

FTC Proposes Rule to Ban Hidden and Falsely Advertised Fees

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The Federal Trade Commission (FTC) has proposed a new rule aimed at eliminating certain "hidden" and "junk" fee practices. The FTC said that these fees, which may be undisclosed until late in the transaction process, are estimated to cost consumers 10s of billions of dollars annually.

The **proposed rule** aims to make markets more competitive by ensuring total price transparency.

Rulemaking Proceeding

The FTC initiated a public proceeding last year to obtain feedback regarding the impact of these fees on consumers and businesses, receiving over 12,000 comments. Consumers voiced frustration with fee disclosure practices across various sectors, including in the hospitality, online ticket retailing, apartment rentals, and utility industries.

The Proposed Rule

The proposed Section 464.2 is designed to prevent bait-and-switch pricing. It requires businesses to disclose the total price of an offer, display, or advertisement in a clear and conspicuous manner. The total price includes all charges a consumer must pay for a product or service, excluding shipping charges and government fees, but including any mandatory ancillary product or service. This prohibition on hidden fees applies even if a different entity provides the product or service. For instance, if an online travel agent advertises a hotel room's price provided by a hotel chain, the agent must display the total price, inclusive of mandatory fees charged by the hotel chain.

Section 464.3 proposes that businesses clearly and conspicuously disclose any amount a consumer may pay that is excluded from the total price before the consumer agrees to pay. This could include shipping charges, government fees, optional fees, voluntary

gratuities, and invitations to tip. The nature and purpose of fees also encompass the refundability of such fees and the identity of any product or service for which fees are charged. For example, a meal delivery app that includes 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 compensates a delivery driver while another portion compensates the business for providing the online application, a description that combines both portions without specifying each portion's recipient would violate Section 464.3.

The proposed rule also includes enforcement mechanisms, enabling the FTC to obtain refunds for affected consumers and pursue monetary penalties against businesses that fail to adhere to its provisions.

Several federal agencies, including the Consumer Financial Protection Bureau (CFPB), the Federal Communications Commission (FCC), the US Department of Housing and Urban Development (HUD), and the US Department of Transportation (DOT), are supporting the FTC's initiative and implementing similar rules within their respective sectors.

The FTC's proposed rule is currently open for public comment for 60 days following its publication in the Federal Register.

Additional Background

The FTC's proposed rule is the latest step by the Biden Administration in an ongoing effort to require businesses to disclose certain fees in their upfront advertised prices. A September 2023 **alert** noted recent California legislation addressing these issues, while an August 2023 **alert** highlighted

the latest consumer class actions faced by hotel operators regarding how they advertise prices, as well as additional White House action aimed at eliminating "junk fees" and increasing upfront pricing disclosures across many industries.

How We Can Help

In light of this evolving legal and regulatory environment, it is essential for companies to proactively manage their price advertising practices to avoid enforcement scrutiny, protect their business and brand, and maintain customer trust.

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