consumers may find it too costly to search for total price information for some or all goods under consideration. This leads consumer demand to become less elastic, and consumers will accept higher prices relative to an efficient equilibrium. Additionally, as shrouded prices make it harder for consumers to comparison shop, firms may gain more market power that allows them to raise prices.[256]

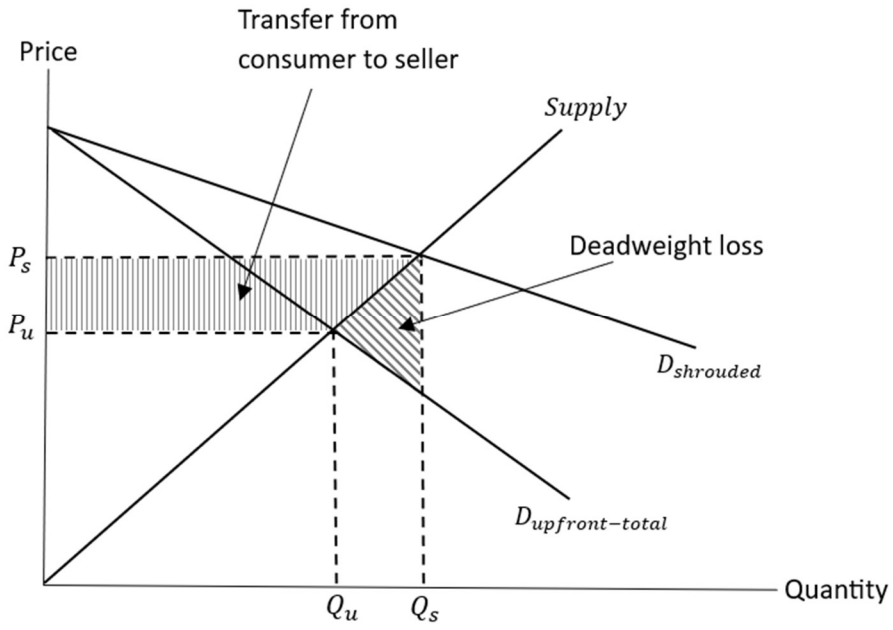
Figure 1 illustrates this effect of shrouded prices on consumer demand. In this model, the demand curve $D_{upfront\text{-}total}$ represents consumers' true preferences when presented with an upfront total price. When a shrouded price hinders consumers' ability to learn total prices and efficiently compare competing goods, consumer demand will swing out, as a result of decreased elasticity, as represented by $D_{shrouded}$. Consequently, incomplete price information may lead consumers to

[256] Michael R. Baye et al., *Search Costs, Hassle Costs, and Drip Pricing: Equilibria with Rational Consumers and Firms*, (Nash-Equilibrium.com, Working Paper, 2019), http://nash-equilibrium.com/PDFs/Drip.pdf.

purchase more of the good or service at a higher price than they would if they had complete price information.

As a consequence of the higher price paid by consumers, there is a transfer of surplus from consumers to sellers. This transfer correlates with additional profit for producers, who thus have an incentive to increase consumer costs in this manner.[257] Whereas such transfers are neither benefits nor costs in this analysis, the overconsumption also leads to a societal cost in the form of deadweight loss because the resources used to produce the good would have been put to a better use if consumer demand had not been distorted in this manner. This inefficient consumption level and the accompanying increase in consumer search costs represent a market failure.[258]

Figure 1: Effects of price shrouding on consumer demand



[257] Although consumers in this model would prefer upfront pricing, it is unlikely that any individual firm in a market with shrouded prices could increase its market share by providing upfront total prices. Under the expectation of shrouded prices, consumers may inadvertently interpret such a firm's upfront prices as higher base prices, leading the firm to lose rather than gain business. In this way, shrouded prices create a prisoners' dilemma in the market that cannot be undone through competition.

[258] For expositional simplicity, Figure 1 does not include the shift to the supply curve resulting from firms' increased market power. This shift in supply would likely lead to similar shifts in the market equilibrium: higher prices, a transfer of surplus from consumers to producers, and a deadweight loss to society.

Additionally, products are vertically differentiated in many markets, with higher quality items selling at higher prices. In such markets, drip pricing may lead to equilibria characterized by inefficiently high qualities in addition to inefficiently high quantities.[259] Consumers may respond to fully disclosed prices in these markets by purchasing lower quality products in addition to purchasing fewer products.

b. Shrouded Pricing as a Source of Biased Expectations

As explained in Section VII.C.1.a, sellers have incentives to distort consumer demand toward an inefficient equilibrium. This inefficiency may also arise in a behavioral context.[260] By shrouding total prices through drip or partitioned pricing, a firm may bias its consumers' price expectations. For example, consumers may respond to dripped prices by anchoring their beliefs on the base price and, thus, systematically underestimate the price of the good. This underestimation, whether by all consumers or merely by a subset of consumers, would lead to an outward shift in consumer demand. While this outward shift would look different than the demand distortion in Figure 1, it would lead to a similarly inefficient equilibrium in which the good is overconsumed and society suffers a deadweight loss.

There are several studies that show how consumer behavior changes as a result of drip pricing. One study found that when optional surcharges are dripped, individuals are more likely to select a more expensive option (after including surcharges) than what they would have chosen under upfront pricing.[261] Even when the participants became aware of the additional fees, they were reluctant to restart the purchase process because they perceived high search costs and

[259] This phenomenon has been observed, for example, in the live-event ticketing industry. *See* Blake et al., *supra* n. 153.
[260] David Laibson, Harvard U., Drip pricing: A Behavioral Economics Perspective, Address at the F.T.C. (May 21, 2012), https://www.ftc.gov/sites/default/files/documents/public_events/economics-drip-pricing/dlaibson.pdf.
[261] Shelle Santana et al., *Consumer Reactions to Drip Pricing*, 39 Mktg. Sci. 1, 188–210 (2020), https://doi.org/10.1287/mksc.2019.1207.

inaccurately assumed that all companies charge the same fees. A different economics paper conducted an experiment and found that consumers encountering drip pricing are more likely to make purchasing mistakes if they are uncertain about the extent of the drip pricing.[262]

Another prominent study looked at how consumers respond to the salience of sales tax on goods, which affects the full price of a product.[263] In this study, when the grocery store displayed the full price of each item on shelves as part of a field experiment, people purchased fewer products, relative to the control scenario in which sales tax was added at checkout, despite knowing that the final price being charged had not changed. In 2014, StubHub conducted an experiment in which some consumers were presented total prices inclusive of fees up front while other consumers were presented a base price up front with fees revealed at checkout. An analysis of this experiment revealed that presenting consumers with total prices up front reduced both the quantity and quality of tickets purchased relative to presenting consumers with dripped prices.[264]

2. Economic Effects of the Proposed Rule

The model of incomplete price information, described in Section VII.C.1.a, provides a framework for assessing the potential costs, benefits, and transfers associated with the proposed rule. The proposed rule would result in positive net benefits if it increases the ease with which consumers can learn total prices and if the proposed rule improves consumer comprehension of fees as they relate to total price, facilitates comparison shopping, reduces search costs, or otherwise allows consumers to make choices that increase net welfare.

Under the current regime, if a seller in a given industry utilizes hidden fees, that seller may acquire a larger market share by advertising lower initial prices than other sellers not using hidden

[262] Alexander Rasch et al., *Drip Pricing and its Regulation: Experimental Evidence*, 176 J. Econ. Behav. & Org., 353–70 (2020), https://doi.org/10.1016/j.jebo.2020.04.007.
[263] Raj Chetty et al., *Salience and Taxation: Theory and Evidence*, 99 Am. Econ. Rev. 4, 1145–77 (2009).
[264] *See* Blake et al., *supra* n. 153.

fees. Absent a federal rule, competitive forces will drive other firms within an industry to also use hidden fees. These firms may have to accept a lower market share if they don't use hidden fees, even though their total prices are similar to their competitors. Thus, one potential outcome of the proposed rule is that firms that currently do not use drip pricing (in an industry where drip pricing is common) will no longer face the competitive pressure to employ hidden fees and may experience higher revenue if consumers can more easily compare prices across firms.

The proposed rule would also generate societal costs as firms would have to adjust how they convey prices to consumers. The proposed rule could increase economic efficiency if it improves consumers' price calculations and the resulting reduction in deadweight loss exceeds the cost to firms of providing more transparent pricing. It may also facilitate price comparisons by consumers, increase competition among sellers, and put downward pressure on prices. Due to a lack of data, it is difficult to fully quantify all the potential effects of the proposed rule on the full economy. Where there may be impacts that we are unable to quantify, we provide a qualitative description.

a. General Benefits of Proposed Rule

Consumers would benefit from the proposed rule in several ways. In addition to reductions in search costs and deadweight loss, which are described in greater detail in Section VII.C.1, there may be unquantified benefits from Section 464.3 of the proposed rule, which in part prohibits misrepresentation regarding the nature and purpose of any amount a consumer may pay that is excluded from the Total Price. Another potential unquantified benefit to consumers from the proposed rule is reduced frustration and consumer stress that is often associated with surprise fees that distort the purchasing process.

The proposed rule may also provide a benefit to firms in the form of harmonized, nation-wide compliance requirements. In the absence of the proposed rule, individual states may pursue

enforcement actions against firms using drip pricing or enact their own drip pricing prohibitions.[265] Such regulations could vary from state to state, and firms would incur greater costs to ensure simultaneous compliance with this patchwork of regulations. A single rule at the federal level would reduce the need for regulations at the state level and provide a simpler regulatory framework for firms. The Commission solicits comments on whether there are any additional benefits of the proposed rule that are not currently explored in this analysis and any data that may support estimating those benefits.

(1) Reductions in Search Costs

Consumers may save time searching for total price on goods and services as a result of the proposed rule. In a well-functioning market, consumers find it beneficial to spend time comparison shopping for low prices. When mandatory fees are obscured, however, consumers incur longer search times to discover full prices and make informed purchasing decisions. The purchase process for a given transaction takes longer than it would otherwise, as a consumer learns the full price at the end of the process and may need to re-assess whether they wish to purchase at a higher price than originally expected or look for other options. The proposed rule would eliminate the need for additional, inefficient amounts of time to determine the total price from sellers who do not provide the total price up front. At this time, we quantify the reduction in search costs in the live-event ticketing and short-term lodging industries. We do not quantify the benefits of the reductions in search costs in other industries because we lack the data to quantify such benefits, but we acknowledge that it is a positive benefit to the proposed rule.

[265] *See, e.g.*, enforcement by the state of Pennsylvania against Marriott International, discussed in Section VII.C.3.b(2).

(2) Reductions in Deadweight Loss

As discussed in Section VII.C.1.a, consumers' incomplete price information may distort consumer demand. This distortion may shift a market to an inefficient equilibrium and generate deadweight loss, which results from consumers purchasing higher quantities of the good than they would if fully informed. Under the proposed rule, consumers would learn the total price up front. Thus, consumers' demand distortion would likely be mitigated, and some fraction of the welfare-reducing transactions would be prevented. In other words, resources supporting overconsumption become available for better societal use, and the deadweight loss is reduced or eliminated. The provision of full pricing information may also reduce consumers' mistake purchases with respect to product quality. Drip pricing might lead consumers to purchase goods of inefficiently high quality; the proposed rule may allow consumers to choose efficient levels of quality. In addition, the requirement to disclose the refundability of any fees not included in the total price may also reduce the quantity of consumers' mistake purchases. Absent the proposed rule, if businesses do not disclose that certain charges are not refundable, consumers might make purchases assuming that they are refundable. Thus, the proposed rule may result in consumers purchasing closer to the efficient quantity of goods. We do not quantify the reduction in deadweight loss, but we acknowledge that it is a positive benefit to the proposed rule.

b. Welfare Transfers

The Commission expects that prices are likely to adjust in response to the transparency facilitated by the proposed rule. These price adjustments serve to transfer welfare from one side of the market to the other; consumer welfare would increase, and producer profits would decrease by the same amount. Typically, transfers of welfare from one set of people in the economy to another

are documented in a regulatory analysis, but do not change net social welfare.[266] While it is likely that the proposed rule may result in transfers of welfare, we do not attempt to estimate these transfers.

c. General Costs of Proposed Rule

Because the proposed rule is sector-neutral and economy-wide, all firms will be affected to some degree. Firms operating in the United States will likely do a basic regulatory review to determine how the proposed rule applies to them. Firms that are not already in compliance with the proposed rule may incur additional costs to re-optimize prices of goods and services. These firms may also incur costs to adjust how they display price information in order to disclose the full price whenever a price is quoted, and add required disclosures regarding refundability of fees not included in Total Price (e.g., fees for optional goods and services). For example, firms may need to reprogram websites, reprint advertisements, or redesign menus to comply with the proposed rule.

In addition, there may be some costs related to unintended consequences of the proposed rule. For instance, consumers who are used to an existing pricing structure that separately discloses mandatory fees at the end of the purchase process may mistakenly make inefficient purchases while adjusting to the new regime of all-in total pricing. For example, consumers accustomed to dripped ticketing fees may initially under-consume when shopping for tickets with upfront all-in pricing. The societal cost of such inefficiencies would be temporary and decrease as consumers adjust to the all-in pricing required by the proposed rule.

As another example, while the proposed rule excludes government charges and shipping from the required disclosure of total price, the proposed rule requires any internal handling costs

[266] *See* Off. Mgmt. & Budget, *supra* n. 251 ("A regulation that restricts the supply of a good, causing its price to rise, produces a transfer from buyers to sellers. The net reduction in the total surplus (consumer plus producer) is a real cost to society, but the transfer from buyers to sellers resulting from a higher price is not a real cost since the net reduction automatically accounts for the transfer from buyers to sellers.").

associated with packaging a good that were previously presented as fees at the end of the purchase process to be incorporated in the total price. Internal handling costs include costs not attributable to the amount sellers are charged by third party shipping services like UPS or USPS. Since shipping and handling charges are currently often combined into one fee, businesses may have to change how they account for handling costs and how they advertise shipping and handling costs in order to comply with this provision.

d. Comparison of Benefits and Costs

The total costs of the proposed rule are uncertain because it is unclear how, across a variety of industries, firms would adjust prices, change their price displays and disclosures, and upgrade their systems in response to the proposed rule. This section quantifies economy-wide compliance costs to the extent possible, while recognizing that we cannot quantify all costs. The degree to which the proposed rule generates benefits for all industries in the economy is unclear, due to a lack of reliable information on how these fees affect search and decision-making at the economy level and the way in which pricing and search costs vary across industries. As such, we are unable to quantify economy-wide benefits. Instead, we determine the break-even level of benefits the proposed rule must generate in order to outweigh the quantified costs we estimate and, thus, generate a net positive benefit to society.

As a preview, we conclude in Section VII.C.2.d.(2) that if the proposed rule results in a benefit of at least $6.65 per consumer per year over 10 years, then the benefits from reduced search time will exceed quantified compliance costs. It seems likely that consumers would experience search time savings of this amount.

(1) Quantified Costs

Section VII.C.3 provides more detailed quantitative analyses of costs for three specific industries about which we have more information regarding mandatory fees: live-event ticketing,

short-term lodging, and restaurants. However, there are likely other industries that may need to change their current practices to comply with the proposed rule, if finalized. To determine compliance costs for the remainder of the economy, we assume that 90% of these firms already comply with the proposed rule and that the other 10% of these firms do not currently comply with the proposed rule.

The Commission quantifies the compliance costs utilizing assumptions on the number of hours required to check compliance with and, if necessary, come into compliance with the proposed rule. We expect that in response to the proposed rule, firms will initially determine whether and how the proposed rule applies to them given their current pricing and fee disclosure strategies. We assume firms whose current practices align with the proposed rule will incur one hour of lawyer time to confirm their compliance.[267]

We do not have data on the exact costs firms not presently compliant will incur to comply with the proposed rule. We acknowledge that some firms in some industries may have already developed the tools required to comply with the proposed rule because they operate in jurisdictions with similar rules, such as all-in pricing requirements. Transitioning to compliance for these types of firms should be relatively straightforward. For other firms and in other industries, transitioning to compliance may require additional time and costs. To capture both the variation and uncertainty of costs across industries, we make a series of low-end and high-end assumptions on the number of hours required to comply with the proposed rule. For example, we assume that firms not presently compliant will employ a low end of 5 hours and a high end of 10 hours of lawyer time to determine what is necessary to comply with the proposed rule. While some firms may forgo formal legal

[267] Note that one hour of lawyer time is a proxy for the average amount of time firms will need to check whether the proposed rule applies to them. For example, some small businesses may not employ an attorney, but may instead have a staff member review the rule.

advice, this range of lawyer time serves as a proxy for any costs associated with understanding the proposed rule and preparing to comply with it.

The proposed rule's prohibition on drip pricing may lead to shifts in consumer demand, and consequently, shifts in market equilibria. In response, firms transitioning away from drip pricing may need to determine new optimal prices and contracts. In addition, the proposed rule's requirement that internal handling fees must be separated from shipping fees and included in the total price may require firms to invest more resources to better monitor, measure, and adjust both the shipping cost and the total price to comply with this provision. We assume these price re-optimizations require firms to incur a one-time, upfront cost of data scientist time to perform this work. We assume firms not presently compliant will employ a low end of 40 hours and a high end of 80 hours of data scientist time.[268] Similar to the use of lawyer hours in estimating compliance costs, this range of data scientist time serves as a proxy for any costs associated with adjusting pricing strategies in response to the proposed rule.[269]

The Commission expects that the drip pricing employed by firms not presently compliant with the proposed rule is, in many cases, manifested in online sales. In such cases, firms will also need to adjust both advertised prices as well as purchase processes for online sales, and we assume these adjustments require firms to incur a one-time, upfront cost of web developer time. Firms may also need to add required disclosures regarding the refundability of any fees not included in the Total Price. We assume firms not presently compliant will employ a low end of 40 hours and a

[268] While there may be some firms that have already established the systems necessary to comply with the proposed rule, there may be other firms that will require a large number of hours to re-optimize prices. The assumed 40 and 80 hours represent averages over all firms affected by the proposed rule.

[269] Some industries may comprise a mix of firms that are presently compliant and not presently compliant with the proposed rule. It is possible that, within these mixed industries, presently compliant firms would also need to reoptimize prices in response to shifts in market equilibria. That is, the shift in an industry's equilibrium resulting from the proposed rule could be significant enough that all firms in the industry, compliant or not, would need to adjust prices. Firms regularly reoptimize prices in response to market shifts, but it is possible that this price adjustment would require already compliant firms to incur additional costs. We lack data to quantify this potential cost to firms. The Commission solicits comments and data to better understand this potential source of costs.

high end of 80 hours of web developer time to become compliant with the proposed rule.[270] Once firms become compliant with the proposed rule, any future changes to pricing displays or purchasing systems are not a direct consequence of the proposed rule. For brick-and-mortar firms that conduct in-person sales of goods and services and do not currently comply with the proposed rule, updating the price presentation and purchase process may include printing new price displays, revising advertising campaigns, adding required disclosures, as well as updating websites. For such firms, this range of web developer time serves as a proxy for any costs associated with ensuring the firm is compliant with the proposed rule.

It may be the case that once the firm incurs the one-time transition costs, there are no additional costs. For a low-end estimate of costs, we assume annual costs are $0 because there are zero additional hours of labor. However, it may be the case that as firms transition into compliance with the proposed rule, firms need to reevaluate their pricing policies to ensure continued compliance by employing additional lawyer time on an annual basis. Because the proposed rule applies to the entire economy, it is difficult to know the exact annual compliance costs that firms may incur as the various industries adapt to the proposed rule. For the high-end cost estimate, we assume firms require an average of 10 hours of lawyer time for annual compliance checks. These potential annual compliance costs are proxied with lawyer time but may take other forms that are unknown at this time.

Table 2 presents the economy-wide compliance costs, as well as the sum of the industry-specific compliance costs described in more detail in Section VII.C.3. Since the proposed rule is sector-neutral and economy-wide, we begin with the total number of firms in the U.S. (6,140,612), subtract the number of firms in the live-event ticketing, short-term lodging, and restaurant

[270] Note that Consumer Rule II also uses an assumption of 80 hours of time to reprogram flight quotation websites. U.S. Dep't Transp., *Preliminary Regulatory Analysis: Enhancing Airline Passenger Protections II* (May 24, 2010), https://www.regulations.gov/document/DOT-OST-2010-0140-0003 ("Consumer Rule II").

industries, and then assume that 90% of the remaining firms are already in compliance with the proposed rule.[271] This assumption implies that while 5.1 million U.S. firms will only incur one hour of lawyer time to review and confirm compliance, over 500 thousand firms outside of the specific industries analyzed in Section VII.C.3 will incur additional expenses to comply with the proposed rule.

For firms not presently in compliance with the proposed rule, we express compliance costs as present values, and we estimate them by adding one-time costs with recurring annual costs, discounted at either 3% or 7%. We add to these costs the regulatory familiarization costs for firms in the remainder of the economy already compliant with the proposed rule as well as the present value of compliance costs for the three industries discussed in Section VII.C.3 to arrive at the total present value of compliance costs for the economy as a whole. Table 3 presents the per-firm annualized compliance costs for the economy as a whole, separated by firms already in compliance, which incur a one-time compliance check, and firms not presently in compliance, which incur both one-time and recurring costs.

The cost of employee time is monetized using wages obtained from the Bureau of Labor Statistics May 2022 National Occupational Employment and Wage Estimates.[272] This assumption

[271] The number of firms is provided by the United States Census Bureau's Statistics of United States Businesses. U.S. Census Bureau, *2020 SUSB Annual Datasets by Establishment Industry* (Mar. 2023), https://www.census.gov/data/datasets/2020/econ/susb/2020-susb.html. The estimate of 6,140,612 covered firms may be overinclusive as it includes firms that would be exempted from the definition of Business as described in 464.1(b) of the proposed rule if the proposed Motor Vehicle Dealers Rule is finalized.
When subtracting the number of firms in the specific industries, we use the low-end estimate of the number of firms in the live-event ticketing and short-term lodging industries, which results in a higher number of firms for the rest of the economy that may incur costs associated with the proposed rule.

[272] U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *May 2022 National Occupational Employment and Wage Estimates United States* (May 2022) ("OEWS National"), https://www.bls.gov/oes/current/oes_nat.htm. U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *Occupational Employment and Wages, May 2022: 15-2051 Data Scientists* (May 2022) ("OEWS Data Scientists"), https://www.bls.gov/oes/current/oes152051.htm (providing the hourly wages for data scientists); U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *Occupational Employment and Wages, May 2022: 15-1254 Web Developers* (May 2022) ("OEWS Web Developers"), https://www.bls.gov/oes/current/oes151254.htm (providing the hourly wages for web developers); U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics,

is valid if hours spent in compliance activities would otherwise be spent in other productive work-related activities, the social value of which is summarized by the employee's wage.[273] To the extent that these activities can be accomplished using time during which employees would otherwise be idle in the absence of a rule, our estimates will overstate the welfare costs of the proposed rule. For the short-term lodging and restaurant industries, we use the industry specific wages associated with the North American Industry Classification System ("NAICS") codes for those industries.

Occupational Employment and Wages, May 2022: 23-1011 Lawyers (May 2022) ("OEWS Lawyers"), https://www.bls.gov/oes/current/oes231011.htm (providing the hourly wages for lawyers).

[273] This assumption would hold, for example, if both the product and labor markets in this industry were competitive.

Table 2 – Economy-Wide Compliance Costs

	Firms that Already Comply with Proposed Rule		Firms that Do Not Already Comply with Proposed Rule
Number of Firms			
Assumed Fraction of Firms in Compliance (Exclusive of Live-Event Ticketing, Short-Term Lodging, Restaurants)	90%		10%
Number of Firms Exclusive of Live-Event Ticketing, Short-Term Lodging, and Restaurants	5,060,244		562,249
Number of Firms Inclusive of Live-Event Ticketing, Short-Term Lodging, and Restaurants	5,322,434		818,178
Wages			
Hourly Wage Rate Data Scientist	$55.40		$55.40
Hourly Wage Rate Web Developer	$42.11		$42.11
Hourly Wage Lawyer to Review Compliance	$78.74		$78.74
One-time Hours for Regulatory Familiarization or Compliance		**Low-end Estimate**	**High-end Estimate**
Lawyer Hours	1	5	10
Purchase Process Adjustment Hours	0	40	80
Data Analyst Hours	0	40	80
Recurring (Annual) Hours for Compliance			
Lawyer Hours	0	0	10
One-Time Costs	$398,443,589	$2,414,354,719	$4,823,690,494
Recurring (Annual) Costs	$0	$0	$442,254,942
Total Present Value Costs (Annual + One-Time)			
Total @ 7% Discount Rate	$398,443,589	$2,414,354,719	$7,929,904,143
Total @ 3% Discount Rate	$398,443,589	$2,414,354,719	$8,596,214,857
Live-Event Ticketing, Short-Term Lodging, and Restaurants			
Total Present Value Costs (Annual + One Time) for Live-Event Ticketing, Short-Term Lodging, and Restaurants			
Total @ 7% Discount Rate	$47,785,835	$1,555,015,731	$3,692,879,269
Total @ 3% Discount Rate	$47,785,835	$1,555,015,731	$4,065,459,392
Grand Total (All Firms)			
Total @ 7% Discount Rate		$4,415,599,874	$12,069,012,836
Total @ 3% Discount Rate		$4,415,599,874	$13,107,903,673

	Firms that Already Comply with Proposed Rule		Firms that Do Not Already Comply with Proposed Rule
Number of Firms			
Assumed Fraction of Firms in Compliance (Exclusive of Live-Event Ticketing, Short-Term Lodging, Restaurants)	90%		10%
Number of Firms Exclusive of Live-Event Ticketing, Short-Term Lodging, and Restaurants	5,060,244		562,249
Number of Firms Inclusive of Live-Event Ticketing, Short-Term Lodging, and Restaurants	5,322,434		818,178
Wages			
Hourly Wage Rate Data Scientist	$55.40		$55.40
Hourly Wage Rate Web Developer	$42.11		$42.11
Hourly Wage Lawyer to Review Compliance	$78.74		$78.74
One-time Hours for Regulatory Familiarization or Compliance		**Low-end Estimate**	**High-end Estimate**
Lawyer Hours	1	5	10
Purchase Process Adjustment Hours	0	40	80
Data Analyst Hours	0	40	80
Recurring (Annual) Hours for Compliance			
Lawyer Hours	0	0	10
One-Time Costs	$398,443,589	$2,414,354,719	$4,823,690,494
Recurring (Annual) Costs	$0	$0	$442,254,942
Total Present Value Costs (Annual + One-Time)			
Total @ 7% Discount Rate	$398,443,589	$2,414,354,719	$7,929,904,143
Total @ 3% Discount Rate	$398,443,589	$2,414,354,719	$8,596,214,857
Live-Event Ticketing, Short-Term Lodging, and Restaurants			
Total Present Value Costs (Annual + One Time) for Live-Event Ticketing, Short-Term Lodging, and Restaurants			
Total @ 7% Discount Rate	$47,785,835	$1,547,358,869	$3,685,664,727
Total @ 3% Discount Rate	$47,785,835	$1,547,358,869	$4,058,244,850
Grand Total (All Firms)			
Total @ 7% Discount Rate		$4,407,943,013	$12,061,798,294
Total @ 3% Discount Rate		$4,407,943,013	$13,100,689,131

Note: The number of firms comes from the U.S. Census Bureau.[274] Hourly wages are from the U.S. Bureau of Labor Statistics.[275] All Firms includes the live-event ticketing, short-term lodging, and restaurant industries. For the independent values of these costs, please see the respective sections. This grand total also includes the one-time costs to firms that already comply with the proposed rule. We relied upon publicly available sources of data in our calculations. We recognize that there may be additional sources of data and we encourage comments that provide alternative sources of data where they are available.

Table 3 – Per Firm Annualized Costs

	Firms that Already Comply with Proposed Rule	Firms that Do Not Already Comply with Proposed Rule	
All Industries		**Low-End**	**High-End**
Annualized Compliance Cost Per Firm @ 7% Discount Rate		$691	$2,010
Annualized Compliance Cost Per Firm @ 3% Discount Rate		$569	$1,803
One-Time Cost (Firms Already in Compliance)	$78.74		

(2) Break-Even Analysis of Economy-Wide Costs and Benefits

In order for the proposed rule to have a positive net benefit, its benefits must outweigh its costs. It is difficult to quantify the net social benefits of the proposed rule at the economy level because it depends on the extent to which drip pricing exists and the degree to which the rule would result in more informed decisions for consumers, which vary by industry. Since the Commission is unable to quantify the benefits of the proposed rule at the economy level, we instead calculate the break-even benefit per consumer based on the quantified costs presented in Section VII.C.2.d.(1). That is, we determine the minimum value the proposed rule would need to generate for the average consumer in order for the total benefit of the proposed rule to outweigh its quantified costs. This benefit may include reduced search costs (as described in the live-event

[274] *See* U.S. Census Bureau, *supra* n. 271.
[275] U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *Occupational Employment and Wages, May 2022: 15-2051 Data Scientists* (May 2022) ("OEWS Data Scientists"), https://www.bls.gov/oes/current/oes152051.htm (providing the hourly wages for data scientists); U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *Occupational Employment and Wages, May 2022: 15-1254 Web Developers* (May 2022) ("OEWS Web Developers"), https://www.bls.gov/oes/current/oes151254.htm (providing the hourly wages for web developers); U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *Occupational Employment and Wages, May 2022: 23-1011 Lawyers* (May 2022) ("OEWS Lawyers"), https://www.bls.gov/oes/current/oes231011.htm (providing the hourly wages for lawyers).

ticketing and short-term lodging industry analysis), reduced deadweight loss, and reduced psychological distress from surprise fees. For this analysis, we consider costs in annualized terms – the average discounted cost of compliance per year over 10 years.[276] As such, we express the break-even benefit as an average benefit per consumer per year over 10 years.[277]

From Table 2, under the assumption that firms and consumers discount future years at 3%, we estimate that the proposed rule may result in costs as high as $13.1 billion over 10 years. Assuming a discount rate of 7% for future years, we estimate that the proposed rule may result in costs as high as $12.1 billion over 10 years. To determine the break-even benefit, we begin with the total present value of total costs and calculate the annualized total costs across all industries.[278] Next, we calculate what the break-even benefit would be per consumer, according to this formula:

Per Consumer Annualized Benefits >= Annualized Quantified Compliance Costs / Population

Table 4 presents the results of this break-even analysis. According to the 2020 Census, there are 258,343,281 adults living in the United States. Thus, we divide the estimates of annualized costs by the number of U.S. adults to find the average consumer benefit per year for 10 years required to exceed quantified compliance costs. For example, if the proposed rule results in an average benefit to consumers that exceeds $6.65 per year over 10 years, then the proposed rule's benefits exceed its quantified economy-wide compliance costs under the high-end assumption and an assumed 7% discount rate.

Table 4 also provides the break-even benefit per consumer in terms of minutes saved as a result of the proposed rule. Given that the mean wage is $29.76 and consumers reportedly value

[276] For the purposes of discounting and annualizing costs, we assume that firms incur their one-time costs immediately, at the beginning of year 1, while they incur the potential costs of annual compliance checks at the end of each year.
[277] Benefits to consumers, such as reductions in search costs, will accrue continuously over time. For simplicity, we assume for the break-even analysis that annualized benefits accrue all at once at the end of each year. As such, the break-even analysis may overestimate the level of benefits required to outweigh costs.
[278] Note that while total costs are higher with a smaller discount rate, annualized costs are higher with a larger discount rate due to the high upfront costs and relatively low recurring costs.

time at 82% of their mean wage, an hour of saved search time is worth $24.40/hour.[279] If we divide the break-even dollar benefit per consumer using the high-end assumptions and a discount rate of 7% ($6.65) by the value of saved search time ($24.40/hour) and convert to minutes, the break-even saved search time per consumer is 16.35 minutes. That is, if the proposed rule results in savings from reduced search time that exceed 16.35 minutes per consumer per year over 10 years, then the benefits from reduced search time will exceed quantified compliance costs.[280] It seems likely that consumers would experience search time savings of this amount.

Table 4 – Break-Even Analysis

Break-Even Benefit Per Consumer ($)	Low-End Estimate	High-End Estimate
Full Economy		
Total @ 7% Discount Rate	$2.43	$6.65
Total @ 3% Discount Rate	$2.00	$5.95
Break-Even Time Savings Per Consumer (Minutes)		
Full Economy		
Total @ 7% Discount Rate	5.98	16.35
Total @ 3% Discount Rate	4.93	14.62

There are a few important caveats to this break-even analysis. It is possible that some industries may have more firms that are already in compliance with the rule than others. In the absence of data on compliance across industries, the analysis relies on the assumption that 10% of the firms in the remainder of the economy (excluding live-event ticketing, short-term lodging, and restaurants) are not already in compliance with the proposed rule. This assumption may overestimate the number of non-compliant firms in the remainder of the economy. In this case, this assumption leads to an overestimate of both costs and break-even benefits.

[279] *See* OEWS National, *supra* n. 272 (providing the mean hourly wage); Daniel S. Hamermesh, *What's to Know About Time Use?*, 30 J. Econ. Surv. 1, 198–203 (2015) (providing the value of consumer time).
[280] Under the assumption of a 3% discount rate, the break-even time saved per consumer per year would be 14.62 minutes.

On the other hand, there may be many more firms not already in compliance with the proposed rule, in which case this assumption results in an underestimate of both costs and break-even benefits. Using the same break-even benefits approach with high-end cost assumptions but assuming that 50% of firms in the remainder of the economy are not already in compliance, the proposed rule would need to result in an annual benefit of $24.04, or 59.09 minutes saved, per consumer per year over 10 years in order to exceed quantified compliance costs.

This break-even analysis does not account for any unquantified costs. For instance, some potential unintended consequences are discussed in the restaurant industry section. The proposed rule applies to the entire economy, and we acknowledge that we cannot forecast all potential consequences and costs. On the other hand, there are additional unquantified benefits from the proposed rule beyond reducing search time such as the reduction in deadweight loss caused by consumers' incomplete price information. The proposed rule may also affect unintended consequences that are beneficial. If the benefits from reduced deadweight loss, reduced search time, and beneficial unintended consequences outweigh the costs from compliance and harmful unintended consequences, then the proposed rule results in positive net social benefits.

Finally, a break-even analysis cannot reveal whether the net benefits from the proposed rule will be positive in some industries and negative in others.

3. Welfare Effects in Specific Industries

Although the proposed rule would apply to nearly all industries and sectors under the jurisdiction of the Commission, it is difficult to quantify benefits and costs economy-wide beyond the break-even analysis presented in Section VII.C.2.d.(2). However, there are some industries where drip pricing is commonplace and there may be better data available for estimation of the benefits and costs of the proposed rule.

This section describes the potential benefits and costs of the proposed rule on two specific industries that have been highlighted as being severely impacted by these undisclosed mandatory fees: the live-event ticketing industry and the short-term lodging industry. It also discusses the potential costs and benefits of the proposed rule in the restaurant industry, where new types of mandatory fees are emerging. The Commission provides quantitative estimates where possible for these industries and describe benefits and costs that we can only assess qualitatively.

a. Live-event Ticketing Industry

This section provides analysis of the quantified benefits and costs of the proposed rule for the live-event ticketing industry. As discussed in Section VII.C.1, there are some benefits and costs that are unquantified, such as reductions in deadweight loss. Using various assumptions, the quantified benefits and costs imply that the rule will have a positive net benefit.

The live-event ticketing industry is often used as an example where consumers are surprised by mandatory fees at the end of the purchase process.[281] Online event ticket sales were reported to be $8.1 billion in 2022.[282] Live events include music concerts (30.3%), sporting events (33%), and dance, opera, and theater productions (12.4%).[283] For many consumers, there are no close substitutes for the specific product, a live-event ticket, that they wish to purchase. Thus, when consumers are presented with surprise mandatory fees, the consumer either pays the full price including the fee, spends time searching for a new option such as a different seat, or foregoes the purchase entirely.

The live-event ticketing industry is unique relative to other industries because there is a large and robust secondary market. A given ticket to an event may be sold in the primary market, and then resold multiple times in the secondary market. It is difficult to fully quantify how many

[281] *E.g.*, The White House, *How Junk Fees Distort Competition, supra* n. 254.
[282] Michal Dalal, *Online Event Ticket Sales in the US*, IBISWorld (May 2023) ("Ticket Sales Industry Report").
[283] *Id.*

live-event ticket purchases are made in the US, how many involve mandatory fees, and what the typical size of the fee is. Anecdotally, it appears that most live-event ticket sellers include some kind of fee, although the size of the fee varies across sellers. In a non-generalizable sample, the GAO found live-event ticketing fees in primary and secondary ticket markets averaged 27% and 31%, respectively, of the ticket's price.[284]

In response to the White House calling for disclosure of hidden fees, some ticket sellers have voluntarily pledged to show "all-in prices" when the consumer begins the purchase process.[285] However, these voluntary pledges were announced after the Advance Notice of Proposed Rulemaking for the proposed rule and may be in response to proposed national legislation.[286] Absent the proposed rule, market forces would likely return to the equilibrium of hidden mandatory fees. In fact, the National Association of Ticket Brokers ("NATB") and StubHub submitted comments in support of the proposed rule requiring all-in pricing, but commented that the rule will only be effective if the rule is applied to all ticket sellers and rigorously enforced.[287] If any seller utilizes hidden fees, they may get a larger market share by advertising lower initial prices. Absent a federal rule applying to all sellers, competitive forces might drive ticket sellers to return to the use of hidden fees. Thus, when quantifying the benefits and costs, we quantify relative to the baseline equilibrium where sellers do not disclose the Total Price up front.

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[284] U.S. Gov't Accountability Off., *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, (April 12 2018), https://www.gao.gov/products/gao-18-347.
[285] The White House, *President Biden Recognizes Actions by Private Sector Ticketing and Travel Companies to Eliminate Hidden Junk Fees and Provide Millions of Customers with Transparent Pricing* (Jun. 15, 2023) https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/15/president-biden-recognizes-actions-by-private-sector-ticketing-and-travel-companies-to-eliminate-hidden-junk-fees-and-provide-millions-of-customers-with-transparent-pricing/. Some ticket sellers, such as TickPick.com, have never used hidden fees.
[286] *See, e.g.,* U.S. Senate Comm. Com. Science Trans., *The TICKET Act*, https://www.commerce.senate.gov/services/files/071401A3-D280-414C-AEDB-A9B57F276067.
[287] FTC-2022-0069-6089.

(1) Live-Event Ticketing: Estimated Benefits of Proposed Rule

(a) Consumer Time Savings When Shopping for Live-Event Tickets

The proposed rule would require disclosures of the Total Price inclusive of all mandatory charges that a consumer must pay in order to make full use of the good or service. Required disclosure of the relevant prices and prohibitions on misrepresentations save consumers time when shopping for a live-event ticket by requiring the provision of salient, material information early in the process and eliminating time spent pursuing ticket offers priced above the consumer's reservation price.

The Commission assumes that, as a result of the proposed rulemaking provisions prohibiting misrepresentations and requiring price transparency, the total time spent by a consumer conducting the transaction will decrease, because some consumers will reduce the number of ticket listings they view prior to making a ticket purchase. For example, Blake *et al.* (2021) examine an experiment on StubHub where fees are presented up front to some consumers and at the backend of the purchase to others.[288] They find that the fraction of consumers who only view one listing is 74% when fees are presented at the end of the transaction versus 83% when fees are presented up front. Using the distribution of listings viewed by consumers reported in Blake et al. (2021), we calculate that the reduction in the average number of listings viewed from showing fees up front is 0.1525 listings.

The amount of time the average consumer spends viewing a listing for a live event is uncertain. However, many ticket sellers utilize a "countdown clock" where the selected tickets in the consumer's shopping cart expire and are returned to the marketplace. These countdown clocks

[288] Blake et al., *supra* n. 153.

range from 5 to 10 minutes per ticket transaction.[289] Multiplying the assumed length of a ticket transaction of 5 or 10 minutes by the estimated reduction in viewed listings from Blake et al. (2021) results in a search time savings of 0.7625 to 1.525 minutes per consumer transaction.[290]

Next, we estimate the number of consumer purchases of live-event tickets. Live Nation (which owns Ticketmaster) reported selling 281 million fee-bearing tickets in the primary and secondary markets using the Ticketmaster system in its 2022 10-K SEC filing.[291] However, this is the total for combined North America and International ticket sales. Live Nation also reports that roughly 2/3 of concert events were in North America, so we apply that proportion to ticket sales and assume that Ticketmaster sold almost 188 million tickets in North America. To estimate the number of tickets sold in the U.S., we adjust the number of tickets by the share of North American GDP attributable to the U.S, which results in an estimated 165 million tickets sold in the primary and secondary market by Ticketmaster in the U.S.[292]

To find the total number of tickets sold in the U.S., we extrapolate from the Ticketmaster ticket sales using the market share of Ticketmaster. Our main uncertainty is in Ticketmaster's market share. In 2010, the DOJ approved the merger between Ticketmaster and Live Nation, and reported that Ticketmaster had maintained a market share of over 80% for the previous 15 years.[293] If we assume that Ticketmaster still has an 80% share of the ticket market (which includes both the

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[289] Ticketmaster reports that the amount of time varies by event but references a 5-minute purchasing period. Ticketmaster, *Why does Ticketmaster enforce a time limit when making purchases online?*, https://help.ticketmasterksa.com/hc/en-us/articles/360017497557-Why-does-Ticketmaster-enforce-a-time-limit-when-making-purchases-online-. Based on a small, non-representative sample of ticket purchase attempts, StubHub appears to generally offer 10 minutes to complete a ticket purchase.

[290] *See also* Consumer Rule II., *supra* n. 270. The Preliminary Regulatory Impact Analysis for Consumer Rule II assumed consumers would save 5 minutes of search and estimation time if all websites provided full-fare information up front.

[291] U.S. Sec. & Exchange Comm'n, Form 10-K, Live Nation Entertainment, Inc. (Feb. 23, 2023) ("Live Nation 10-K") https://www.sec.gov/ix?doc=/Archives/edgar/data/1335258/000133525823000014/lyv-20221231.htm.

[292] U.S. GDP in 2022 was estimated to be $25.46 trillion, GDP in Mexico was estimated to be $1.41 trillion, and Canadian GDP was estimated to be $2.14 trillion in 2022. We adjust North American tickets by 88% to estimate the number of tickets sold in the United States.

[293] *See*, U.S. Dep't of Justice, *The TicketMaster/Live Nation Merger Review And Consent Decree In Perspective* (Mar. 18, 2010), https://www.justice.gov/atr/speech/ticketmasterlive-nation-merger-review-and-consent-decree-perspective.

primary and secondary ticket markets), we can extrapolate an estimate of the total number of tickets sold in the U.S. by dividing Ticketmaster ticket sales in the U.S. by 80%.[294] This provides a low-end estimate of the number of tickets sold in the U.S. of 206 million tickets.

However, Ticketmaster did not begin selling in the secondary market until after the merger with Live Nation. Based on publicly available information, we are uncertain of Ticketmaster's market share in the secondary market for tickets. If Ticketmaster does not have 80% of the ticket market (both primary and secondary), the number of tickets sold in the U.S. exceeds the low-end estimate of 206 million tickets. To generate a high-end estimate of the total number of tickets sold in the U.S., we use the reported revenue for the full online ticket sales industry provided by the private research firm IBISWorld and calculate Ticketmaster's revenue share of the industry.[295] IBISWorld reports the online ticket sales industry, including both primary ticket sellers and ticket resellers, earned $8.1 billion in revenue in 2022. The Live Nation 10-K filing reports ticketing revenue of $2.2 billion in 2022, which suggests that Ticketmaster has a 27% revenue share of the online ticketing industry.[296] We extrapolate a high-end estimate of the total number of tickets sold in the U.S. by dividing Ticketmaster ticket sales in the U.S. by 27%, which results in an estimate of 612 million tickets.

[294] Note that the Live Nation 10-K filing does not separate out tickets sold by Ticketmaster in the primary versus secondary market. The 80% market share of Ticketmaster reported by the Department of Justice was only in the primary market; the secondary market includes StubHub, VividSeats, TickPick.com, Ace Ticket, Alliance Tickets, Coast to Coast Tickets, and others. Because we do not have information on the proportion of Ticketmaster tickets sold in the secondary market and market share of Ticketmaster in the secondary market, the estimated number of tickets sold in the U.S. is under-estimated. This also implies that the benefits of the proposed rule may be under-estimated under this assumption, because we are under-counting the number of tickets sold currently with hidden fees.
[295] Ticket Sales Industry Report, *supra* n. 282.
[296] Note that assuming Ticketmaster's market share is equivalent to its revenue share (of the primary and secondary market) assumes that the average price of a ticket sold by Ticketmaster is the same as (or lower than) the average price of a ticket sold by the rest of the industry. If, however, the average price of a ticket sold by Ticketmaster is higher than average prices in the rest of the ticket selling industry, then Ticketmaster's revenue share is higher than its ticket share, and this extrapolation understates the total number of tickets sold in the U.S.

Lastly, the reduction in search time of 0.7625 to 1.525 minutes is per consumer purchase, not per ticket purchase. We assume that the average consumer purchase is either 1.5 or 3 tickets.[297] Thus, the total number of tickets sold is divided by 1.5 or 3 to arrive at an estimated range for the number of consumer purchases. We estimate the range of live event consumer purchases in the U.S. to be 69 million on the low end and 408 million on the high end.

When multiplied by the number of transactions per year, the reduction in minutes spent viewing ticket listings will generate a total time savings of 875 thousand to 10.4 million hours per year. According to the Bureau of Labor Statistics Occupational Employment Statistics, the average hourly wage of U.S. workers in 2022 was $29.76,[298] and recent research suggests that individuals living in the U.S. value their non-work time at 82% of average hourly earnings.[299] Thus, the value of non-work time for the average U.S. worker would be $24.40 per hour. As a result, our best estimate of the total benefit from time savings for completed transactions is roughly $21.3 million to $253 million per year, depending on how conservative our assumptions are. Table 5 presents the expected benefits of time savings over the next 10 years in present value.

[297] The Commission does not currently have information on the average number of tickets purchased in a transaction. There is reason to believe the average would be greater than 1, because most venues limit the number of tickets that can be purchased in a given transaction. The limit is dependent on the event. Ticketmaster, *Why is there a ticket limit?*, https://help.ticketmaster.com/hc/en-us/articles/9781245025937-Why-is-there-a-ticket-limit-#:~:text=Event%20organizers%20can%20choose%20to,or%20exceed%20published%20ticket%20limits.
[298] OEWS National, *supra* n. 272.
[299] Hamermesh, *supra* n. 279 at 198–203.

Table 5 – Live-Event Ticketing: Estimated Benefits of Time Savings for Completed Transactions

		Low-End Benefit Estimate	High-End Benefit Estimate
Completed Transactions			
Minutes Viewing Live-Event Ticket Listing		5	10
Reduction in Average Number of Listings Viewed		0.1525	0.1525
Minutes Saved per Transaction		0.7625	1.525
Number of Tickets Sold in the United States		206,481,486	611,796,995
Average Number of Tickets in a Purchase		3	1.5
Number of Consumer Purchases		68,827,162	407,864,663
Hours Saved Per Year		874,679	10,366,560
Value of 1 hour of non-work time		$24.40	
Total $ Saved per year		$21,344,955	$252,977,242
Abandoned Transactions		***Unquantified***	***Unquantified***
Reductions in Deadweight Loss		***Unquantified***	***Unquantified***
Total Quantified Benefits (10 Years)	**7% discount rate**	$149,918,030	$1,776,806,284
Total Quantified Benefits (10 Years)	**3% discount rate**	$182,076,794	$2,157,947,183

Note: Benefits have been discounted to the present value at both 3% and 7% rates. The total tickets sold in the U.S. market is estimated using the reported number of tickets sold in the primary and secondary market in the 10-K SEC filing for Live Nation.[300] This number of tickets is then adjusted by the proportion of North American events, and then adjusted by the share of North American GDP attributable to the U.S. Wage rates are taken from the U.S. Bureau of Labor Statistics and adjusted by the consumer value of time reported in Hamermesh (2016).[301] We relied upon publicly available sources of data in our calculations. We recognize that there may be additional sources of data and we encourage comments that provide alternative sources of data where they are available.

(b) Additional Unquantified Benefits: Reductions in Deadweight Loss and Abandoned Transactions

Due to the incomplete price information problem described in Section VII.C.1, the proposed rule requiring ticket sellers to show the total price of tickets will likely result in a reduction of deadweight loss. When consumers are not able to observe total prices in the beginning of the purchase process, sellers are likely able to charge higher prices than could be supported under the proposed rule. Recent research suggests that when consumers are able to observe total

[300] Live Nation 10-K, *supra* n. 291.
[301] OEWS National, *supra* n. 272; Hamermesh, *supra* n. 279.

prices for tickets up front—as is intended under the proposed rule—consumers purchase fewer and lower quality tickets and seller revenue is reduced.[302] At this time, we do not quantify the reduction in deadweight loss, but acknowledge that it is a positive benefit to the rule.

Another unquantified potential benefit to the proposed rule is a decrease in abandoned transactions. For example, in some cases, once the additional information about full price is revealed, consumers may fully abandon the transaction (*i.e.*, not purchase a ticket at all). Unfortunately, the Commission lacks adequate information to determine the quantity of such abandoned transactions and the amount of time spent pursuing them. As a result, this benefit is unquantified in the current analysis. The Commission solicits comment on the frequency of, and reasons for, abandoned transactions in the live-event ticket market in order to help quantify this benefit.

(2) Live-Event Ticketing: Estimated Costs of Proposed Rule

This section describes the potential costs of the proposed rule provisions and provide quantitative estimates where possible. For live-event ticketing, the cost of employee time is again monetized using wages obtained from the Bureau of Labor Statistics May 2022 National Occupational Employment and Wage Estimates.[303] Because live-event ticketing is not associated with a specific NAICS code, we use wages at the national level rather than the industry-specific wages that are used to calculate costs for the short-term lodging and restaurant industry.

The costs to sellers from the proposed rule include a review of whether the rule applies, and, if the firm is not currently compliant with the proposed rule, one-time costs to comply with the rule and recurring annual costs to review and ensure on-going compliance. The Commission's preliminary analysis presents two cost scenarios corresponding to different assumptions on how

[302] Blake et al., *supra* n. 153.
[303] OEWS National, *supra* n. 272.

many hours are required to comply with the rule and how many firms would be affected by the rule. We present these as a low-end cost scenario and a high-end cost scenario.

In order to estimate costs for the entire ticket-selling industry, we calculate the cost per seller and multiply by the number of sellers in the industry. However, there is some uncertainty about the number of live-event ticket sellers that would be affected by the rule. The NAICS classification system does not define a classification solely for ticket sellers, but there are two NAICS codes that might include ticket sellers. The GAO report used the NAICS code 561599, which is "All Other Travel Arrangement and Reservation Services" and includes 1,545 firms such as Tickets.com and VividSeats.[304] However, firms such as Ticketmaster and StubHub are classified as NAICS code 7113, which is "Promoters of Performing Arts, Sports, and Similar Events" and includes 7,624 firms.[305] As a high-end estimate of the number of live-event ticket sellers, we use the sum of the firms within these two NAICS code and assume there are 9,169 firms potentially impacted by the proposed rule.

We recognize this number is potentially over-inclusive, as many firms within NAICS code 561599 and 7113 do not directly sell tickets or charge mandatory fees, and thus would not be impacted by the proposed rule. The private research firm IBISWorld estimates that the number of firms in the online ticket selling industry is 3,528 in 2022.[306] We use this number of firms as a low-end estimate of the number of firms.

Next, we estimate the number of hours a firm would spend complying with the proposed rule. As with assumptions regarding the number of firms, the following estimation utilizes a low-

[304] NAICS code 561599 "comprises establishments (except travel agencies, tour operators, and convention and visitors bureaus) primarily engaged in providing travel arrangement and reservation services." U.S. Census Bureau, North American Industry Classification System, *561599 All Other Travel Arrangement and Reservation Services*, https://www.census.gov/naics/?input=561599&year=2022&details=561599.
[305] U.S. Census Bureau, *supra* n. 271.
[306] Ticket Sales Industry Report, *supra* n. 282.

end and high-end value for the number of hours necessary for compliance. Because many ticket sellers operate in other countries that already have requirements similar to the proposed rule (Canada, Australia, EU), ticket sellers may have already incorporated the changes contemplated by the proposed rule to their operating practices. The websites may be already programmed, the lawyers already prepped about the rule, and the data scientists may have already determined the optimal pricing strategy; thus, sellers would have relatively low costs to transition to all-in pricing in the U.S.

In this low-end cost scenario, because live-event ticket sellers are already largely prepared to advertise total prices to consumers, the one-time, upfront cost of determining optimal prices and updating the purchase systems in terms of the number of required hours is negligible. We assume 5 hours of lawyer time to determine if the proposed rule applies, 40 hours of data scientist time to re-optimize the pricing strategy, and 40 hours of web developer time to edit and reprogram the website to display upfront prices. For the low-end cost scenario, we also assume there are no annual costs after the firm has incurred the one-time transition costs.

In the high-cost scenario, we assume that ticket sellers have not laid the groundwork for upfront pricing. We assume sellers require twice the number of hours to determine optimal prices, re-program the website to include the total price, and review and confirm compliance. Thus, the one-time costs include 10 hours of lawyer time, 80 hours of data scientist time, and 80 hours of web developer time. For the high-end cost estimate, we assume there are recurring annual costs of 10 hours of lawyer time per year to review and confirm compliance.

Table 6 presents the low-end and high-end estimates of costs for the live-event ticketing industry.

Table 6 – Live-Event Ticketing: Estimated Costs of Compliance

		Low-End Cost Estimate	High-End Cost Estimate
Number of Live-Event Ticket Sellers		3,326	9,169
Hours to Determine Optimal Pricing and Contracts (Data Scientist Hours)		40	80
Hours to Update Purchasing Systems to Reflect Total Price (Website Developer Hours)		40	80
Hours to Determine how Rule Applies (Lawyer Hours)		5	10
Hourly Wage Rate Data Scientist		$55.40	$55.40
Hourly Wage Rate Website Developer		$42.11	$42.11
Hourly Wage Lawyer to Review Compliance		$78.74	$78.74
One-Time Fixed Cost to Include Fees Up Front		**$14,282,177**	**$78,745,206**
Hours for Reviewing Rule and Compliance (Annual)		0	10
Hourly Wage Lawyer to Review Compliance		$78.74	$78.74
Total Costs per year		**$0**	**$7,219,671**
Total Quantified Costs (10 Years) (One-Time + Annual)	**Present Value at 7% discount rate**	**$14,282,177**	**$129,453,151**
Total Quantified Costs (10 Years) (One-Time + Annual)	**Present Value at 3% discount rate**	**$14,282,177**	**$140,330,460**
Annualized Compliance Cost Per Firm	At 7% discount rate	$611.38	$2,010.17
Annualized Compliance Cost Per Firm	At 3% discount rate	$503.40	$1,794.20

Note: Costs have been discounted to the present at both 3% and 7% rates. The per firm costs for the live-event ticketing industry are the same as the per firm costs for the remaining firms in the economy (exclusive of live-event ticketing, short-term lodging, and restaurants) because we assume that 100% of firms in the live-event ticketing industry would incur additional costs to comply with the proposed rule and we use national wages for the live-event ticketing industry, as opposed to industry specific wages for short-term lodging and restaurants. The high-end estimate of firms is the sum of the number of firms in NAICS code 561599 and NAICS code 7113 reported by the U.S. Census Bureau.[307] We relied upon publicly available sources of data in our calculations. We recognize that there may be additional sources of data and we encourage comments that provide alternative sources of data where they are available.

(3) Live-Event Ticketing: Net Benefits

Next, in Table 7 we present the net benefits using the quantified benefits and costs discussed in Sections VII.C.3.a.(1) and VII.C.3.a.(2). To calculate the low end of the range for net benefits, we subtract the total quantified costs using the high-end cost assumptions from the total quantified

[307] U.S. Census Bureau, *supra* n. 271. Hourly wages are from the Bureau of Labor Statistics. OEWS Data Scientist, *supra* n. 272 (providing the hourly wages for data scientists); OEWS Web Developers, *supra* n. 272 (providing the hourly wages for web developers); and OEWS Lawyers, *supra* n. 272 (providing the hourly wages for lawyers).

benefits using the low-end benefit assumptions. For the high end of the range for net benefits, we subtract the low-end estimate of total quantified costs from the high-end estimate of total quantified benefits.

Table 7 – Live-Event Ticketing: Estimated Net Benefits

		10-Year Period	
		Low-end Estimate	**High-end Estimate**
Total Quantified Benefits	7% discount rate	$149,918,030	$1,776,806,284
Total Quantified Benefits	3% discount rate	$182,076,794	$2,157,947,183
Total Quantified Costs (One-Time + Annual)	7% discount rate	$14,282,177	$129,453,151
Total Quantified Costs (One-Time + Annual)	3% discount rate	$14,282,177	$140,330,460
		(Low Benefits – High Cost)	**(High Benefits – Low Cost)**
Net Benefits (10 Years)	7% discount rate	$20,464,879	$1,762,524,107
Net Benefits (10 Years)	3% discount rate	$41,746,333	$2,143,665,007

Note: Benefits have been discounted to the present at both 3% and 7% rates.

Using various assumptions, the quantified benefits and costs imply that the rule will have a positive net benefit, even without accounting for the benefit of reducing deadweight loss.

(4) Live-Event Ticketing: Uncertainties

Our ability to precisely estimate benefits and costs is limited due to uncertainties in key parameters. The quantified benefits and costs for the live-event ticketing industry rely on a set of assumptions, based on the best available public information. When the data were unclear, we used sets of assumptions that would generate a range of low-end and high-end estimates. In Table 8 we summarize the key assumptions and how those assumptions may affect the resulting estimate of quantified benefits and costs.

Table 8 – Live-Event Ticketing: Summary of Key Uncertainties

Assumption or Uncertainty	Impact on Benefits
Assumptions to estimate total number of consumers in the United States purchasing live-event tickets in a given year:	
• Ticketmaster sales of tickets in North America are proportional to events in North America • Total tickets sold in U.S. is proportional to Ticketmaster share of ticket market revenue	• Adjusting total Ticketmaster tickets sold (North America + International) by proportion of events in North America may overestimate or underestimate tickets sold in North America. • Market share extrapolation based on revenue share may underestimate or overestimate the total number of tickets sold in the U.S.
• Number of tickets purchased in average consumer transaction (1.5 or 3 tickets per consumer)	• Adjusting total tickets sold by number of tickets in average transaction may overestimate or underestimate the total number of consumer transactions
Reduction in Listings Viewed	
• Blake et al. (2021) paper showing reduction of 0.16 listings viewed on StubHub with upfront pricing	• Assuming upfront pricing leads to 0.16 fewer listings viewed may underestimate total search time reduced, because it does not account for consumers using other purchasing systems (competitors)
Time to conduct ticket transaction:	
• Shopping cart clocks from Ticketmaster and StubHub sale pages (5 or 10 minutes)	• Assuming consumers use full timer clock may overestimate transaction time
Assumption or Uncertainty	**Impact on Costs**
Number of firms selling tickets: • Sum of firms in potential NAICS codes • IBIS World report on Online Ticket Sellers	• May overestimate total number of firms affected if a large proportion of firms in these NAICS codes are not subject to the proposed rule • May underestimate total costs if there are a meaningful number of firms selling tickets offline

Number of hours to comply with proposed rule: • Hours of lawyer time, data analyst time, and web developer time	• May overestimate costs per firm if many firms either already comply or have the systems in place to easily comply with proposed rule. Also may underestimate costs if compliance requires greater number of hours.

The Commission is expressly soliciting comments regarding the uncertainties described in Table 8. Specifically, the Commission requests data that would allow for more refined estimation of the benefits of the proposed rule, including data on the total annual number of consumer live-event ticket purchases and the average search time saved for consumers as a result of the proposed rule. The Commission also requests data to refine the estimated cost of the proposed rule, including information on the number of live-event ticket sellers currently charging hidden mandatory fees, and the anticipated cost to firms from complying with the proposed rule.

b. Short-Term Lodging Industry

Businesses in the short-term lodging industry often charge a variety of mandatory add-on fees. These fees are typically either disclosed up front in fine print separately from the base price (a practice known as partitioned pricing) or revealed just before payment, after the consumer has clicked through multiple pages of a listing (known as drip pricing).[308] Hotels may impose these mandatory surcharges as "resort fees or "destination fees." Hotels often justify charging these fees as necessary to cover the costs of amenities that are not reflected in the base rate, such as Wi-Fi, pool, and gym access, towels, parking, and shuttle service. These fees are not optional and do not depend on the use of these amenities. Home share websites like Airbnb and VRBO label these mandatory fees as "cleaning fees", "service fees", or "host fees."

[308] Sometimes these fees are not disclosed altogether or are not disclosed until a customer has arrived at the lodging to check in.

Consumer behavior studies have shown that both partitioned pricing and drip pricing causes consumers to underestimate the total price of the product, even when all components of the price are disclosed up front.[309] As a result, disclosing mandatory surcharges separately from the room rate without first disclosing the total price is likely to harm consumers by increasing search costs and reducing consumer surplus.[310] These fees may reduce consumer surplus if consumers respond by booking a room that is more expensive than the room they would have chosen under upfront total pricing. It may also increase search costs if consumers spend more time looking at additional listings in search for a cheaper hotel.

AHLA states that 6% of U.S. hotels charge resort fees, which amounts to $2.93 billion dollars paid in resort fees annually by U.S. consumers.[311] This number underestimates how much U.S. consumers pay in mandatory fees because it does not include fees from finding accommodations on the home share market through websites like Airbnb and VRBO or fees incurred from booking at foreign hotels with U.S. facing websites. Resort fees in the U.S. average 11% of the per night cost of a room, and can be as high as 35%, especially at lower cost hotels.[312]

This section includes an estimate of the benefits and costs associated with the reduced search costs as a result of the proposed rule. Since there is an additional, unquantified benefit of reduced deadweight loss, which is discussed conceptually in Section VII.C.2.a, the net benefit estimated in the following analysis is conservative. The Commission finds that the quantified

[309] Howard A. Shelanski et al., *Economics at the FTC: Drug and PBM Mergers and Drip Pricing*, 41 Rev. Indus. Org., 303-319 (2012).
[310] *See* Sullivan, *supra* n. 153.
[311] FTC-2022-0069-6037 (AHLA); Bjorn Hanson, *U.S. Lodging Industry Fees and Surcharges Forecast to Increase to a New Record Level in 2018 – $2.93 Billion, and Another Record Anticipated for 2019 – the Newest Emerging Category is "Resort Fees" for Urban Luxury and Full Service Hotels* (Aug. 27, 2018), https://bjornhansonhospitality.com/fees-%26-surcharges.
[312] Sally French & Sam Kemmis, *How to Avoid Hotel Resort Fees (and Which Brands Are the Worst)*, NerdWallet (Aug. 9, 2023), https://www.nerdwallet.com/article/travel/hotel-resort-fees.

benefits and costs imply that the rule will have a positive net benefit, even without accounting for the unquantified benefit of reducing deadweight loss.

(1) Short-Term Lodging: Estimated Benefits of Proposed Rule

(a) Consumer time savings when shopping for hotels

As a result of the proposed rule, the Commission expects that the time consumers spend searching for short-term lodging will decrease because prices will be easier to compare within and across websites. Some consumers will reduce the number of short-term lodging listings they view prior to making a booking or spend less time understanding and assessing the full price.[313] In our analysis we make the conservative and simplifying assumption that the time spent viewing a listing remains the same, and that consumers reduce the average number of listings they view. Table 9 quantifies the benefits of such time savings and provides lower and upper-end estimates to account for uncertainty in the available statistics.

The Commission specifically focuses on the benefits that accrue to consumers who book rooms from within the United States on any US-facing website, which can include bookings at both domestic and foreign short-term lodgings. Short-term lodgings include both traditional hotels as well as rooms booked through home share websites like Airbnb and VRBO.[314] In this section, we outline how the benefits are calculated in Table 9 and the assumptions we make. The table reports a

[313] The drip pricing literature suggests that because time to view one listing is lower under upfront pricing, there may also be a subset of consumers who view *more* listings because the cost of viewing an additional listing has decreased. Sullivan, *supra* n. 153. It is unclear how this affects total time spent searching. If the higher number of listings viewed is offset by the lower time it takes to view each listing, the total time spent searching will be lower under upfront pricing for this subset of consumers. If total time increases, it can be classified as "good" search time for this particular group of consumers because it results in consumers purchasing their preferred hotel room. Alternatively, another group of consumers could view fewer listings because upfront prices allow consumers to compare rooms more easily and select their preferred hotel room more quickly. Blake et al., *supra* n. 153. The total search time for these consumers will decrease. We focus on the latter group of consumers because the change in their search time represents a decrease in "bad" or unnecessary search caused by drip pricing.

[314] Airbnb currently includes a toggle for consumers to click to switch to viewing all listing prices up front. However, the default option is to view listings with drip pricing, and the toggle is not visible if a consumer starts their search from any Airbnb page other than the homepage. VRBO includes the total price including fees on the first page of search results in very fine print under the much larger base price. Neither Airbnb nor VRBO are currently in compliance with the proposed rule, which would require the total price to be the most prominent default upfront price.

set of basic search statistics used in the calculation, the savings per year for consumers who book at U.S. short-term lodgings, the savings per year for consumers who book at foreign short-term lodgings with US-facing websites, and the combined total savings for all U.S. consumers per year.

Although not all short-term lodgings charge resort fees, the lack of a unified standard of upfront pricing across listings makes comparing prices difficult and time consuming for consumers. Even within a single short-term lodging website, there is variation in whether listings have hidden fees. For example, Marriott's 32 hotel brands impose hidden fees for listings in some cities but not in others. Some listings, in very fine print under the listed price, note whether resort fees are included or excluded in the base price. Some listings do not say anything, requiring consumers to click through the listing to learn whether there are hidden fees at the end. Given that 6% of hotels impose drip pricing, and the average hotel shopper visits 17 travel websites before booking, consumers are likely to encounter at least one website that imposes drip pricing in their search for a hotel.[315] Even for consumers who complete their whole search and booking process without visiting any websites that impose hidden resort fees, the fact that there *could* be hidden fees creates uncertainty and may cause consumers to click through more listings than they otherwise would have to learn if the initial price is truly the final price. Therefore, we quantify the benefits for all U.S. consumers who book a room in a given year, regardless of whether they interacted with a website that imposed drip pricing.

(i) Search Statistics

The Commission uses two different studies to calculate lower and upper-end estimates for the average number of minutes it takes to view one listing. On the lower end, we use statistics on

[315] Chris Anderson et al., *The Billboard Effect: Still Alive and Well,* 17 Ctr. Hosp. Rpt. 11 (2017), https://hdl.handle.net/1813/70982. The Commission calculates the average number of websites visited by summing the average number of OTAs, Hotel Sites, TripAdvisor, and Other Meta websites visited 60 days prior to reserving a room.

Airbnb user search behavior collected by Fradkin (2017) to calculate that consumers spend 9.48 minutes to view one listing.[316] On the upper end, we use a hotel search cost model developed by Chen and Yao (2016) to calculate the average search cost per listing.[317] Using this average search cost, we estimate that consumers spend 14.3 minutes viewing one listing. See Appendix A for calculation details for both estimates. Using the estimates from each study as lower and upper-end estimates ensures that we capture user search behavior on both home share websites like Airbnb and more traditional hotel websites.

To estimate the reduction in average listings viewed due to drip pricing, we use results on the average reduction in listings viewed under upfront pricing from an experiment in the ticketing industry.[318] The study finds that the average reduction in listings viewed under upfront pricing is 10.6% of the mean listings viewed under drip pricing. For the low-end estimate, we apply the same proportion to the mean listings viewed by Airbnb users in Fradkin (2017) (2.367 listings, proxied by number of contacts) and find a reduction of 0.25listings. On the upper end, we apply this to the mean listings viewed by hotel searchers in Chen and Yao (2016), 2.3 listings, and find a reduction of 0.24 listings.[319]

Multiplying this number by the minutes to view one listing results in 2.39 to 3.53 minutes saved per transaction. These estimates are likely conservative, given that they assume consumers

[316] Andrey Fradkin, *Search, Matching, and the Role of Digital Marketplace Design in Enabling Trade: Evidence from Airbnb*, (MIT Initiative on the Digit. Econ., Working Paper, 2017).
[317] Yuxin Chen & Song Yao, *Sequential Search with Refinement: Model and Application with Click-Stream Data*, 63 Mgmt. Sci. 12, 4345-4365 (2017), https://doi.org/10.1287/mnsc.2016.2557
[318] Blake et al., *supra* n. 153.
[319] Although we are basing our reduction in listings estimates on data that comes from the ticketing industry, our method results in the most conservative reduction of viewed listings compared to other methods. The most relevant study from the hotel search cost literature estimates that improvements in hotel rankings (which may be loosely comparable to removing drip pricing) reduces search costs by $11.50. *See* Raluca M. Ursu, *The Power of Rankings: Quantifying the Effect of Rankings on Online Consumer Search and Purchase Decisions*, 37 Mktg. Sci. 4, 507-684 (2018). Given our estimates of the time to view one listing (between 9.48 and 14.30 minutes), this suggests an average reduction of between 2.95 and 1.95 listings viewed, which is implausible given that various papers find the average number of listings viewed at baseline to be between 2 and 3. Thus, while some papers find substantially higher search costs than our method, this provides assurance that, if anything, our benefits estimates are likely conservative.

only view one website before booking a room. One study suggests that consumers in fact visit an average of 17 websites before booking.[320] In addition, the average reduction in listings viewed may also underestimate benefits from eliminating drip pricing because it is more difficult to adapt to the wide variability of fees in the short-term lodging industry than it is in the ticketing industry, where listings have the same percentage fee. Short-term lodgings have different fees, and the number of lodgings with such fees will vary across markets.

According to the Bureau of Labor Statistics Occupational Employment Statistics,[321] the average hourly wage of U.S. workers in 2022 was $29.76, and recent research suggests that individuals living in the U.S. value their non-work time at 82% of average hourly earnings.[322] Thus, the value of non-work time for the average U.S. worker is estimated to be $24.40 per hour.

(ii) US Hotels and Home Share

Next, the Commission calculates the total savings per year for U.S. consumers who book at U.S. short-term lodgings, which includes both U.S. hotels and home shares. We find the total number of nights booked in the U.S.in 2022 by dividing the total revenue the U.S. short-term lodgings industry earned from rooms by the average daily rate (ADR).[323] The ADR is the average revenue per room-night booked in the U.S. The total number of nights booked in the U.S. in 2022 that would potentially be affected by this rule is about 1.29 billion.

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[320] *See* Anderson & Han, *supra* n. 315. It is unclear whether the relationship between websites viewed and time saved is linear, as consumers may save less time on the 15th website they view as they do on the first, so it is difficult to extrapolate from our estimates to the total time saved for consumers who view multiple websites. Therefore, to remain conservative in our estimate of benefits, we assume that consumers visit only one website.

[321] OEWS National, *supra* n. 272.

[322] Hamermesh, *supra* n. 279 at 198–203.

[323] Revenue equals about 192.23 billion. Alexia Moreno Zambrano, *Hotels & Motels in the US*, IBISWorld (Jan. 2023) ("Hotels & Motels Industry Report"); Thi Le, Bed & Breakfast & Hostel Accommodations in the US, IBISWorld (Jan. 2023) ("Bed & Breakfast Industry Report"). The ADR is about $149. *STR: U.S. hotel ADR and RevPAR reached record highs in 2022*, STR (Jan. 20, 2023), https://str.com/press-release/str-us-hotel-adr-and-revpar-reached-record-highs-2022.

Dividing the total number of nights booked by the average number of nights per booking gives 715 million total bookings.[324] About 91.8%, or 657 million, of these bookings are made by U.S. consumers.[325] Finally, we calculate the total savings for U.S. consumers per year by multiplying the number of bookings made by U.S. consumers by the minutes saved per transaction and the value of time for consumers. This results in total savings of about $637.2$941.6 million dollars.

(iii) Foreign Hotels and Home Share with US-Facing Websites

To estimate the number of foreign short-term lodging bookings made by U.S. consumers, the Commission uses the fact that 96% of all trips taken by U.S. consumers are domestic.[326] Multiplying the number of bookings made by U.S. consumers by ((1 - .96)/.96)) gives the number of foreign bookings, which is between 26.8 and 27.4 million. The total savings for this category amounts to about $26.5–$39.2 million dollars.

(iv) All Hotels and Home Share

Together, U.S. and foreign bookings amount to about 683.9 million bookings per year. This corresponds to between 27.2 and 40.2 million hours saved by U.S. consumers per year, and between $663.7 million and $980.9 million total savings per year. Table 9 presents the expected benefits of time savings over the next 10 years in present value.

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[324] Consumers book on average 1.8 nights per booking. Jordan Hollander, *75+ Hospitality Statistics You Should Know (2023)*, Hotel tech Report (Aug. 9, 2023).

[325] *How much do U.S. hotels depend on international guest stays?*, CRBE Econometric Advisors' Blog (Oct. 10, 2017), https://www.cbre-ea.com/public-home/deconstructing-cre/2017/10/10/how-much-do-u.s.-hotels-depend-on-international-guest-stays#:~:text=We%20estimate%20that%208.2%25%20of%20all%20hotel%20guests,Miami%20at%2057.5%25%E2%80%94are%20highly%20dependent%20on%20international%20guests.

[326] Adrian, *U.S. Travel & Tourism Statistics 2020-2021*, Tourism Academy Blog (Sep. 15, 2021), https://blog.tourismacademy.org/us-tourism-travel-statistics-2020-2021.

Table 9 - Short-Term Lodging: Estimated Benefits of Time Savings for Completed Transactions

		10-Year Period	
		Low-end Benefit Estimate	**High-end Benefit Estimate**
Search Statistics			
Minutes to View Listing		9.48	14.41
Reduction in Average Number of Listings Viewed		0.25	0.24
Minutes Saved Per Transaction		2.39	3.53
Value of 1 hour of non-work time		$24.40	$24.40
US Hotels and Home Share			
Total Number of Nights Booked		1,287,361,938	1,287,361,938
Average Nights Per Booking		2	2
Number of Bookings		715,201,077	715,201,077
Number of Bookings Made by US Consumers		656,554,589	656,554,589
Total Savings Per Year		**$637,176,656**	**$941,617,067**
Foreign Hotels and Home Share			
Number of Foreign Bookings Made by US Consumers		27,356,441	27,356,441
Total Savings Per Year		**$26,549,027**	**$39,234,044**
All Hotels and Home Share			
Total Bookings		683,911,030	683,911,030
Hours Saved by US Consumers Per Year		27,198,305	40,193,545
Total $ Saved Per Year		**$663,725,684**	**$980,851,112**
Abandoned Transactions		***Unquantified***	***Unquantified***
Reductions in Deadweight Loss		***Unquantified***	***Unquantified***
Total Quantified Benefits	**7% discount rate**	**$4,661,731,460**	**$6,889,087,761**
Total Quantified Benefits	**3% discount rate**	**$5,661,714,710**	**$8,366,858,934**

Note: Benefits over 10 years have been discounted to the present at both 3% and 7% rates. The value of time for hotel consumers is the mean hourly wage and adjusted by the consumer value of time reported in Hamermesh (2016).[327] Average nights per booking is from Hotel Tech Report.[328] We relied upon publicly available sources of data in our calculations. We recognize that there may be additional sources of data and we encourage comments that provide alternative sources of data where they are available.

[327] OEWS National, *supra* n. 272; Hamermesh, *supra* n. 279.
[328] Hotel Tech Report, *supra* n. 324.

(b) Additional unquantified benefits: reductions in deadweight loss and abandoned transactions

Due to the incomplete price information problem described in Section VII.C.1.a, the proposed rule requiring short-term lodgings to show the total price of rooms will likely result in a reduction of deadweight loss. When consumers are not able to observe total prices in the beginning of the booking process, sellers are likely able to charge higher prices than could be supported under the proposed rule. In addition, the requirement to disclose the refundability of any fees not included in the total price may also result in fewer mistake purchases stemming from incomplete information. Both the total price provision and the refundability disclosure provision may provide consumers with more complete pricing information necessary when making decisions about purchasing hotel rooms, thus reducing deadweight loss. At this time, we do not quantify the reduction in deadweight loss, but acknowledge that it is a positive benefit to the proposed rule.

In some cases, once the additional information about full price is revealed, consumers may fully abandon the transaction (i.e., not book a room at all). Since the lodging cost is only a part of the overall cost of a trip, abandoning a transaction may be less likely for short-term lodging than other industries. In that case, the unquantified benefit is likely to be small. The Commission lacks adequate information to determine the quantity of such abandoned transactions and the amount of time spent pursuing them. As a result, this benefit is unquantified in the current analysis. The Commission solicits comment on the frequency of and reasons for abandoned transactions in the short-term lodging industry in order to help quantify this benefit.

(2) Short-Term Lodging: Estimated Costs of Proposed Rule

This section describes the potential costs of the proposed rule provisions to the short-term lodging industry and provide quantitative estimates where possible. The costs to hotels from the proposed rule include a review of whether the rule applies, and, if the firm is not currently

compliant with the proposed rule, one-time costs to comply with the rule and recurring annual costs to review and ensure on-going compliance. The cost of employee time is monetized using wages obtained from the Bureau of Labor Statistics National Industry-Specific Occupational Employment and Wage Estimates.[329] We use wages specific to the Traveler Accommodation industry (associated with NAICS code 721100). This industry includes traditional hotels and motels, casino hotels, bed and breakfast inns, and hostels. The Commission also quantifies the cost to individual home share hosts in the form of a one-time cost to adjust prices on home share listings.

Table 10 outlines the estimated costs of the proposed rule. Panel A shows the costs for U.S. hotels and home share hosts, Panel B shows costs for foreign hotels and home share hosts who post listings on U.S.-facing websites,[330] and Panel C shows the total combined costs for both groups.

(i) Panel A: U.S. Hotels and Home Share Hosts

There are 47,817 U.S. hotels associated with the "Traveler Accommodation" NAICS code. Of these firms, 6% impose resort fees, bringing the number of U.S. firms affected to 2,869 firms. We assume that this is inclusive of hotels that do not disclose the refundability of any optional add-on charges for additional goods and services. We remove one firm from the low-end estimate to account for the possibility that Marriott fully complies with its settlement with Pennsylvania and removes drip pricing absent the rule.[331]

Next, we estimate the number of hours a U.S. hotel would spend complying with the proposed rule. We assume all hotels that do not impose drip pricing and already disclose

[329] U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *May 2022 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 721100 - Traveler Accommodation* (May 2022) ("OEWS Traveler Accommodation"), https://www.bls.gov/oes/current/naics4_721100.htm.

[330] We include costs to foreign hotels with U.S.-facing websites because complying with the proposed rule may cause them to pass through some costs to U.S. hotel shoppers. We are unable to quantify what percentage of costs will be passed through, so to be conservative we include all costs to foreign hotels and home share hosts.

[331] In 2021, Marriott agreed to a settlement with the Pennsylvania Attorney General in which they are required to include mandatory resort fees in the base rate on the first page of the booking process. So far, Marriott has missed multiple deadlines to make this change and today has only partially complied with this settlement, incorporating resort fees in the base price for some of its hotel brands, but not for others.

refundability of optional charges will spend one hour of lawyer time determining if the proposed rule applies to them. Hotels that are not presently compliant with the rule will incur additional costs to comply with the proposed rule. In the low-end estimate, we assume that because many hotels have websites facing other countries that already have similar requirements to the proposed rule (e.g., Canada, Australia, EU), hotels may already have experience incorporating the necessary changes to their operating practices. In this scenario, hotels have relatively low costs to transition to all-in pricing for their US-facing websites. We assume 5 hours of lawyer time to determine how the proposed rule applies to the firm, 40 hours of data scientist time to re-optimize the pricing strategy, and 40 hours of web developer time to edit and reprogram the website to display upfront prices and make refundability disclosures.

In addition to hotels, the proposed rule would also affect individuals who participate in the home share market by listing their property for short term rentals on websites like Airbnb and VRBO. We estimate the total number of home share hosts in the U.S. by starting with the number of Airbnb hosts in the U.S. who post home share listings (not including larger bed and breakfast or hostel establishments) and extrapolating to the full U.S. market using Airbnb's market share in the U.S.[332] On the low-end, we assume that each host will take 1 hour to reprice each listing. Hosts have on average 1.18 listings, resulting in 1.18 hours of time per host.[333] The value of time comes from the same source as in Table 9.

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[332] *See* Clark Shultz, *Airbnb increases market share in latest read from M Science*, Seeking Alpha (June 6, 2022), https://seekingalpha.com/news/3846023-airbnb-increases-market-share-in-latest-read-from-m-science (providing Airbnb's market share). This results in 504,000 Airbnb home share hosts/.746 = 675,603 home share hosts in the US.

[333] The average number of listings per host is calculated from the total number of U.S. listings and the total number of U.S. hosts. Steve Deane, 2022 *Airbnb Statistics: Usage, Demographics, and Revenue Growth*, the Stratos Blog (Jan. 4, 2022), https://www.stratosjets.com/blog/airbnb-statistics/#:~:text=People%20stay%20an%20average%20of%202.4%20times%20longer,highest%20number%20of%20any%20country%20in%20the%20world. (providing the U.S. listings); Thibault Masson, *Airbnb host data: Who are Airbnb hosts? Why are individual hosts more important than professional ones?*, Rental Scale-Up (Dec. 6, 2020), https://www.rentalscaleup.com/airbnb-host-data-who-are-airbnb-hosts-why-are-individual-hosts-more-important-than-professional-

In the high-cost scenario, we assume that hotels have not laid the groundwork for upfront pricing. We assume hotels require twice the number of hours to determine optimal prices, re-program the website to include the total price, and review and confirm compliance. Thus, the one-time costs for hotels include 10 hours of lawyer time, 80 hours of data scientist time, and 80 hours of web developer time. We assume home share hosts spend 3 hours repricing each listing, resulting in 3.5 hours per host.

In addition to the one-time costs, we also assume hotels incur annual costs of between 0 to 10 hours of lawyer time per year to review and confirm compliance with the proposed rule.[334] The total costs, which include both the one-time fixed cost and the annual costs for the next ten years in present value, range from between $331 million and $1001 million using a 7% discount rate, and between $331 million and $1040 million using a 3% discount rate.

Note that all ranges of lawyer, data scientist, web developer, and home share host time serve as proxies for any costs associated with reviewing and ensuring compliance, adjusting pricing strategies, ensuring consumers are presented with total price, and re-evaluating home share listings respectively in response to the proposed rule.

(ii) Panel B: Foreign Hotels and Home Share Hosts

It is difficult to estimate costs for foreign hotels and home share hosts using the same method in Panel A because there are no reliable estimates for the number of foreign hotels and home share hosts, as well as the relevant international wage rate for lawyers, data scientists, and web developers. We instead estimate foreign costs by extrapolating from the U.S. costs estimated

ones/#:~:text=About%2086%25%20of%20the%204%20million%20Airbnb%20hosts,roughly%20560%2C000%20operate%20in%20the%20United%20States%20%2814%25%29 (providing the number of U.S. hosts).

[334] Since home share hosts are not operating large, sophisticated firms and will likely not spend additional time ensuring compliance beyond year one, we assume home share hosts do not incur annual costs due to the rule.

in Panel A. Since the U.S. hotel industry's global market share is about 14.5%,[335] the one-time and annual costs for foreign hotels can each be calculated by multiplying the one-time and annual costs for U.S. hotels by (1 - .145)/.145. This method captures the cost of all foreign hotels, including ones that may not have a U.S. facing website and thus will not be subject to the proposed rule. Therefore, the costs to foreign hotels may be an overestimate.

We use the percentage of Airbnb's U.S. revenue (46%)[336] to proxy for the U.S. home share market's global market share. Using this, we estimate the one-time cost for foreign home share hosts to be equal to the total one-time cost for U.S. home share hosts multiplied by (1 - 0.46)/0.46. The total one-time and annual foreign hotel and home-share costs for the next ten years in present value range from $103.3 - $313.7 million using a 7% discount rate, and $103.3 - $337.1 million using a 3% discount rate.

(iii) Panel C: All Hotels and Home Share Hosts (US + Foreign)

The total cost for all affected hotels and home share hosts over 10 years in present value is estimated to be between $136.5 and $413.8 million using a 7% discount rate and $136.5–$441.1 million using a 3% discount rate. This amounts to approximately between $406 to $1,232 annually per firm using a 7% discount rate and between $335 to $1,081 using a 3% discount rate.

Table 10 – Short-Term Lodging: Estimated Costs of Compliance

	Low-Cost Estimate	High-Cost Estimate
Panel A: US Hotels and Home Share Hosts		
A.1. US Hotels and Home Share Hosts: One Time Costs		
Number of US Hotels	47,817	47,817

[335] The U.S. hotel industry's global market share in 2022 is calculated by adding the revenues reported in the IBISWorld Reports for "Hotels and Motels in the US", "Casino Hotels in the US", and "Bed and Breakfast and Hostel Accommodations in the US" and dividing it by the global revenue found in IBISWorld Global Hotels & Resorts Industry Report. Hotels & Motels Industry Report, *supra* n. 323; Bed & Breakfast Industry Report, *supra* n. 323; Demetrios Berdousis, *Casino Hotels in the US*, IBISWorld (Jan. 2023).

[336] U.S. Sec. & Exchange Comm'n, Form 10-K, Airbnb, Inc. (Feb. 17, 2023) https://www.sec.gov/ix?doc=/Archives/edgar/data/1559720/000155972023000003/abnb-20221231.htm.

Hotels That Impose Drip Pricing (6% of total)		2,868	2,869
Hours to Determine Whether Rule Applies (Non-drip Price Firms) (Lawyer Hours)		1	1
Hours to Determine Whether Rule Applies (Drip price firms) (Lawyer Hours)		5	10
Hours to Determine Optimal Pricing and Contracts (Data Scientist Hours)		40	80
Hours to Update Purchasing Systems to Reflect Total Price (Website Developer Hours)		40	80
Hourly Wage Rate - Lawyer		$91.57	$91.57
Hourly Wage Rate - Data Scientist		$39.07	$39.07
Hourly Wage Rate - Website Developer		$33.11	$33.11
Total One-Time Fixed Cost for Hotels		**$13,709,648**	**$23,309,917**
Home Share Hosts in the US		675,603	675,603
Hours to Determine Optimal Pricing for Home Share Listing		1.18	3.54
Value of Time		$24.40	$24.40
Total One-Time Fixed Cost for Home Share Hosts		**$19,430,966**	**$58,292,899**
Total One-time fixed cost for Hotels + Home Share Hosts		**$33,140,615**	**$81,602,816**
A.2. US Hotels and Home Share Hosts: Annual Costs			
Hours for Reviewing Rule and Compliance (Annual)		0	10
Hourly Wage - Lawyer		$91.57	$91.57
Total annual costs		**$0**	**$2,627,162**
A.3. US Hotels and Home Share Hosts: Total Costs			
Total Costs (One-Time + Annual)	**7% discount rate**	**$33,140,615**	**$100,054,900**
Total Costs (One-Time + Annual)	**3% discount rate**	**$33,140,615**	**$104,013,037**
Panel B: Foreign Hotels and Home Share Hosts			
B.1. Foreign Hotels and Home Share Hosts: One-Time Costs			
Total Cost for Foreign Hotels		$80,809,337	$137,396,592
Total Cost for Foreign Home Share Hosts		$22,522,937	$67,568,812
Total One-Time Fixed Costs		**$103,332,275**	**$204,965,404**
B.2. Foreign Hotels and Home Share Hosts: Annual costs			
Total Annual Costs		**$0**	**$15,485,385**
B.3. Foreign Hotels and Home Share Hosts: Total Costs			
Total Costs (One-Time + Annual)	**7% discount rate**	**$103,332,275**	**$313,728,271**
Total Costs (One-Time + Annual)	**3% discount rate**	**$103,332,275**	**$337,058,882**
Panel C: All Hotels and Home Share Hosts (US + Foreign)			
Total One-Time Fixed Costs		$136,472,889	$286,568,220
Total Annual Costs		$0	$18,112,547

Grand Total Costs (One-Time + Annual)	**7% discount rate**	**$136,472,889**	**$413,783,170**
Grand Total Costs (One-Time + Annual)	**3% discount rate**	**$136,472,889**	**$441,071,919**
Annualized Cost Per firm	**7% discount rate**	**$406.35**	**$1,232.06**
Annualized Cost Per firm	**3% discount rate**	**$334.58**	**$1,081.35**

Note: Costs over 10 years have been discounted to the present at both 3% and 7% rates. The number of U.S. hotels is from the U.S. Census Bureau.[337] The statistic that 6% of U.S. hotels impose drip pricing comes from an AHLA comment to the ANPR.[338] All hourly wages come from the U.S. Bureau of Labor Statistics.[339] The value of time for hotel consumers is the hourly wage rate adjusted by the consumer value of time.[340] The total cost for foreign hotels is calculated by extrapolating from the total cost for U.S. hotels using the U.S.'s global market share of the short-term lodging industry from IBISWorld Industry Reports.[341] The total cost for foreign home share hosts is calculated by extrapolating from the total cost for U.S. home share costs using Airbnb's U.S. revenue as a percentage of its total revenue, as reported in Airbnb's 2022 10-K Filing.[342] We relied upon publicly available sources of data in our calculations. We recognize that there may be additional sources of data and we encourage comments that provide alternative sources of data where they are available.

(3) Short-Term Lodging: Net Benefits

Table 11 presents the net benefits of the proposed rule in the short-term lodging industry using the quantified benefits and costs discussed in Sections VII.C.3.b.(1) and VII.C.3.b.(2). To calculate the low end of the range for net benefits, we subtract the total costs using the high-end cost assumptions from the total benefits using the low-end benefit assumptions. For the high end of the range for net benefits, we subtract the total costs using the low-end cost assumptions from the total benefits using the high-end benefit assumptions.

The quantified benefits and costs imply that the proposed rule will have a positive net benefit, even without accounting for the unquantified benefit of reducing deadweight loss.

[337] U.S. Census Bureau, *supra* n. 271.
[338] FTC-2022-0069-6037 (AHLA).
[339] OEWS Traveler Accommodation, *supra* n. 329.
[340] *See* OEWS National, *supra* n. 272 (providing the mean hourly wage); Hamermesh, *supra* n. 279 (providing the value of time).
[341] *See supra* n. 335 (describing the calculations).
[342] U.S. Sec. & Exchange Comm'n, Form 10-K, Airbnb, Inc. (Feb. 17, 2023).

Table 11 - Short-Term Lodging: Estimated Net Benefits

		Low-end Estimate	High-end Estimate
Total Benefits	**7% discount rate**	$4,661,731,460	$6,889,087,761
Total Benefits	**3% discount rate**	$5,661,714,710	$8,366,858,934
Total Costs (One-Time + Annual)	**7% discount rate**	$136,472,889	$413,783,170
Total Costs (One-Time + Annual)	**3% discount rate**	$136,472,889	$441,071,919
		(Low Benefits – High Cost)	**(High Benefits – Low Cost)**
Net Benefits	**7% discount rate**	$4,247,948,290	$6,752,614,872
Net Benefits	**3% discount rate**	$5,220,642,791	$8,230,386,045

Note: Benefits have been discounted to the present at both 3% and 7%.

(4) Short-Term Lodging: Uncertainties

The Commission's ability to precisely estimate benefits and costs is limited due to uncertainties in key parameters. The quantified benefits and costs for the short-term lodging industry rely on a set of assumptions based on the best available public information. When the data were unclear, we used sets of assumptions that would generate a range of low-end and high-end estimates. Table 12 summarizes the key assumptions and how they may affect the resulting estimate of quantified benefits and costs. When possible, we attempted to underestimate benefits and overestimate costs in order to estimate conservative net benefits.

Table 12 – Short-Term Lodging: Summary of Key Uncertainties

Assumption or Uncertainty in Benefits Calculation	**Impact on Benefits**
We assume that reduction in average listings viewed is proportional (as a percentage of the baseline mean) to the reduction in average tickets viewed in the Blake et al. (2021) StubHub study.	This likely underestimates benefits because short-term lodgings vary substantially both within and across locations in the magnitude of the resort fees they charge, unlike tickets on a ticketing platform. In addition, the hotel search cost literature finds search cost savings from improved hotel ranking (which may be comparable to removing drip pricing) that are very large and imply bigger reductions in average listings viewed.

We assume that because 96% of all trips taken by U.S. consumers are domestic, 96% of all rooms booked by U.S. consumers are located in the U.S.	Trips taken does not necessarily equal rooms booked, and it is likely that only some subset of trips taken by U.S. consumers also correspond to a room booking. If the true percentage of domestic bookings is greater than 96%, our estimate of the number of foreign hotel bookings will be too small. If it is less than 96%, our estimate of foreign hotel bookings will be too large.
We assume consumers only visit one travel website before booking a room.	If consumers visit more than one website before booking, the average reductions in listings viewed in response to this rule may be larger than our estimates, causing us to underestimate benefits.
Assumption or Uncertainty in Costs Calculation	**Impact on Costs**
6% of all firms impose drip pricing.	The AHLA stated in a comment that "only 6% of hotels nationwide charge a mandatory resort/destination/amenity fee." We assume that this means that 6% of firms impose drip pricing, and not 6% of all establishments (physical hotel buildings). If it is actually 6% of all establishments that impose drip pricing, then our estimate likely overestimates the number of firms that impose drip pricing, leading to inflated costs. For example, if all chain hotels impose drip pricing for at least one of their establishments and none or very few independent hotels do, the number of firms would be much smaller than 6% of all firms.
Number of hours to comply with proposed rule: Hours of lawyer time, data analyst time, and web developer time	May overestimate costs per firm if many firms either already comply or have the systems in place to easily comply with proposed rule. May underestimate costs if compliance requires greater number of hours.
Airbnb's market share in the U.S. home share industry is the same as its share of total hosts in the US	If Airbnb's share of hosts is smaller than its market share, then the extrapolation to give the number of home share hosts in the U.S. (and therefore their total costs) will be underestimated. It will be overestimated if the share of hosts is larger than the market share.
Hours each Airbnb host spends repricing listings due to proposed rule	May overestimate costs if hosts spend less time repricing, or do not reprice at all. May underestimate costs if hosts spend more time.
We assume that the U.S. hotel industry's global market share by revenue is the same as its global market share by cost.	May underestimate costs for foreign hotels if true global cost share is smaller. May overestimate costs if true global cost share is bigger.
We assume that the percentage of revenue Airbnb made in the U.S. is the same as the U.S. home share market's global market share.	May underestimate costs for hosts located outside of the U.S. if the true market share is smaller. May overestimate costs if true global cost share is bigger.

We assume that 100% of all costs to foreign hotels with U.S.-facing websites will be passed on to U.S. consumers.	We include costs to foreign hotels with US-facing websites because complying with the proposed rule may cause them to pass through some costs to U.S. hotel shoppers. We are unable to quantify what percentage of costs will be passed through, though we believe it will be trivial. Nevertheless, to be conservative we include all costs to foreign hotels and home share hosts. This inflates our cost estimates, resulting in a smaller, more conservative net benefit.

The Commission is expressly soliciting comments regarding the uncertainties described in Table 12. Specifically, the Commission requests data that would allow for more refined estimation of benefits of the proposed rule, including statistics on domestic versus foreign bookings by U.S. consumers, data on the reduction of average listings viewed as a result of the proposed rule, and data on the average search time saved for consumers as a result of the proposed rule. The Commission also requests data to refine the estimated cost of the proposed rule, including whether the 6%

resort fee statistic from the AHLA applies to firms or establishments, the anticipated cost to firms and home share hosts from complying with the proposed rule, and data on the number of home share hosts in the US.

c. Restaurant Industry

This section considers the impact of the proposed rule on restaurants and drinking establishments, collectively referred to as "restaurants," and discuss the potential benefits and costs of the proposed rule within this industry. While we focus here on the restaurant industry, many of the benefit and cost considerations presented here likely apply in similar fashion to other service industries in which either tipping is common or service fees are being employed. Examples of businesses in these industries include nail salons and massage studios. We lack data to quantify several of these benefits and costs, but we estimate compliance costs and determine a break-even level of benefit.

The restaurant industry has seen a recent spike in the use of hidden fees. In its 2023 State of the Industry Report, the National Restaurant Association notes that 15% of restaurants (13% of limited-service restaurants and 17% of full-service restaurants) are adding fees to bills.[343] These fees are typically a percentage of the subtotal before sales tax. Furthermore, 81% of the restaurants adding these fees plan to continue adding these charges for more than a year.

Fees in the restaurant industry take several forms. First, it has been a long-standing practice for most, if not all, full-service restaurants to charge mandatory service fees for large parties (typically a minimum of 6 or 8 consumers). We assume in our cost calculations that all full-service restaurants employ large-party mandatory charges.

Second, some restaurants have added mandatory service fees for parties of any size. These fees equal a percentage of the bill, typically 18%, 20%, or 22%, in line with customary percentages consumers use to calculate gratuities. Third, some restaurants are charging 5-10% fees they describe as supporting higher wages or enhanced benefits for workers. In state or local jurisdictions that are eliminating the distinction between tipped and standard minimum wages by raising the tipped minimum wage to equal the corresponding standard minimum wage, some restaurants are including specific fees as part of the transition.[344] Finally, some restaurants have added inflation-related charges and others are charging consumers a fee for paying with credit cards instead of cash.

The expectations that consumers have regarding fees will depend upon the type of fees. For example, consumers likely expect mandatory service charges for large parties given that they are a

[343] *State of the Restaurant Industry 2023*, National Restaurant Association (2023).
[344] Seven states (Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington) and one territory (Guam) have a uniform minimum wage, regardless of tips. U.S. Dep't of Lab., *Minimum Wages for Tipped Employees* (July 1, 2023), https://www.dol.gov/agencies/whd/state/minimum-wage/tipped. Several states and the District of Columbia are currently considering a transition or are in the process of transitioning to a uniform minimum wage. Talmon Joseph Smith, *Battle Over Wage Rules for Tipped Workers Is Heating Up*, N. Y. Times (Oct. 14, 2022), https://www.nytimes.com/2022/10/13/business/economy/tipped-wage-subminimum.html.

common industry practice. On the other hand, recently introduced fees may be a surprise to consumers. Consumers' expectations will depend on how such fees are disclosed. In addition, restaurants rely on local demand and so repeat customers may come to learn about the fees that restaurants charge—such as whether they have substituted mandatory service charges for tips—over time. In line with observations in the drip pricing literature, consumers are more likely to choose restaurants based on their expectations on cost, which may not incorporate the added costs of fees.

In the absence of a rule, restaurants have discretion as to how they disclose these fees to consumers. Some restaurants may make prominent statements that they have moved to mandatory service charges or instruct consumers not to provide tips. Others may disclose such fees on their menus, which some consumers may not read and so only learn of the fees after receiving the bill at the end of the meal. At this point, consumers have no choice but to accept the fees. Restaurants may characterize some fees as optional and, thus, avoidable in principle, but these fees are mandatory in effect because consumers may not have a way to practicably avoid them if they do not learn of them until receiving the bill. For example, a consumer can avoid a credit card usage fee by paying with cash. If, however, the consumer does not know about this fee in advance and does not have sufficient cash on hand, it is unlikely that the consumer can obtain cash on the spot to cover the bill. As with mandatory fees, the consumer has no reasonable choice but to accept and pay the unexpected credit card usage fee.

Mandatory service charges, the largest fees being added to bills, are commensurate with customary levels of tipping, but they are not necessarily used as a substitute for tipping; in fact, tips and mandatory service fees are distinct under tax and labor laws.[345] All fees imposed by a

[345] *See, e.g.*, I.R.S., *Internal Revenue Bulletin: 2012–26* (June 25, 2012), https://www.irs.gov/irb/2012-26_IRB; U.S. Dep't of Lab., *Tip Regulations under the Fair Labor Standards Act (FLSA)*, https://www.dol.gov/agencies/whd/flsa/tips.

restaurant, including mandatory service charges, accrue to the restaurant's owner, and the owner has full discretion regarding the use of these fees, including whether fees are passed on to waitstaff. For example, a restaurant may choose to pay a higher wage ("fair wage") out of all of the income it receives. In addition, a restaurant may choose to disclose how these mandatory service fees will be used. Some restaurants, for example, have waitstaff explicitly inform consumers that their bills include a mandatory service charge and, thus, no tip is necessary.

The variation across restaurants in types of fees and use of those fees is likely to affect how consumers tip. It is reasonable to assume that most consumers will not tip when explicitly informed that a tip is not necessary. In the absence of such instruction, fees will still likely have a crowding out effect on consumer tipping.[346] Regardless of how restaurants employing mandatory service fees are using or distributing these fees, consumers likely view these larger fees as tip replacements; consequently, consumers will leave little or no tip when made aware of restaurants' service fees. Changes in tipping will subsequently impact the labor market for waitstaff.

(1) Restaurants: Benefits of Proposed Rule

As applied to restaurants, the proposed rule would require the prices of menu items to be inclusive of any mandatory fees. Restaurants that have implemented mandatory service fees intended as substitutes for tipping could satisfy the proposed rule in one of two ways. First, restaurants could maintain menu prices and eliminate mandatory service fees with the expectation that consumers will resume tipping as is customary. This would represent a return to the traditional tipping model, the typical pricing structure of most restaurants. Alternatively, restaurants could increase menu prices to incorporate the mandatory service charge and continue to operate on a no-

[346] In some cases, consumers may "overtip" if they are unaware of mandatory service fees. We do not consider this issue or other similar issues related to tip adjustments because they involve transfers and, thus, have a net neutral impact on social welfare.

tipping-expected model.[347] Since most restaurants use the traditional tipping model, a restaurant including mandatory service charges in its prices would look more expensive than most of its competitors that have optional tips and so lose out on customers to its competitors. We thus assume these restaurants will choose a return to the traditional tipping model in response to the proposed rule.

Given the long-standing usage of large party fees, we assume restaurants currently imposing these fees would respond to the proposed rule by printing separate small party and large party menus, the latter of which would incorporate the large party fees into menu prices. Finally, since non-service-related fees, such as credit card usage fees, are generally not as well established, we assume restaurants would eliminate these fees and adjust menu prices in response to the proposed rule.

The primary benefit in the restaurant industry from the proposed rule would be the reduction or elimination of deadweight loss in the current, inefficient market equilibrium. An additional, unquantifiable benefit would be the reduction or elimination of psychological costs to consumers caused by the frustration of surprise fees. Furthermore, much confusion and frustration exists among consumers regarding the use of newer restaurant fees. For example, many consumers are confused by "service" charges or fees where those fees do not go to service workers. The proposed rule's prohibition on misrepresenting the nature and purpose of such fees would provide the additional unquantified benefit of lessening consumer confusion around such service charges. This benefit serves both consumers as well as service workers as it increases transparency.

[347] Restaurants could continue to include tip lines in bills; the proposed rule does not proscribe tipping in any way. Consumers who wish to leave additional gratuities would still be able to do so.

(a) Reductions in Deadweight Loss

Due to the incomplete price information problem described in Section VII.C.1, the proposed rule requiring restaurants to show the total price of menu items will likely result in a reduction of deadweight loss. Consumers, initially unaware of restaurant fees, are likely spending more on menu items than they would if they knew the full prices. This market inefficiency may be exacerbated in the restaurant industry since consumers often learn of fees when receiving bills and, thus, are unable to adjust their choices in response to the fees. However, widespread practices understood by consumers like mandatory service charges for large parties are less likely to create such inefficiencies. The proposed rule would allow consumers to make fully informed decisions that would lead to a more efficient market equilibrium and reduce or eliminate the deadweight loss in the prevailing equilibrium. We lack data to quantify this reduction in deadweight loss.

(2) Restaurants: Costs of Proposed Rule

This section describes the potential costs of the proposed rule's provisions and provide quantitative estimates where possible. We obtain the number of firms and establishments in the restaurant industry from the 2020 SUSB Annual Dataset. For restaurants, the cost of worker time is monetized using wages obtained from the Bureau of Labor Statistics May 2022 National Occupational Employment and Wage Estimates..[348] Restaurants and drinking establishments fall under the two-digit NAICS code of 72 for accommodation and food services, and we use industry-specific average wages for this sector to estimate costs.

[348] U.S. Bureau Lab. Stat., Occupational Employment and Wage Statistics, *May 2022 National Industry-Specific Occupational Employment and Wage Estimates: Sector 72 - Accommodation and Food Services* (May 2022) ("OEWS Accommodation and Food Services"), https://www.bls.gov/oes/current/naics2_72.htm.

(a) Compliance Costs

The costs to firms from the proposed rule include a review of how the proposed rule applies to the firm, one-time costs to comply with the proposed rule, and annual costs to review and ensure on-going compliance. Our preliminary analysis presents two cost scenarios corresponding to different assumptions on how many hours are required to comply with the proposed rule and how many firms would be impacted by the proposed rule. We present these as a low-end cost scenario and a high-end cost scenario. Table 13 summarizes compliance costs under both of these scenarios.

As in the general discussion of compliance costs in Section VII.C.2.c, we assume that restaurants already in compliance with the proposed rule would incur one hour of lawyer time to confirm this compliance. Similarly, we assume that restaurants not currently in compliance would incur five to ten hours of legal advice to understand the impact of the proposed rule and five to ten hours of legal advice to come into compliance with the proposed rule. Pricing in the restaurant industry is less complex than in the previously discussed industries. We assume that restaurant owners themselves spend five to ten hours reoptimizing prices, and we use the wage of food service managers as a proxy for the cost of this time. These costs would be incurred at the firm level; that is, a firm operating multiple identically branded restaurants would incur these costs once.[349]

Restaurants not currently in compliance with the proposed rule would need to update and possibly redesign menus or menu boards. To estimate menu-related costs, a cost specific to this industry, we use the assumptions and prices of the FDA's Regulatory Impact Analysis for its 2014 Menu Labeling Rule[350] ("Menu Labeling RIA"), with prices inflated to 2023 levels according to

[349] These calculations will underestimate the costs of firms that operate a portfolio of heterogeneous restaurants. We do not expect the additional cost to such firms to significantly impact the industry-wide cost estimates.

[350] Food & Drug Admin., *Final Rule, Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments*, 79 Fed. Reg. 71155 (Dec. 1, 2014).

the BLS CPI Inflation Calculator.[351] Thus, we assume that the average cost for a restaurant firm to redesign its menu is $4,818. One potential source of uncertainty in this estimate is the adoption of QR codes and online menus, which may reduce physical menu costs. However, we are unaware of evidence on the adoption of these new technologies.

After the relevant firms redesign their menus, menu replacement would need to occur at each establishment. Following the Menu Labeling RIA, we assume between 0% and 50% of full-service restaurants and bars would have to replace printed menus, at an average cost of $2.60 per menu, at their establishments in response to the proposed rule. Since printed menus are regularly replaced, many establishments would already be in the process of reprinting menus that could be coordinated with any changes needed to be made at the time the rule goes into effect; the proposed rule would not impact printing costs for these establishments.[352] For other establishments (limited-service restaurants, cafeterias, coffee shops, etc.), we assume that menu boards have an average replacement cost of $715. For all establishments replacing menus or menu boards, we assume replacement requires one hour of managerial time at a wage of $31.47 and one hour of waitstaff time at a wage of $15.89. We acknowledge that it is uncertain how appropriately the menu redesign costs from the Menu Labeling Regulatory Impact Analysis would represent the menu redesign costs in this context. The costs used in this analysis may also serve as a proxy for any additional costs restaurants may incur that are not captured in this analysis.

[351] U.S. Bureau Lab. Stat., *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm. Costs inflated from November 2014 to June 2023.

[352] Since large party service fees are widespread and well-established, it may be the case that full-service restaurants respond to the rule by setting two sets of prices, one for large parties and one for small parties. We assume that this choice would not affect menu printing costs since restaurants could select the number of each type of menu according to their established seating arrangements. Restaurants have flexibility in accommodating large parties by combining tables, but we assume that maintaining this flexibility would have little effect on menu printing costs as our estimate already accounts for extra menus.

As in the general discussion of compliance costs, we assume that restaurant firms not currently in compliance would incur zero to ten hours of attorney time to ensure continued compliance in future years. Table 13 provides the total quantified costs (one-time upfront costs plus annual costs) for both the low-end and high-end cost scenarios, and these costs are calculated as present values using discount rates of 7% and 3%. Annualized per firm costs are also provided; for parsimony, these annualized costs are presented for two consolidated categories of restaurant types: (1) full-service restaurants and bars and (2) limited-service restaurants and cafeterias, buffets, snack/coffee shops, etc.

Table 13 – Restaurants: Estimated Costs of Compliance

Present Value of Costs Over a 10-Year Period			
Number of restaurants by type		**Firms**	**Establishments**
All restaurant types		466,976	615,135
Full-service restaurants		217,103	249,975
Bars		38,253	39,129
Limited-service restaurants		156,138	251,533
Cafeterias, buffets, snacks, coffee shops, etc.		56,611	74,498
Percentage of full-service firms charging fees	100%		
Percentage of other firms charging fees	13%		
Hourly Wages	**Rate**		
Lawyers	$88.88		
Managers	$31.47		
Staff	$15.89		
Upfront Costs		**Low-Cost Estimate**	**High-Cost Estimate**
Per firm labor hours required for compliance			
Hours to determine how rule applies, presently compliant firms (lawyer hours)		1	1
Hours to determine how rule applies, presently noncompliant firms (lawyer hours)		5	10
Hours to reoptimize prices (manager time)		5	10
Per establishment hours required for compliance			
Hours to swap out menus/menu boards (manager time)		1	1
Hours to swap out menus/menu boards (staff time)		1	1

Per firm menu costs			
Cost to redesign menus	$4,818.27		
Per establishment menu costs			
Number of printed menus to be replaced			
Full-service restaurants	91		
Bars	78		
Cost per printed menu	$2.60		
Percentage of menus to be replaced		0%	50%
Number of menu boards to be replaced			
Limited-service restaurants	3		
Cafeterias, buffets, snacks, coffee shops, etc.	1		
Cost per menu board	$715.07		
One-Time Fixed Cost to Include Fees Up Front		**$1,452,046,501**	**$1,638,454,104**
Annual Costs			
Hours for Reviewing Rule and Compliance (Annual)		0	10
Total Annual Costs		**$0**	**$221,962,921**
Total Costs			
Total Quantified Costs (One-Time + Annual)	**7% discount rate**	**$1,452,046,501**	**$3,197,428,782**
Total Quantified Costs (One-Time + Annual)	**3% discount rate**	**$1,452,046,501**	**$3,531,842,847**
Annualized Per Firm Costs (Noncompliant Firms)			
Full-Service/Bars	**7% discount rate**	**$772**	**$1,769**
Full-Service/Bars	**3% discount rate**	**$1,179**	**$2,153**
Limited-service/cafeterias/coffee shops	**7% discount rate**	**$635**	**$1,614**
Limited-service/cafeterias/coffee shops	**3% discount rate**	**$971**	**$1,930**

Note: Costs have been discounted to the present at both 3% and 7% rates. Numbers of firms and establishments from NAICS codes 7224 (Drinking Places (Alcoholic Beverages)) and 7225 (Restaurants and Other Eating Places). Hourly wages are from the Bureau of Labor Statistics.[353] Annualized per firms costs for firms that are not presently compliant represent a weighted average of the indicated restaurant types. We relied upon publicly available sources of data in our calculations. We recognize that there may be additional sources of data and we encourage comments that provide alternative sources of data where they are available.

(b) Labor Market Effects

We have assumed that the proposed rule would lead any restaurants that have adopted mandatory service charges in lieu of tipping to return to the traditional tipping model. Adjustments in tipping and restaurant worker compensation will likely lead to a shift in the labor market

[353] OEWS Accommodation and Food Services, *supra* n. 348.

equilibrium for restaurant workers. This shift could generate a net benefit or a net cost to society, as well as transfers to or from restaurant workers, but we lack the data to quantitatively or qualitatively determine the welfare effect of the equilibrium shift.

In addition, this shift would generate differing welfare impacts across the waitstaff labor market. For example, moving away from the traditional tipping model and toward standardized wages, would mitigate discrimination that occurs through tipping. The literature has found that Black employees tend to receive lower tips than White employees, and that the black-white gap in tipping cannot be explained by differences in service quality.[354] There is also evidence that, after controlling for other factors, women earn less in tips than men.[355] Thus, by causing restaurants to revert to the traditional tipping model as we have assumed, the proposed rule may have the unintended consequence of increasing racial and gender disparities in the waitstaff labor market.

(3) Restaurants: Break-Even Analysis

As discussed in Section VII.C.1, we lack data to quantify the benefits of the proposed rule within the restaurant industry. Instead, we calculate what the benefits would need to be in order for the proposed rule to have a positive net benefit. We calculate that if the proposed rule results in a benefit of at least $1.76 per consumer per year over 10 years, then the benefits to the restaurant industry of the proposed rule will exceed the industry's compliance costs under the high-end cost assumptions with a 7% discount rate.

[354] *See*, *e.g.*, Michael Lynn et al., *Consumer Racial Discrimination in Tipping: A Replication and Extension*, 38 J. Applied Soc. Psych. 4, 1045–60 (2008), https://doi.org/10.1111/j.1559-1816.2008.00338.x; Zachary W. Brewster et al., *Black-White Earnings Gap among Restaurant Servers: A Replication, Extension, and Exploration of Consumer Racial Discrimination in Tipping*, 84 Socio. Inquiry 4 (2013), https://doi.org/10.1111/soin.12056.

[355] *See* Matthew Parrett, *Customer Discrimination in Restaurants: Dining Frequency Matters*, 32 J. Lab. Rsch. 2, 87-112 (2011), https://doi.org/10.1007/s12122-011-9107-8.

(4) Restaurants: Uncertainties

Our ability to precisely estimate benefits and costs is limited due to uncertainties in key parameters. The quantified benefits and costs for the restaurant industry rely on a set of assumptions, based on the best available public information. When the data were unclear, we used sets of assumptions that would generate a range of low-end and high-end estimates. Table 14 summarizes the key assumptions and how those assumptions may affect the resulting estimate of quantified benefits and costs.

Table 14 – Restaurants: Summary of Key Uncertainties

Assumption or Uncertainty	Impact on Costs
Types of firm cost: • Using NAICS codes to determine which restaurant firms count as full-service versus non-full-service • Full-service restaurants and bars use printed menus while other restaurant types use menu boards	• May underestimate or overestimate percentage of firms estimated to be out of compliance if NAICS and NRA classifications do not line up • May overestimate or underestimate aggregate menu costs
Number of hours necessary to comply with proposed rule: • Hours of lawyer time, restaurant manager time, and restaurant employee time	• May overestimate costs per firm if many firms either already comply or have the systems in place to easily comply with proposed rule. Also may underestimate costs if compliance requires greater number of hours
Menu costs: • Using Menu Labeling Regulatory Impact Analysis assumptions on costs of menu design,	May underestimate costs if menu costs have outpaced inflation. May underestimate or overestimate costs since menu redesign costs may not be comparable between this context and Menu Labeling Rule context

menu printing, and menu board replacement • Number of seats per establishment	• May underestimate costs if restaurants have increased capacity since 2014
Assumption or Uncertainty	Impact on Break-Even Benefits Amount
Number of affected consumers: • Assuming all adults are affected	• Underestimates required break-even benefit amount per consumer if some adults are not impacted by the rule because they are not restaurant consumers or they only consume from establishments unaffected by the rule

The Commission is expressly soliciting comments regarding the uncertainties described in Table 14. Specifically, the Commission requests data that would allow for more refined estimation of benefits of the proposed rule. The Commission also requests data to refine the estimated cost of the proposed rule, including information on the number of restaurants currently charging hidden or misleading mandatory fees, and the anticipated cost to firms from complying with the proposed rule.

4. Economic Evaluation of Alternatives

As an alternative to the proposed rule, the Commission has considered not pursuing rulemaking and to rely on its existing tools through enforcement actions and consumer education instead. Relative to a no-action baseline, by definition, there would be no incremental benefits or costs. The prevalence of drip pricing and hidden mandatory fees would continue to persist.

Another potential alternative as discussed in Section VII.B. is whether the rule should be limited to businesses in the live-event ticketing and/or short-term lodging industries. For these specific industries where we are able to quantify both benefits and costs, we have the following evaluation of costs and benefits of such an alternative. In the live-event ticketing industry, the

estimated present value of net benefits due to the proposed rule over a 10-year period with a 7% discount rate is between $20,464,879 and $1,762,524,107. Using a 3% rate, the present value of net benefits in the live-event ticketing industry is estimated to be between $41,746,333 and $2,143,665,007. The present value of net benefits from the proposed rule's requirements over a 10-year period using a 7% discount rate in the short-term lodging industry is estimated to be between $4,247,948,290–$6,752,614,872. Using a 3% rate, the present value of net benefits in the short-term lodging industry is estimated to be between $5,220,642,791 and $8,230,386,045.

The Commission does not have the data to prepare a quantitative analysis of the other alternatives discussed in Section VII.B. The final regulatory analysis may include additional quantification of alternative proposals if the Commission receives data and relevant information in response to the questions for public comment in Section X.

5. Summary of Results

The preceding regulatory analysis has attempted to catalog and, where possible, quantify the potential costs for the economy as a whole, as well as the incremental benefits and costs of the proposed rule for specific industries. At the economy level, we estimate that, for most firms in the economy, the per firm cost will be a one-time cost of $78.74. For firms and industries that currently rely on hidden mandatory fees and require more time to comply, we estimate the annualized per firm cost might be as high as $2,010.

Because the Commission is unable to quantify economy-wide benefits to the proposed rule, at the economy level we provide a break-even analysis using quantified compliance costs. The break-even analysis implies there are positive net benefits to the proposed rule if the benefit per consumer is at least $6.65 per consumer per year over a 10-year period. Note that this analysis does not account for costs from unintended consequences of the proposed rule or the potential benefits from reducing deadweight loss by providing consumers with full information.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.,* requires federal agencies to seek and obtain Office of Management and Budget ("OMB") approval before undertaking a collection of information directed to ten or more persons. The term "collection of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information.[356] The Commission believes the proposed rule contains a disclosure requirement that would constitute a collection of information requiring OMB approval under the PRA. The Commission has submitted the proposed rule to OMB for review and approval of any collection of information requirements.

A. Hidden Fees Prohibited

Section 464.2(a) of the proposed rule defines it as an unfair and deceptive practice for businesses to offer, display, or advertise amounts consumers may pay without clearly and conspicuously disclosing the Total Price, as defined in the proposed rule. Section 464.2(b) specifies that, as a preventative measure, businesses that offer, display, or advertise an amount a consumer may pay must display the Total Price more prominently than any other pricing information. While these provisions may alter when and how, in the course of transactions, businesses disclose Total Price, the disclosure itself provides consumers with information readily available to businesses and is something businesses must do in the course of their regular business activities. Thus, the Commission concludes that the Total Price disclosure does not constitute a collection of information for PRA purposes and estimates that any additional attendant costs are *de minimis*.

[356] 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

B. Misleading Fees Prohibited

Section 464.3(a) of the proposed rule prohibits businesses from misrepresenting the nature and purpose of any amount a consumer may pay, including the refundability of such fees and the identity of any good or service for which fees are charged. This Section does not require any additional disclosures or information collection, and only requires businesses to refrain from making misrepresentations. The Commission concludes that any additional costs that might be associated with the prohibitions in Section 464.3(a) against making misrepresentations are *de minimis*.

Section 464.3(b) of the proposed rule requires businesses to disclose clearly and conspicuously before consumers consent to pay the nature and purpose of any amount a consumer may pay that is excluded from the Total Price, including the refundability of such fees and the identity of any good or service for which fees are charged. The information required by Section 464.3(b) is necessary as a preventative measure to address the unfair and deceptive conduct of misrepresenting the nature and purpose of fees. Disclosing the amount of fees and the identity of goods or services for which the fees are charged provides consumers with information readily available to businesses and is something businesses do in the course of their regular business activities. The Commission concludes that disclosing the amount of fees and the identity of goods or services does not constitute a collection of information for PRA purposes, and that any costs associated with making these disclosures are *de minimis*. In connection with the requirement in Section 464.3(b) that businesses disclose the refundability of fees and charges, businesses may not routinely disclose this information as part of business transactions, and there may be costs associated with developing procedures to provide this disclosure. The Commission estimates such costs as follows:

1. Estimated One-Time Hours Burden: 245,454 Hours

The estimated hours of one-time burden for the required disclosures is 245,454 hours. This estimate is explained in this section.

2. Number of Respondents

The proposed rule applies to all firms in the economy and may result in all firms conducting a compliance review, which we proxy with one hour of attorney time. FTC staff estimates there are 818,178 entities that will incur additional costs beyond the initial one-hour compliance review to comply fully with the proposed rule, including firms in the live-event ticketing industry, the hospitality industry, and restaurants. This estimate is based on the total number of firms in the United States according to data from the U.S. Census North American Industry Classification System (NAICS). This estimate relies on the assumption that 10% of all firms in the U.S. (outside of the three specific industries) will incur additional compliance costs.

Of the 818,178 total entities incurring additional costs, only some firms will incur costs directly related to the disclosure requirement. The remaining firms may incur compliance costs due to other provisions of the rule. For example, some firms may only need to re-optimize price and adjust price displays (because they previously charged hidden mandatory fees), but these firms do not need to add disclosures. Lastly, many firms that charge fees for optional goods and services may already disclose whether those optional fees are refundable. Accordingly, we assume that 20% of the 818,178 total firms that incur additional compliance costs would be required to add disclosures regarding the refundability of fees not included in Total Price, resulting in an estimated 163,636 number of respondents.[357]

[357] This number may be overinclusive as it as it includes firms that would be exempted from the definition of Business as described in 464.1(b) of the proposed rule if the proposed Motor Vehicle Dealers Rule is finalized.

3. Disclosure Hours

The proposed rule would require firms to disclose the nature and purpose of any amount a consumer may pay that is excluded from the Total Price, including the refundability of such fees and the identity of any good or service for which fees are charged. We anticipate that the substantial majority of sellers routinely provide these disclosures in the ordinary course of business as a matter of good business practice. For these sellers, the time and financial resources associated with making these disclosures do not constitute a "burden" under the PRA because they are a usual and customary part of regular business practice. 5 CFR 1320.3(b)(2). Moreover, some state laws require the same or similar disclosures as the proposed rule mandates. In addition, some firms may be covered by disclosure requirements of other rules.

Accordingly, to reflect these various considerations, we estimate the disclosure burden required by the proposed rule will be, on average, 90 minutes (or 1.5 hours) for each entity estimated to not be currently compliant with the disclosure requirement of the proposed rule. Of this 90-minute total, we estimate that 30 minutes will be time spent by attorneys reviewing the disclosure and 60 minutes will be time spent to update the website or physical price display. The total estimated one-time burden is 245,454 hours (163,636 firms x 1.5 hours).

4. Estimated One-Time Labor Cost

The estimated one-time labor cost for disclosures is $13,305,243. This total is the sum of the total cost of attorney time calculated by applying the hourly wage for attorney time of $78.40 to the estimate of 30 minutes of attorney time and applying the hourly wage for web developer time of $42.11 to the estimate of 60 minutes (1 hour) of web developer time ($81.31 per entity * 163,636 entities).[358]

[358] Web developer time is a proxy for any costs associated with changing the firm's disclosures to comply with the proposed rule, such as the time spent adjusting websites or adjusting any physical price displays to include the disclosure. The estimated mean hourly wage for a web developer is $42.11. OEWS Web Developers, *supra* n. 272.

5. Estimated Non-Labor Cost

The capital and start-up costs associated with the proposed rule's disclosure are *de minimis*. Any disclosure capital costs involved with the proposed rule, such as equipment and office supplies, would be costs borne by sellers in the normal course of business.

Under Section 3506(c)(2)(A) of the Paperwork Reduction Act, the Commission invites comments on: (1) whether the disclosure requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

Comments on the proposed disclosure requirement subject to Paperwork Reduction Act review by OMB should additionally be submitted to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. The reginfo.gov web link is a United States Government website operated by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews federal information collections.

IX. Regulatory Flexibility Act—Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires the Commission to prepare and make available for public comment an "initial regulatory flexibility analysis" ("IRFA") in connection with any NPRM. 5 U.S.C. 603. An IRFA requires many of the same components as Section 22 of the FTC Act and the Paperwork Reduction Act, including (1) a description of the reasons that agency action is being considered, (2) a statement of the objectives of, and legal basis for, the proposed rule, and (3) a description of any significant alternatives to the proposed rule

which accomplish the stated objectives and minimize any significant economic impact of the proposed rule on small entities. Where the Commission has already addressed these components, it incorporates that analysis into its IRFA.[359] The remaining requirements are addressed in this section.

The Commission invites comment on the burden on any small entities that would be covered and has prepared the following analysis.

A. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Most firms in the U.S. economy would be subject to this proposed rule, but only firms that do not currently disclose total price will need to adjust their pricing strategy. According to the Statistics of U.S. Businesses, there were 6,119,657 firms in the United States with fewer than 500 employees, representing 99.7% of all U.S. firms.[360] Small businesses that currently comply with the proposed rule will have a relatively trivial cost of assessing whether they are currently in compliance, and we assume at most these firms will use one hour of lawyer time to confirm compliance. Small businesses that currently do not disclose total price (such as restaurants charging mandatory service fees), will incur additional costs to re-optimize prices and adjust the marketing campaigns and the consumer purchase process to include full total cost. The Commission seeks comment and information regarding the estimated number and the nature of small business entities for which the proposed rule would have a significant economic impact.

[359] *See* Sections III and VII A.–B. of this preamble.
[360] U.S. Census Bureau, *supra* n. 271. Employment of fewer than 500 employees is a commonly used metric for classifying a firm as a "small business."

B. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule

The proposed rule contains no reporting or recordkeeping requirements. To comply with the proposed rule, small entities are required to disclose total price prominently and not misrepresent the nature and purpose of any amount a consumer may pay. Almost all firms, including small entities, are subject to the requirements of the proposed rule. For firms that already comply with the proposed rule, the one-time cost per firm is assumed to be one hour of lawyer time at $78.74.

For small businesses that are not currently in compliance, firms will need to re-optimize prices, adjust marketing campaigns, and adapt the purchase process to include full total cost. These firms may also incur recurring annual costs of additional lawyer time to assess and confirm annual compliance. The annualized costs of the one-time cost and the annual costs for the next 10 years is estimated to be as much as $2,010 per firm averaged over all industries. Industry-specific per firm costs, however, may be smaller or larger than this estimate.

C. Identification, to the Extent Practicable, of All Relevant Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rule

The FTC has not identified any other federal statutes, rules, or policies currently in effect that may directly duplicate or conflict with the proposed rule. The Commission has identified a number of other rules or laws that contain provisions that potentially overlap with certain provisions of the proposed rule.[361] First, several other rules or laws contain requirements regarding the disclosure of pricing information in specific industries or in connection with specific

[361] The proposed rule is intended to supplement or complement these existing laws and rules.

transactions, including: the Consumer Leasing Act,[362] the Electronic Fund Transfer Act,[363] the Franchise Rule,[364] the Funeral Rule,[365] the Truth in Lending Act,[366] the proposed amendments to the Negative Option Rule,[367] the Real Estate Settlement Procedures Act,[368] the Telemarketing Sales Rule,[369] the Truth in Savings Act,[370] the Empowering Broadband Consumers through

[362] For example, Regulation M, which implements the Consumer Leasing Act ("CLA"), requires that an advertisement for a consumer lease, among other things, "may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms," and the Regulation also requires a series of written disclosures with pricing information, prior to consummation of a consumer lease. *See* 12 CFR 1013.7 and 213.7; 12 CFR 1013.4 and 213.4. Model forms for written disclosures are in Regulation M, Appendix A, 12 CFR 1013 and 213. The CLA is at 15 U.S.C. 1667–1667f.

[363]For example, Regulation E, which implements the Electronic Fund Transfer Act ("EFTA"), requires financial institutions to disclose fees, among other things, at the time a consumer contracts for the service or before the first electronic fund transfer is made. *See* 12 CFR 1005.7 and 205.7. In some instances, Regulation E applies to other entities, including persons and remittance transfer providers, and requires written disclosures or authorizations as to certain costs or payments and pricing terms for gift cards, prepaid accounts, certain remittance transfers and preauthorized transfers. Model forms for written disclosures are found in Regulation E, Appendix A, 12 CFR 1005 and 205. The EFTA is at 15 U.S.C. 1693–1693r.

[364] The Franchise Rule requires sellers of franchises to make specific disclosures in a prescribed form regarding the total investment necessary to begin operation of a franchise, as well as other costs. The Franchise Rule also requires the disclosure of any initial fees and their refundability. 16 CFR 436.

[365] The Funeral Rule requires specific pricing disclosures and itemizations for funeral goods and services. 16 CFR 453.

[366] For example, Regulation Z, which implements the Truth in Lending Act ("TILA"), requires that an advertisement for credit, among other things, that states specific credit terms "shall state only those terms that actually are or will be arranged or offered by the creditor," and the Regulation also requires written disclosures of costs and terms for many consumer credit products including mortgage loans, personal loans, credit cards, open-end credit, automobile financing, and student loans. *See e.g.*, 12 CFR 1026.24 and 226.24, 1026.16 and 226.16, 1026.6 and 226.6, 1026.18–.19, 1026.37–.38, 1026.46, and 1026.60–61. Model forms for written disclosures are in Regulation Z, Appendices G–H, 12 CFR 1026 and 226. The TILA is at 15 U.S.C. 1601–1666j.

[367] The proposed amendments to the Negative Option Rule require, for all transactions involving a negative option feature, the disclosure of the amount or range of costs a consumer will be charged, the frequency of the charges and the date each charge will be submitted for payment. These disclosures must be clear and conspicuous and occur before a consumer enters their billing information. Negative Option Rule, 88 FR 24716 (amendments proposed Apr. 24, 2023).

[368] For example, Regulation X, which implements certain aspects of the Real Estate Settlement Procedures Act ("RESPA"), among other things, requires disclosure of settlement service costs and other information and sets other requirements for certain mortgages. *See generally* 12 CFR 1024. Various forms and statements are in Regulation X, including but not limited to Appendices A–D. The RESPA is at 12 U.S.C. 2601 et seq.

[369] The Telemarketing Sales Rule ("TSR") requires telemarketing sellers to clearly and conspicuously disclose, before a consumer consents to pay, the total costs to purchase, receive, or use, and the quantity of, any goods or services. 16 CFR 310.

[370] For example, Regulation DD, which implements the Truth in Savings Act ("TISA"), and which applies to deposit brokers, among others, for certain advertisements, includes various disclosures, including for certain overdraft charges. *See generally* 12 CFR 1030. Additionally, for credit unions insured by or eligible for insurance by NCUSIF (including state-chartered credit unions), a separate regulation generally applies; the advertising provisions of that credit union regulation also apply to persons who advertise such credit union accounts. These credit union-related requirements include, in some instances, disclosures, including for certain overdraft charges. *See generally* 12 CFR 707. The TISA is at 12 U.S.C. 4301–4313.

Transparency Rule,[371] and the Full Fare Advertising Rule.[372] These provisions appear generally compatible with the proposed rule's requirements regarding the disclosure of pricing information. In areas of shared jurisdiction, the Commission seeks comment and information to determine if compliance with the proposed rule along with the specific disclosure provisions for certain types of sectors or transactions would be impossible, overly burdensome, or beneficial.

The Commission has also identified several rules and laws that prohibit misrepresentations potentially related to charges and fees in connection with specific industries or transactions. Specifically, several rules and statutes prohibit misrepresentations that overlap with the proposed rule's prohibition against misrepresenting the nature and purpose of any amount a consumer may pay, including: the Business Opportunity Rule,[373] the Mortgage Acts and Practices Advertising Rule (Regulation N),[374] the Mortgage Assistance Relief Services Rule (Regulation O),[375] the proposed amendments to the Negative Option Rule,[376] the Telemarketing Sales Rule,[377] the

[371] The recently adopted Empowering Broadband Consumers through Transparency Rule requires internet service providers (ISPs) to display at the point of sale labels that disclose certain information about broadband prices, introductory rates, data allowances, and broadband speeds. The broadband label requires prominent disclosure of monthly price and itemization of monthly provider fees, one time fees, early termination fees and government taxes. The total monthly price does not include the itemized fees. Empowering Broadband Consumers Through Transparency, 87 FR 76959 (Dec. 16, 2022) (to be codified at 47 CFR 8).

[372] The Full Fare Advertising Rule covers advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation or tour requiring a component of air transportation. The Rule prohibits stating a price that is not the "entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component." 14 CFR 399.84.

[373] The Business Opportunity Rule prohibits certain misrepresentations as to cost. In addition, the Business Opportunity Rule requires an affirmative disclosure of refundability for covered transactions that is broader than the provisions of the proposed rule. 16 CFR 437.

[374] The Mortgage Acts and Practices Advertising Rule, Regulation N (MAPS) prohibits misrepresentations regarding mortgage credit products including "the existence, nature, or amount of fees or costs to the consumer" associated with the credit product. The MAPS rule also prohibits misrepresentations regarding "existence, cost, payment terms, or other terms" associated with any addition product or feature sold in connection with a mortgage credit product. 12 CFR 1014.

[375] The Mortgage Assistance Relief Services Rule (Regulation O) prohibits misrepresentations regarding total costs and refunds related to mortgage assistance services. 12 CFR 1015.

[376] The proposed amendments to the Negative Option Rule prohibits misrepresentations of material facts related to any negative option transaction. Negative Option Rule, 88 FR 24716 (amendments proposed Apr. 24, 2023).

[377] In connection with telemarketing, the TSR prohibits the misrepresentation of material information, including the total costs to purchase, receive, or use, and the quantity of any goods or services that are the subject of a sales offer. 16 CFR 310.

TILA,[378] and the TISA.[379] The Commission has not identified any conflict arising from complying with these sector or transaction-specific rules and statutes and the proposed rule's prohibition against misrepresenting the nature and purpose of any amount a consumer may pay. The Commission invites comment and information regarding any potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies.

X. Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed rule. The Commission requests that factual data on which the comments are based be submitted with the comments. In addition to the issues raised in this preamble, the Commission solicits public comment on the specific questions identified in this section. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

A. General Questions for Comment

(1) Should the Commission finalize the proposed rule as a final rule? Why or why not? How, if at all, should the Commission change the proposed rule in promulgating a final rule?

(2) Please provide comment, including relevant data, statistics, consumer complaint information, or any other evidence, on each different provision of the proposed rule. Regarding each provision, please include answers to the following questions:

(a) What is the provision's impact (including any benefits and costs), if any, on consumers, governments, and businesses, both those existing and those yet to be started?

[378] 15 U.S.C. 1601–1666j. Regulation Z implements the TILA. 12 CFR 1026. Among other things, Regulation Z prohibits misleading advertising of "fixed" rates and payments, and misleading comparisons in advertisements, in advertisements for credit secured by a dwelling. *See* 12 CFR 1026.24(i).

[379] Among other things, the TISA (Regulation DD and NCUA's separate implementing regulation) prohibits misleading or inaccurate advertisements. *See*, *generally*, 12 CFR 1030.8 and 707.8.

(b) What alternative provision(s) should the Commission consider?

(3) Would the proposed rule, if promulgated, benefit consumers and competition? Provide all available data and evidence that supports your answer, such as empirical data, statistics, consumer-perception studies, and consumer complaints.

(4) What are the relevant sources of data that reflect the benefits to consumers and competition from the proposed rule, if promulgated? Provide all available data, statistics, and evidence.

(5) What are the relevant sources of data that reflect the average search time saved for consumers as a result of the proposed rule? Provide all available data, statistics, and evidence.

(6) What are the relevant sources of data that reflect the compliance costs that may apply to businesses from the proposed rule, if promulgated? Provide all available data, statistics, and evidence.

(a) What are the relevant sources of data that reflect the number of firms that will be affected by the proposed rule? Provide all available data, statistics, and evidence.

(b) What are the relevant sources of data that reflect the number of lawyer hours a firm in each industry would need to review compliance with the rule? Provide all available data, statistics, and evidence.

(c) What are the relevant sources of data that reflect the number of data scientist hours a firm in each industry would need to comply with the proposed rule? Provide all available data, statistics, and evidence.

(d) What are the relevant sources of data that reflect the number of web developer hours a firm in each industry would need to comply with the proposed rule? Provide all available data, statistics, and evidence.

(e) What are the relevant sources of data that reflect other possible costs that have not already been considered that may apply to businesses, consumers, or workers from the proposed rule, if promulgated? Provide all available data, statistics, and evidence.

(f) What are the relevant sources of data that reflect the number of firms in each industry that use third-party services to display pricing information that would reduce the costs of compliance? What are the relevant sources of data that reflect how much such services would cost in order to comply with the proposed rule? Provide all available data, statistics, and evidence.

(7) Would the proposed rule, if promulgated, have a significant economic impact on a substantial number of small entities? If so, how could it be modified to avoid a significant economic impact on a substantial number of small entities?

(8) How would the proposed rule, if promulgated, intersect with existing industry practices, norms, rules, laws, or regulations? Are there any existing laws or regulations that would affect or interfere with the implementation of the proposed rule?

(9) Is the proposed rule adequate to address the two practices identified as prevalent, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees? Are there additional provisions necessary to prevent these practices in specific industries?

B. Section 464.1: Definitions

(10) Are the proposed definitions clear? Should any changes be made to any definitions? Are additional definitions needed?

(11) Should the scope of any of the proposed definitions be expanded or narrowed, and if so, how and why?

(12) Should the proposed definition for "Business" exclude certain businesses, and if so, why?

(13) The proposed definition for "Business" contains an exclusion for "motor vehicle dealers that must comply with 16 CFR 463, requiring motor vehicle dealers to disclose the full cash price for which a dealer will sell or finance the motor vehicle to any consumer, and prohibiting motor vehicle dealers from making misrepresentations." Is this definition clear and understandable? Is this definition ambiguous in any way? How, if at all, should this definition be improved? This exception would only apply if the proposed Motor Vehicle Dealers Rule is finalized and in effect and not subsequently narrowed, altered, or otherwise not in effect. Is having such an exclusion appropriate?

(14) Should a new definition of "Covered Business" be added to narrow the Businesses covered by specific requirements of the rule, in particular the preventative requirements in Section 464.2(b)? If so, how should "Covered Businesses" be defined?

(a) Should the definition of "Covered Business" be limited to businesses in the live-event ticketing and/or short-term lodging industries?

i. If so, how should Businesses in the live-event ticketing industry be defined? If they are defined as "any Business that makes live-event tickets available, directly or indirectly, to the general public," is that definition clear and understandable? Is it ambiguous in any way? How, if at all, should that definition be improved?

ii. If so, how should Businesses in the short-term lodging industry be defined? If they are defined as "any Business that makes temporary sleeping accommodations available, directly or indirectly, to the general public," is that definition clear and understandable? Is it ambiguous in any way? How, if at all, should that definition be improved?

(b) Should the definition of "Covered Business" exclude small businesses? If so, how should "small businesses" be defined?

i. If "Covered Business" is defined to "include all of the following: (1) any Business that does not satisfy both the Small Business Administration's definition of a small business concern (13 CFR 121.105) and the Small Business Administration's Table of Size Standards (13 CFR 121.201); (2) any Business, regardless of size, that offers goods or services in the live-event ticketing industry; and (3) any Business, regardless of size, that offers goods or services in the short-term accommodations industry," is that definition clear and understandable? Is it ambiguous in any way? How, if at all, should that definition be improved? Are there industries other than live-event ticketing and short-term accommodations that should be subject to all the proposed requirements of the rule, regardless of size?

ii. What are the relevant sources of data that reflect the costs and benefits that the proposed rule would have on Covered Businesses if this definition is added to the proposed rule?

(c) Should a definition of "Covered Business" exclude businesses to the extent that they offer or advertise credit, lease, or savings products, or to the extent that they extend credit or leases or provide savings products to consumers? In the alternative, should the definition exclude certain of these businesses or products from only certain provisions? If so, specifically, which businesses and products, which provisions of the proposed rule, and why and how, or why not?

(d) Should a definition for "Covered Business" be limited to businesses that offer goods or services online and in mobile applications? Why or why not?

i. If so, how should such businesses be defined?

ii. What are the relevant sources of data that reflect the costs and benefits that the proposed rule would have on Covered Businesses if they are defined in this way?

iii. What are the relevant sources of data that reflect differences in costs for online versus brick-and-mortar stores? Provide all available data, statistics, and evidence.

(15) Should a definition for "Covered Business" exclude limited-service and full-service restaurants that satisfy both the Small Business Administration's definition of a small business concern (13 CFR 121.105) and the Small Business Administration's Table of Size Standards (13 CFR 121.201)?

(16) Should the proposed definition for "Total Price" contain an exception for "mandatory charges by restaurants for service performed for the customer in lieu of tips, as defined by the Department of Labor (29 CFR 531.52)"?

(17) Does the proposed definition for "Total Price" provide sufficient clarity for industries that calculate charges based on increments of time? Why or why not?

(18) The proposed definition of Total Price allows Shipping Charges to be excluded. Shipping Charges are defined as "the fees or charges that reasonably reflect the amount a Business incurs to send physical goods to a consumer through the mail, including private mail services" § 464.1(f). Is this provision clear and understandable? Is this provision ambiguous in any way? How, if at all, should this provision be improved?

(a) Does the proposed definition of "Shipping Charges" effectively allow Businesses to pass along reasonable costs of shipping to consumers without permitting artificial inflation of such costs?

(b) How would this provision impact the assessment and calculation of shipping costs across industries, and in particular industries?

(c) What are the relevant sources of data that reflect the manner in which firms calculate shipping costs? Provide all available data, statistics, and evidence.

(19) Does the proposed definition of Total Price provide sufficient clarity for industries that "all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service" includes (1) all fees or charges that are not reasonably avoidable and (2) all fees or charges for goods or services that a reasonable consumer would expect to be included with the purchase?

C. Section 464.2: Hidden Fees Prohibited

(20) Section 464.2(a) of the proposed rule states, "[i]t is an unfair and deceptive practice and a violation of this part for any Business to offer, display, or advertise an amount a consumer may pay without Clearly and Conspicuously disclosing the Total Price." Is this prohibition clear and understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?

(21) Section 464.2(b) of the proposed rule states, "[i]n any offer, display, or advertisement that contains an amount a consumer may pay, a Business must display the Total Price more prominently than any other Pricing Information." Is this prohibition clear and understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?

(22) Should the proposed rule address the itemization of fees and charges that make up the "Total Price?" If so, how should the proposed rule address itemization and why?

(23) By requiring mandatory fees to be included in the Total Price, does the requirement in 464.2(a) effectively eliminate fees that provide little or no value to the consumer in exchange for the charge? Why or why not? Are there any such fees that would not be eliminated by the proposed rule?

(24) Should the proposed rule explicitly prohibit fees that provide little or no value to the consumer in exchange for the charge? Why or why not? Should such a rule apply to optional fees? Why or why not? What should the Commission consider in determining if a fee provides little or no value to the consumer?

(25) Should the proposed rule prohibit fees that are excessive? Why or why not? How would such a rule define excessive fees?

D. Section 464.3: Misleading Fees Prohibited

(26) Section 464.3(a) of the proposed rule states, "[i]t is an unfair and deceptive practice and a violation of this part for any Business to misrepresent the nature and purpose of any amount a consumer may pay, including the refundability of such fees and the identity of any good or service for which fees are charged." Is this prohibition clear and understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?

(a) Does Section 464.3(a)'s provision prohibiting misrepresentations regarding "the nature and purpose of any amount a consumer may pay" provide sufficient clarity that it includes any amount included in the Total Price if that amount is also itemized separately from the Total Price?

(b) Does Section 464.3(a)'s provision prohibiting misrepresentations regarding "the nature and purpose of any amount a consumer may pay" provide sufficient clarity that it includes any amount excluded from the Total Price such as Shipping Charges, Government Charges, optional charges, voluntary gratuities, and invitations to tip?

(27) Section 464.3(b) of the proposed rule states, "[a] Business must disclose Clearly and Conspicuously before the consumer consents to pay the nature and purpose of any amount a consumer may pay that is excluded from the Total Price, including the refundability of such fees and the identity of any good or service for which fees are charged." Is this prohibition clear and

understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?

(a) Section 464.3(b) of the proposed rule requires certain disclosures "before the consumer consents to pay." Should the proposed rule instead require Businesses to disclose Clearly and Conspicuously the nature and purpose of any amount a consumer may pay that is excluded from the Total Price "before the consumer consents to pay and before obtaining a consumer's billing information"?

(b) Section 464.3(b) of the proposed rule requires disclosures regarding "the nature and purpose of any amount a consumer may pay that is excluded from the Total Price." Does this provision provide sufficient clarity that it includes Shipping Charges, Government Charges, optional charges, voluntary gratuities, and invitations to tip?

E. Industry-Specific Practices

(28) What are the relevant sources of data that reflect the frequency of, and reasons for, abandoned transactions in the live-event ticket market? Provide all available data, statistics, and evidence.

(29) What are the relevant sources of data that reflect the total annual number of live-event ticket purchases? What are the relevant sources of information that separate total annual ticket purchases into primary and secondary ticket sales? Provide all available data, statistics, and evidence.

(30) What are the relevant sources of data that reflect the number of live-event ticket sellers currently charging hidden mandatory fees? Provide all available data, statistics, and evidence.

(31) The comments identified additional problematic practices regarding live events, including unfair dynamic pricing, transferability restrictions, lack of transparency regarding ticket holdbacks, lack of transparency regarding speculative tickets, and the use of bots.

How prevalent are these acts and practices and should the proposed rule be modified to address any of these practices? Provide all available data and evidence that supports your answer, such as empirical data, statistics, consumer-perception studies, and consumer complaints.

(32) What are the relevant sources of data that reflect the frequency of, and reasons for, abandoned transactions in the short-term lodging industry? Provide all available data, statistics, and evidence.

(33) What are the relevant sources of data that reflect the number of hotel firms that impose resort fees or other similar mandatory fees? Provide all available data, statistics, and evidence.

(34) What are the relevant sources of data that reflect the number of individual home share hosts in the US? Provide all available data, statistics, and evidence.

(35) What are the relevant sources of data that reflect the number of restaurants currently charging mandatory fees?

(36) What are the relevant sources of data that reflect the number of restaurants that charge each type of fee (such as credit card surcharge fees, kitchen fees, economic impact or inflation fees, mandatory service fees in lieu of tips, or mandatory service fees that do not replace tips) being used by restaurants?

(37) What are the relevant sources of data that reflect the number of restaurants that have moved away from the traditional tipping model? Provide all available data, statistics, and evidence.

(a) What are the relevant sources of data that reflect the number of such restaurants that do not request tips?

(b) What are the relevant sources of data that reflect the number of such restaurants that impose on customers, regardless of the size of the party, mandatory charges for service performed for the customer in lieu of tips?

XI. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write "Unfair or Deceptive Fees, R207011" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website https://www.regulations.gov.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the https://www.regulations.gov website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write "Unfair or Deceptive Fees NPRM, R207011" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential"—as provided in Section 6(f) of the

FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)— including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at https://www.regulations.gov—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it, and visit https://www.regulations.gov/docket/FTC-2023-00XX to read a plain-language summary of the proposed rule. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see https://www.ftc.gov/siteinformation/privacypolicy.

XII. Communications by Outside Parties to the Commissioners or Their Advisors

Under Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor will be subject to the following treatment: written communications and summaries or transcripts of all oral communications must be placed on the rulemaking record. Unless the outside party making an oral communication is a member of Congress, communications received after the close of the public-comment period are permitted only if advance notice is published in the Weekly Calendar and Notice of "Sunshine" Meetings.

XIII. List of Subjects in 16 CFR Part 464

Consumer protection, Trade practices, Advertising

XIV. Proposed Rule on Unfair or Deceptive Fees, 16 CFR Part 464

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend 16 CFR Chapter I by adding part 464 to read as follows:

Part 464—Rule on Unfair or Deceptive Fees

Sec.

Authority: 15 U.S.C. 41–58.

464.1 Definitions

(a) *Ancillary Good or Service* means any additional good(s) or service(s) offered to a consumer as part of the same transaction.

(b) *Business* means an individual, corporation, partnership, association, or any other entity that offers goods or services, including, but not limited to, online, in mobile applications, and in physical locations. Motor vehicle dealers that must comply with 16 CFR 463, requiring motor vehicle dealers to disclose the full cash price for which a dealer will sell or finance the motor vehicle to any consumer, and prohibiting motor vehicle dealers from making misrepresentations, are exempted from the definition of "Business" for all purposes under this part.

(c) *Clear(ly) and Conspicuous(ly)* means a required disclosure that is difficult to miss (i.e., easily noticeable) and easily understandable, including in all of the following ways:
    (1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
    (2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
    (3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
    (4) In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
    (5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
    (6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
    (7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
    (8) When the representation or sales practice targets a specific audience, such as children, older adults, or the terminally ill, "ordinary consumers" includes reasonable members of that group.
(d) *Government Charges* means all fees or charges imposed on consumers by a Federal, State, or local government agency, unit, or department.
(e) *Pricing Information* means any information relating to an amount a consumer may pay.
(f) *Shipping Charges* means the fees or charges that reasonably reflect the amount a Business incurs to send physical goods to a consumer through the mail, including private mail services.
(g) *Total Price* means the maximum total of all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service, except that Shipping Charges and Government Charges may be excluded.

§ 464.2 Hidden Fees Prohibited

(a) It is an unfair and deceptive practice and a violation of this part for any Business to offer, display, or advertise an amount a consumer may pay without Clearly and Conspicuously disclosing the Total Price.
(b) In any offer, display, or advertisement that contains an amount a consumer may pay, a Business must display the Total Price more prominently than any other Pricing Information.

§ 464.3 Misleading Fees Prohibited

(a) It is an unfair and deceptive practice and a violation of this part for any Business to misrepresent the nature and purpose of any amount a consumer may pay, including the refundability of such fees and the identity of any good or service for which fees are charged.
(b) A Business must disclose Clearly and Conspicuously before the consumer consents to pay the nature and purpose of any amount a consumer may pay that is excluded from the Total Price, including the refundability of such fees and the identity of any good or service for which fees are charged.

§ 464.4 Relation to State Laws

(a) *In General.* This part will not be construed as superseding, altering, or affecting any State statute, regulation, order, or interpretation relating to unfair or deceptive fees or charges, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.
(b) *Greater protection under State law.* For purposes of this Section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part.

By direction of the Commission.

April J. Tabor, Secretary.

XV. Appendix

A. Appendix A: Short-term Lodging Industry Minutes Per Listing Calculations

1. Low-end Estimate of Minutes Per Listing Calculation

We use the Airbnb user search statistics reported in Fradkin (2017) to obtain a low-end estimate of minutes to view one listing after clicking on it. The paper provides data on a random sample of users who searched for short-term rentals on Airbnb in a large U.S. city. It reports search behavior separately for all searchers and for searchers who contacted the host, either to inquire about a listing or to book it. We use those numbers to calculate search behavior for the group of searchers who did not send a contact. The relevant statistics for these three groups are summarized in Table A.1.

"Average unique listings seen" includes all listings users see on a search result page, including listings users do not click on. "Average time spent browsing" includes entering search parameters, scrolling through results, and viewing listings after clicking on them. "Average number of contacts" is the average number of times searchers contacted a host for a listing. Since contacting the host requires users to click on the listing, we use this to proxy for number of clicked-on listings.

Table A.1

	(1) All Searchers	(2) Searchers who sent at least one contact	(3) Searchers who did not send a contact
Observations	12,241	4,426	7,815
Average unique listings seen	68.53	87.81	57.61
Average time spent browsing (min)	35.77	57.87	23.25
Average number of contacts (proxy for clicks)		2.37	

From the third column, we calculate:

Time to view each listing without clicks = Average time spent browsing / Average unique listings seen = 23.253/57.61 = .40 minutes per listing.

Because the average time spent browsing for the group in column (2) is inclusive of the amount of time spent sending contacts, not just viewing listings that were not contacted, we use the preceding value calculated from the group in column (3) to estimate the following that applies to searchers in column 2:

Time spent viewing listings without clicks = Time to view each listing without clicks * Average unique listings seen = .40 * 87.812 = 35.44 minutes

and

Average total time viewing listings after clicking = Average time spent browsing - Time spent viewing listings without clicks = 57.874 - 35.44 = 22.43 minutes.

Finally, we calculate time to view one listing:

Time per listing = Average total time viewing listings after clicking / Average number of contacts = 22.43/2.367 = 9.48 minutes per listing.[380]

[380] The numerator of "Time per listing" is an underestimate because "Time spent browsing without clicks" may capture some time spent viewing clicked-on listings that didn't result in a contact. The denominator of "Time per listing" is also an underestimate because the number of listings clicked on is proxied using the number of listings users book or send an inquiry about. Users may click on more listings than just the ones they want to inquire about or book. The two values are related. If the true denominator is higher than what we estimate, then the true numerator will be higher too. Higher listing clicks beyond those that resulted in a contact means more time spent viewing clicked-on listings that didn't result in a contact. The ratio should remain about the same.

2. Upper-end estimate of minutes per listing calculation

We use the hotel search cost model developed by Chen and Yao (2016) to calculate an upper-end estimate of minutes to view one listing. The paper uses data from consumer search behavior when booking hotels in four major international cities on an anonymous major U.S. online travel website.

A search is defined as a listing click-through, and the search cost for a listing is specified as:

$$c_{ij} = c_i(TimeConstraint_i, Slot_j) = \exp(\gamma_{i0} + \gamma_{i1} TimeConstraint_i + \gamma_{i2} Slot_j)$$
$$= \exp(3.07 - .05 * TimeConstraint_i + .01 * Slot_j)$$

where $TimeConstraint_i$ is the number of days between consumer i's search and her check-in. $Slot_j$ is the slot position of the j-th search. The exponential operator ensures that the costs are positive. The gammas are mean levels of cost coefficients.

Using this we can find that the mean search cost per listing when 30 days in advance (the sample average) is exp(3.07 – (.05*30)) = $4.81 per listing. The inflation adjusted value is $5.86.

From this we find that total search cost is then $5.86 per listing * 2.3 searches on average = $13.48.

This total cost can be conceptualized as the number of minutes of viewing listings multiplied by the consumer's value of time. Using $24.40 per hour as the value of time, we find that the time spent viewing listings is ($13.48 / $24.40 per hour) * 60 minutes per hour = 33.15 minutes.

We can calculate the minutes to view one listing as 33.15 minutes /2.3 searches = 14.41 minutes per listing.