



November 17, 2022

## FTC ISSUES ADVANCE NOTICE OF RULEMAKING ON “JUNK FEES”

The Federal Trade Commission (“FTC”) issued a notice of advanced public rulemaking on so-called “junk fees.” The notice is an early step in the administrative process for drafting a regulation. The FTC is seeking public comments on twenty-one separate questions on various practices relating to the advertisement and disclosure of fees, competition on fees, the extent the fees cover a value-added, consumer perception of fees and how to best write a precise rule governing fees.

The FTC is seeking comment on three types of fees:

- Unnecessary charges for worthless, free or fake products or services;
- Unavoidable charges imposed on captive consumers; and
- Surprise charges that secretly push up the purchase price.

In the explanation of the proposed rulemaking, the FTC cited multiple examples of what it saw as “junk fees,” including resort fees and fees on live event tickets. The FTC did not explain how resort fees or live event ticket fees fit into the three categories listed above.

According to the FTC, since resort fees were introduced in the 1990s to 2015, such fees rose to one-sixth of total hotel revenues. In the FTC’s view, resort fees were “a means for some businesses to raise prices without appearing to do so.” The FTC views fees in the live event ticket sales as another “price-obscuring” transaction. The FTC cited a FTC-led workshop which found collective action problems hampered business’ ability to compete on fees. In the workshop, once one platform folded fees into its prices, the platform “lost significant market share” as “consumers perceived the platform’s advertised prices to be higher than its competitors’ displayed prices.” The FTC then cited testimony before Congress that only a mandatory legal requirement on all market participants would result in businesses listing all prices and fees up front.

The FTC has cited fees for “ancillary products” as unfair and deceptive fees in vehicle finance and payday lending. It remains to be seen to what extent the FTC recognizes that certain fees, such as returned check charges or some late payment charges, are capped or even set by state law and the disclosure of fees related to credit are regulated at the federal level.

It remains to be seen the extent that the FTC’s rulemaking will reach fees charged in connection with consumer financial products and services. The Consumer Financial Protection Bureau (“CFPB”) earlier this year requested public comments on fees for credit cards and other consumer financial products. See our ALERTS dated [Jan. 25, 2022](#) and [Jan. 26, 2022](#). Recently, the CFPB noted in the November supervisory highlights the prevalence of “convenience fees” or “pay-to-pay” fees among examined mortgage servicers. Mortgage servicers would charge consumers a fee to make their payments by phone or other preferred channel. The CFPB also targeted similar convenience fees charged by debt collectors and other fees not authorized by the original credit contract as a violation of the federal Fair Debt Collection Practices Act.

We will continue to monitor FTC and CFPB action related to fees on consumer products. □

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## FTC DELAYS COMPLIANCE DATE FOR SAFEGUARDS RULE

The FTC unanimously voted this week to extend the deadline for companies to comply with some of the changes the agency implemented to strengthen the data security safeguards financial institutions must put in place to protect their customers’ personal information by six months. The deadline for complying with some of the updated requirements of the Safeguards Rule is now June 9, 2023. Previously, the compliance date was December 9, 2022. For more information on the Safeguards Rule, see our [ALERT dated Oct. 5, 2022](#).

The extension comes after multiple trade groups requested that the FTC deadline for compliance. The request received broad support, including a bipartisan group of members of Congress. The FTC cited in the announcement a letter by the Small Business Administration’s Office of Advocacy discussing a shortage of qualified personnel to implement information security programs and that supply chain issues may lead to delays in obtaining necessary equipment for upgrading security systems. The endorsement and the concern that staffing and supply difficulties were exacerbated by the COVID-19 pandemic were cited by the FTC as a reason to extend the deadline. □

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