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Trade Regulation Rule on Unfair or Deceptive Fees

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Trade Regulation Rule on Unfair or Deceptive Fees

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Comment from National Consumer Law Center (on behalf of its low-income clients)

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General Comment

Attached please find comments from the National Consumer Law Center (on behalf of its low-income clients) concerning rental housing junk fees. Thank you for your consideration.

Attachments

Unfair or Deceptive Fees NPRM R207011_Comments Concerning Rental Housing Junk Fees_NCLC

The attachment is restricted to restrict all because it contains personally identifiable information data

Unfair or Deceptive Fees NPRM R207011_Comments Concerning Rental Housing Junk Fees_NCLC_Redacted

February 7, 2024

Via regulations.gov
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Unfair or Deceptive Fees NPRM, R207011 – Comments Concerning Rental Housing Junk Fees

The National Consumer Law Center (NCLC), on behalf of its low-income clients, is pleased to submit these comments in response to the Federal Trade Commission's (FTC or Commission) Notice of Proposed Rulemaking (NPRM) to promulgate a trade regulation rule entitled "Rule on Unfair or Deceptive Fees," R207011.¹ We thank the FTC for proposing a rule that is industry neutral and therefore would apply to rental housing, constituting a significant step toward helping to protect renters and rental housing applicants from egregious junk fees-related practices.²

We do not think there are any disputed issues of fact for this proposed rule. However, if the Commission conducts hearings regarding this rule, we wish to participate in those hearings and engage in cross-examination.

Our comments discuss rental housing junk fees, which cause particular harm to renters of color and lower income renters. We also address the FTC's questions on which we have input that goes beyond our February 8, 2023 comments in response to the Commission's Advanced Notice of Proposed Rulemaking (ANPR) in this rulemaking.³ Our comments include three appendices. Appendix A considers how the FTC's proposed rule would apply to the rental housing junk fees identified in NCLC's February 8, 2023 comments and in our subsequent report based on those comments, *Too Damn High: How Junk Fees Add to Skyrocketing Rents*. Appendix B illustrates—using screenshots—how certain rental housing listing platforms currently provide fee information to prospective renters. Appendix C provides excerpts from selected comments submitted in response to the NPRM that discuss rental housing junk fees.

We support the FTC's overall approach to regulating junk fees and also provide recommendations on how to strengthen the rule. Most critically, we urge the FTC to:

- Promulgate a final rule that applies to rental housing junk fees.
- Prohibit hidden, misleading, and excessive fees.

¹ Trade Regulation Rule on Unfair or Deceptive Fees, 84 Fed. Reg. 77420 (proposed Nov. 9, 2023) (to be codified at 15 C.F.R. pt. 464), <https://www.federalregister.gov/documents/2023/11/09/202324234/trade-regulation-rule-on-unfair-or-deceptive-fees>.

² These comments were written by NCLC attorneys Ariel Nelson, April Kuehnhoff, Steve Sharpe, and Chi Chi Wu.

³ Nat'l Consumer L. Ctr. et al., Comments on Advanced Notice of Proposed Rulemaking on Unfair or Deceptive Fees (Feb. 8, 2023), <https://www.nclc.org/wp-content/uploads/2023/02/FinalNCLC-et-al.-Group-Comments-re-Rental-Housing-Junk-Fees-with-Addenda.pdf>. NCLC subsequently published a report based on these comments. Ariel Nelson, April Kuehnhoff, Chi Chi Wu, & Steve Sharpe, Nat'l Consumer Law Ctr., *Too Damn High: How Junk Fees Add to Skyrocketing Rents* (2023), <https://www.nclc.org/wp-content/uploads/2023/03/JunkFeesRpt.pdf> [hereinafter NCLC, *Too Damn High*].

- Clarify that Businesses may not impose fees—whether mandatory or optional—that provide little or no value to the consumer in exchange for the charge.
- Clarify that vague descriptions of fees that a reasonable consumer would not understand violate the rule.
- State that “Ancillary Good or Service” includes fees that are part of the same transaction but that a third-party charges.
- Define fees as “mandatory” if they are not reasonably avoidable or if a reasonable consumer would expect that the good or service is included with the purchase or part of the transaction.
- Require itemization of all mandatory fees and, if applicable, require Businesses to state which fees are one-time fees and which are ongoing monthly fees.
- Require that any fees that may not be encompassed by the Total Price and therefore not disclosed under Section 464.2(a) be disclosed under Section 464.3(b) and itemized.
 - State that where additional costs that are excluded from the Total Price are variable, the Business must disclose the existence of such costs and any formula or method for their calculation.
- Explicitly prohibit misrepresentations regarding any amount included in the Total Price as well as any other fee or charge the consumer may pay.
- State that “before the consumer consents to pay” means before the consumer agrees to “make any payment” that is part of the transaction, including rental housing application fees.
- Issue the final rule as quickly as possible and also commit to issuing Advisory Opinions and Staff Interpretations to address any need for subsequent clarification.

We make additional recommendations, including specific changes to the proposed rule text, throughout these comments.

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I. The FTC Should Promulgate a Final Rule That Protects Renters from Hidden, Misleading, and Excessive Rental Housing Junk Fees

A. Rental housing junk fees likely harm millions of renter households, and renters of color and lower income renters in particular.

About 44 million households—or 35% of the U.S. population—live in rental housing.⁴ Renter households are more likely to be households of color and to have lower incomes. About 58% of Black households and 52% of Hispanic households rented their housing in 2019.⁵ In contrast, only about 28% of white households rented.⁶ Moreover, “longstanding inequities in education and labor markets continue to limit the earnings of households of color, perpetuating racial and ethnic disparities in cost-burdened rates.”⁷ 54% of Black renter households and 52% of Hispanic households are cost burdened—meaning that they pay more than 30% of their income on rent and utilities—while 42% of white households are cost burdened.⁸ Moreover, almost two-thirds of households that fall into the bottom 20% of incomes pay more than 50% of their income on rent and utilities, meaning they are “severely cost burdened.”⁹ Working class renters—the 20% of people who fall into the next level up on the income scale—also face unaffordable rents. The amount of working-class renters who are severely cost burdened has almost tripled to 17% in two decades.¹⁰ And “the dwindling supply of low-rent units is only worsening cost burdens.”¹¹ As detailed in our comments in response to the ANPR, to secure and maintain rental housing, renters across the country typically face a dizzying array of unavoidable fees (1) during their search for housing (e.g., application fees, fees to “hold” an apartment), (2) throughout the

⁴ Fact Sheet: Biden-Harris Administration Takes Action to Protect Renters (July 27, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/27/fact-sheet-biden-harris-administration-takes-action-to-protect-renters/>.

⁵ Drew Desilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.*, Pew Research Ctr. (Aug. 2, 2021), <https://www.pewresearch.org/shortreads/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/> (based on data from 2019); see also Joint Ctr. for Hous. Studies of Harvard Univ., *America’s Rental Housing 12* (2022) [hereinafter *America’s Rental Housing 2022*], https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf (renters are much more likely than homeowners to be single, to be households of color, and to have lower incomes; “High rentership rates among households of color reflect longstanding disparities in access to homeownership, including discriminatory lending, legal, and real estate practices.”).

⁶ Desilver, *supra* note 5 (white households account for three quarters of all owneroccupied U.S. housing units, but only a little over half of renter-occupied units).

⁷ *America’s Rental Housing 2022*, *supra* note 5, at 30.

⁸ *Id.*; see also Andrew Aurand, Dan Emmanuel, Emma Foley, Matt Clarke, Ikra Rafi, & Diane Yentel| Nat’l Low Income Hous. Coal., *The Gap: A Shortage of Affordable Homes 1* (2023), <https://nlihc.org/gap> (“Black, Latino, and Indigenous households are disproportionately extremely low-income renters and are disproportionately impacted by [the affordable housing] shortage”).

⁹ Jason DeParle, *Record Rent Burdens Batter Low-Income Life*, NY Times (Dec. 11, 2023), <https://www.nytimes.com/2023/12/11/us/politics/rent-burdens-low-income-life.html>; see also Joint Ctr. for Hous. Studies of Harvard Univ., *America’s Rental Housing 35* (2024), [hereinafter *America’s Rental Housing 2024*], https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf (“In 2022, 83 percent of [households earning less than \$30,000] were cost burdened, with the majority (65 percent) experiencing severe burdens, marking yet another alltime high.”).

¹⁰ DeParle, *supra* note 9.

¹¹ *America’s Rental Housing 2024*, *supra* note 9, at 2 (“A record-high 22.4 million renter households spent more than 30 percent of their income on rent and utilities. This is an increase of 2 million households over three years Among cost-burdened households, 12.1 million had housing costs that consumed more than half of their income, an alltime high for severe burdens.”).

duration of their lease (e.g., excessive late fees, processing or administrative fees, notice fees, valet trash fees, pest control fees), and (3) at the end of their lease (e.g., fees for cleaning and related move-out fees).¹²

Although these junk fees harm all renters, a Zillow study found that renters of color face steeper fees than white renters.¹³ According to Zillow, renters of color usually submit more applications and pay higher fees for those applications than white renters.¹⁴

Landlords may not disclose up front the avalanche of unavoidable fees renters must pay. As a result, renters may not know the true amount they owe at the start of their lease term and then on a monthly basis until they begin the lease signing process. The client story described in the testimony of the former Director of Housing Advocacy of Atlanta Legal Aid before the U.S. Senate Banking Subcommittee on Financial Institutions and Consumer Protection poignantly captures the experience of many renters with surprise and exorbitant junk fees:

Ms. Dixon is a single mother who found an apartment in the fall of 2020. At the height of the pandemic, she searched online for a place she could afford. She found a two - bedroom apartment that advertised a rent of just under \$1,400 per month. This rate was at the top end of what she could afford, but she looked at her budget and determined it would be possible. The apartment listing did not list any other fees she would be required to pay. She applied for the apartment and paid \$525 through the landlord's online portal which was supposed to cover her \$50 application fee, a \$175 move -in fee, and a \$300 screening fee. All these fees were nonrefundable. She was not able to see the lease or the apartment she'd be renting, but she knew if she did not pay sight unseen, she would lose the apartment to someone else.

A few weeks later, Ms. Dixon's landlord approved her application. She finally received and reviewed a copy of her lease two days before she was slated to move in. It was 50 pages long and contained 8 different addenda. She expected to pay her rent and pay for water. She didn't expect to be responsible for a package locker fee, a trash removal fee, a separate valet trash fee, a pest control fee, a technology package fee, an insurance fee, and a credit reporting fee, all of which were buried in the lease agreement. She also didn't know she would be charged a one-time \$200 approval fee. To make matters worse, Ms. Dixon's landlord did not accept the rent by cash, check, or money order. She either had to pay through Money Gram, which itself charges a fee, or pay through the landlord's online portal, which charged her an astonishing \$72 per month 'convenience fee.' When Ms. Dixon contacted our office a year later, she was paying \$230 more per month than her expected rent.¹⁵

¹² See generally NCLC, *Too Damn High*, *supra* note 3.

¹³ Manny Garcia, *Renters of Color Pay Higher Security Deposits, More Application Fees* Zillow (Apr. 6, 2022), <https://www.zillow.com/research/renters-of-color-higher-fees-30922/>.

¹⁴ *Id.*

¹⁵ *Taking Account of Fees and Tactics Impacting Americans' Wallets Before the S. Comm. on Banking, Hous., & Urban Affs., Subcomm. on Fin. Inst. & Consumer Prot.*, 118th Cong. (2023) (written testimony of Lindsey Siegel, Director of Housing Advocacy, Atlanta Legal Aid Society, on behalf of its lowincome clients), https://www.banking.senate.gov/imo/media/doc/siegel_testimony_7-26-23.pdf [hereinafter Siegel Testimony]; see also *Too Damn High*, *supra* note 3, at 6 ("As an advocate from South Carolina explained, landlords will advertise rentals for \$1100, but after pet fees, deposits, utility deposits, thirdparty company deposits, pest control fees (which people rarely would opt to use and often does not actually exist in practice), the rent will be up to \$1800 per month.").

Housing providers' failure to provide accurate pricing information can threaten renters' ability to effectively budget and to remain housed.¹⁶ Landlords also may fail to accurately and adequately explain the nature and purpose of certain fees.¹⁷ And, throughout the course of their lease, renters may end up being forced to pay fees for services that are not ultimately provided, fees for services that the landlord is legally obligated to provide under state law as part of renting a habitable premises, fees that are significantly greater than the cost to the landlord of a service, and/or fees prohibited by state or local law.¹⁸

One advocate in Louisiana summarized the conditions leading to abusive junk fees like this:

The proliferation of extremely long boilerplate leases such as the model National Apartment Association lease has provided cover for large, poorly-managed multifamily apartment complexes to justify charging hundreds of dollars in fees to tenants despite failing to deliver on their own basic promises. The extreme power imbalance between low-income renters seeking affordable housing in a constrained market makes it even easier for these abuses to go un-checked.

Junk fees render safe and decent rental housing even more out of reach because renters—who are disproportionately people of color and lower income and continue to face the financial fallout from the pandemic¹⁹—must pay them on top of rents that are already sky high. Junk fees also jeopardize access to future housing and financial stability.²⁰

Renters need a broad and robust FTC rule that covers rental housing. As discussed below, voluntary efforts to increase transparency are laudable, but not enough to rein in junk fee - related abuses in the rental housing market.

B. Enforcement actions have revealed the persistence of rental housing junk fees around the country and the need for a broadly applicable FTC rule.

Enforcement actions across the country have revealed widespread and abusive junk fees - related practices, further illustrating the need for a strong FTC rule that encompasses rental housing. Because these lawsuits require significant resources and often involve state law claims

¹⁶ See Fact Sheet: Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters (July 19, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/19/fact-sheet-biden-harris-administration-takes-on-junk-fees-in-rental-housing-to-lower-costs-for-renters/> [hereinafter White House Fact Sheet on Junk Fees]; see also Siegel Testimony, *supra* note 15, at 3 (“Atlanta Legal Aid’s low-income clients understand the risk of not paying rent, and the vast majority will avoid it at all cost. . . . Families who can’t afford junk fees will cut from other areas of their lives: food, medicine, clothing, transportation to work, doctor’s visits, or internet that their children need to complete school assignments. They will forgo other basic needs to avoid becoming homeless.”).

¹⁷ See e.g., NCLC, Too Damn High, *supra* note 3, at 16 (describing how landlords often charge unspecified or unexplained administrative processing fees).

¹⁸ See e.g., *id.* at 25–26.

¹⁹ America’s Rental Housing 2022, *supra* note 5, at 30–31 (“Households of color were especially likely to fall behind on rent, in part due to widespread income loss.”).

²⁰ NCLC, Too Damn High, *supra* note 3, at 7–8 (detailing how, if a tenant cannot afford to pay unavoidable junk fees, the fees may become an alleged rental debt that a housing provider seeks to collect through a third-party debt collector who reports the account to the Big Three credit bureaus, which leads to dunning by debt collectors and negative marks on credit reports that create longterm barriers to obtaining new housing).

that do not apply to tenants in all jurisdictions, an FTC rule is needed to protect all American consumers from the practices uncovered through litigation.

When state attorneys general have committed resources to rental housing cases, they have discovered landlords that charge fees with no relationship to their stated purpose and that violate state laws. In a series of enforcement actions, the Pennsylvania Attorney General unearthed landlords charging tenants for damages without proof,²¹ inflating the costs of damages through a 50% mark-up from the actual cost,²² deducting blanket “administrative charges” from the security deposit contrary to the relevant statute,²³ and imposing automatic and retaliatory legal fees of \$5,000 for tenants that attempted to pursue legal remedies even when the tenant prevailed in court.²⁴

The complaint in *Commonwealth v. Creshem Valley Realty Co., L.P.*, which was based on “numerous” reports covering fifteen residential properties in the Philadelphia area, illustrates how the imposition of junk fees works in tandem with conditions like insufficient heating,²⁵ partially collapsed roofs,²⁶ and dozens of dead rodents to create an abusive and dangerous environment.²⁷ The tenants’ lease had “numerous addendums attached thereto, [which was] more than 50 pages long—and well over 100 pages including various pamphlets—and [contained] various impermissible and/or unenforceable terms buried throughout, including provisions that attempt to authorize self-help eviction practices.”²⁸ The tenants in this case faced harrowing conditions that threatened both their physical well-being and their financial stability.

Enforcement actions in other states have addressed similar abuses:

- **Maryland:** In *Office of the Attorney General v. 786 Property Management, Inc.*, the Maryland Attorney General reached an agreement with the landlord stipulating that the landlord inflated late fees and charged other fees that exceeded the actual cost.²⁹ In addition, the landlord agreed to stop charging unwarranted court appearance fees.³⁰
- **Colorado:** The Colorado Attorney General reached a consent judgment in *State v. Populum Real Estate Holdings, LLC* that requires the defendants to clearly and

²¹ Assurance of Voluntary Compliance at 3–8, *Commonwealth v. McKinney Properties, Inc.*, No. 2022-287 (Pa. Com. Pl. Feb. 8, 2022), <https://www.attorneygeneral.gov/wp-content/uploads/2022/02/2022-02-08-MCKINNEY-PROP-AVC.pdf>.

²² Complaint at 4, *Commonwealth v. A.R. Building Company, Inc.*, No. 23013110 (Pa. Com. Pl. Nov. 14, 2023), <https://www.dropbox.com/scl/fi/bibbqvvgom1olydf5has3/202311-14-PA-v.-AR-Building-Company.pdf?rlkey=90oltw82igovv07fvmvweij9ir&dl=0>

²³ *Commonwealth of Pennsylvania v. Associated Property Management, Inc.*, No. 20192413, at 4 (Pa. Com. Pl. Aug. 10, 2021); <https://www.attorneygeneral.gov/wp-content/uploads/2021/08/2021-08-17-ARPM-Decision.pdf>; Assurance of Voluntary Compliance at 3–8, *Commonwealth v. McKinney Properties, Inc.* (Pa. Com. Pl. Feb. 8, 2022), <https://www.attorneygeneral.gov/wp-content/uploads/2022/02/2022-02-08-MCKINNEY-PROP-AVC.pdf>.

²⁴ Complaint at 25–26, *Pennsylvania v. Creshem Valley Realty Co., L.P.*, No. 230701198 (Pa. Com. Pl. July 13, 2023), <https://www.attorneygeneral.gov/wp-content/uploads/2023/07/230713-SBG-CIE-packet.pdf>.

²⁵ *Id.* at 13.

²⁶ *Id.* at 16.

²⁷ *Id.* at 13–14.

²⁸ *Id.* at 18.

²⁹ Press Release, Anthony G. Brown, Maryland Attorney General, Attorney General Brown Announces Settlement with Real Property Management Capital (Aug. 31, 2023), <https://www.marylandattorneygeneral.gov/press/2023/083123a.pdf>

³⁰ *Id.*

conspicuously disclose all fees prior to application and to refrain from deducting unwarranted charges from tenants' security deposit.³¹

- **Cincinnati, Ohio:** In *City of Cincinnati v. Vinebrook Homes, LLC*, the city filed suit against the largest institutional owner of single-family rental houses in the market, claiming that Vinebrook's practices are "illegal and predatory."³² These practices included improper trip fees for maintenance requests, small cost repair fees, 200% unilateral tenant holdover fees, and improper minimum attorney fees for leases in default.³³

These enforcement actions further illustrate what investigative reports,³⁴ private litigation,³⁵ and comments to the FTC submitted as part of this rulemaking³⁶ also show—that tenants face hidden, misleading, and excessive fees in an already challenging rental market. The actions also demonstrate that regulation and enforcement can lead to improved outcomes; however, the FTC must promulgate a broadly applicable rule to fully protect tenants.

³¹ Stipulated Final Consent Judgment, *State v. Populum Real Estate Holdings, LLC*, No. 2024CV30023 (Colo. Dist. Ct. Jan. 8, 2024), <https://coag.gov/app/uploads/2024/01/2024-01-08-16-17-07-Four-Star-Final-Consent-Judgment.pdf>.

³² Complaint, *City of Cincinnati v. Vinebrook Homes, LLC* (Jan. 18, 2023), <https://www.scribd.com/document/620563275/Cincinnati-vs-Vinebrook-Complaint>; Molly Schramm, *Cincinnati sues Vinebrook Homes after 'repeated violations,' breach of settlement agreement*, WCPO (Jan. 18, 2023), <https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/sues-vinebrook-homes-after-repeated-violations-breach-of-settlement-agreement>.

³³ Complaint at 25–26, 36–37, *City of Cincinnati v. Vinebrook Homes, LLC* (Jan. 18, 2023), <https://www.scribd.com/document/620563275/Cincinnati-vs-Vinebrook-Complaint>.

³⁴ See, e.g., Elvia Malagón & Stephanie Zimmermann, *For Chicago renters, added fees mean people end up paying more for apartments*, Chicago Sun-Times (Jan. 2024), <https://graphics.suntimes.com/money/2024/chicago-apartment-rent-landlord-tenant-application-junk-fee/>; Willoughby Mariano, *Landlords nickel and dime metro Atlanta renters with extra fees*, Atlanta Journal-Constitution (June 16, 2023), <https://www.ajc.com/news/investigations/landlords-nickel-and-dime-metro-atlanta-renters-with-extra-fees/6RBFENKIHFA57CSNFCITWKFT4A/>.

³⁵ See Press Release, Towards Justice, *Tenant Files Class Action Suit Against Colorado Mega Landlord for Junk Fees* (Jan. 11, 2024), <https://towardsjustice.org/2024/01/11/press-release-tenant-files-class-action-suit-against-colorado-mega-landlord-for-junk-fees/>; Class Action Complaint, *Senter v. Metropolitan Management Group, LLC*, C-03-CV-22-002461 (Md. Cir. Ct. June 23, 2022); Siegel Testimony, *supra* note 15 (discussing junk fees seen in legal aid practice).

³⁶ We have included excerpts of comments provided in response to this rulemaking in Appendix C. Additional comments submitted in response to this rulemaking that discuss rental housing junk fees include: Colo. Poverty L. Project, *Comments on Unfair or Deceptive Fees NPRM*, R207011, FTC-2023-0064-2920 (Jan. 12, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-2920> (discusses improper attorney fees); Legal Aid Found. of L.A., *Comments on Proposed Trade Regulation Rule on Unfair or Deceptive Fees*, R207011, FTC-2023-0064-2862 (Jan. 8, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-2862> (misleading repair and parking fees); AARP, *Comments on Unfair or Deceptive Fees NPRM*, R207011, FTC-2023-0064-2885 (Jan. 8, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-2885> (lists fees and references NCLC's report, *Too Damn High: How Junk Fees Add to Skyrocketing Rents*); Cmty. Legal Servs. of Phila., *Comments on Unfair or Deceptive Fees NPRM*, R207011, FTC-2023-0064-2892 (Jan. 8, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-2892> (discusses application fees and fees to make payments); Hous. Pol'y Clinic, Univ. of Tex. Sch. of L., *Comments on Unfair or Deceptive Fees NPRM*, R207011, FTC-2023-0064-2888 (Jan. 8, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-2888> (discusses various rental housing junk fees, explains how industry actively promotes these fees as easy opportunities to increase costs for renters to put more money in landlords' pockets, and analyzes examples of lease quotes provided for specific apartments).

II. **Answers to General Questions: We Support the FTC’s Overall Approach to Regulating Junk Fees**

The FTC is considering a rule that would prohibit most businesses in the U.S. economy, including rental housing providers, from misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. We respond to the following general questions about the proposed rule:

A. Q1: 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?

We urge the FTC to promulgate a final rule that applies to rental housing junk fees and prohibits both hidden and misleading fees, as set out in Sections 464.2 and 464.3 of the proposed rule. The final rule also should prohibit excessive fees.

Players in the rental housing industry have recognized the benefits to both renters and landlords of disclosing fees to rental housing applicants. As the CEO of Rent.com, a rental housing listings platform, summarized:

Transparency around lease terms and fees are ultimately beneficial to both renters and landlords. . . . Renters gain a clearer understanding of the total costs associated with a potential rental, allowing them to better assess their ability to afford a given apartment and to make better household budgets. Landlords receive a higher proportion of qualified applicants who are in a financial position to fulfill the lease terms.³⁷

The White House also has emphasized that transparency is necessary to protect renters. In July of 2023, the White House announced it had secured commitments from three major rental housing listing platforms—Zillow, Apartments.com, and AffordableHousing.com—to provide consumers with total, upfront cost information on rental properties.³⁸ These commitments are an important step toward protecting renters from hidden fees.

However, voluntary efforts are not enough to address the harms of rental housing junk fees and to bring about the benefits of transparency. The commitments the White House obtained do not impose any enforceable, uniform requirements on housing providers. Moreover, not all of the platforms mentioned in the White House’s announcement appear to require housing providers to add fee information when listing a property; instead, landlords that do not provide fee information can still list their properties on the site.³⁹ An FTC rule prohibiting hidden fees therefore is necessary to ensure legally binding protections that apply to rental housing.

Although disclosure is essential, a rule mandating disclosure alone would not curb many of the widespread unfair and abusive junk fees practices occurring in the rental housing market, such as collecting fees for services not provided (e.g., valet trash fees, pest control fees⁴⁰), fees with

³⁷ Aly J. Yale, *The Apartment Transparency Push: What Rental Platforms Are Doing and What It Means for Renters*, U.S. News (Sept. 6, 2023), <https://realestate.usnews.com/real-estate/articles/the-apartment-transparency-push-what-rental-platforms-are-doing-and-what-it-means-for-renters> (quoting Jon Ziglar, CEO of Rent.com).

³⁸ White House Fact Sheet on Junk Fees, *supra* note 16.

³⁹ Yale, *supra* note 37.

⁴⁰ NCLC, *Too Damn High*, *supra* note 3, at 25–26.

vague names and unclear purposes (e.g., processing or administrative fees⁴¹), and fees that far exceed the actual cost of providing a particular service (e.g., notice fees⁴²). Disclosure alone also is insufficient given the sizable power imbalance between tenants and landlords.⁴³ Renters today face an affordable housing shortage and sky-high rents.⁴⁴ To nail down an apartment, they typically also must survive a screening process based on specialized tenant screening reports and scores that are rife with inaccuracies, rely on information plagued with racial disparities, and may not be predictive of a person's ability to succeed as a renter.⁴⁵ As a result, many renters struggle to find a place to live and cannot simply negotiate around unavoidable and predatory junk fees. As the Atlanta Journal-Constitution explained:

Renters have little if any leverage to negotiate unfair terms, especially if they're on a tight budget. Application, reservation and credit check fees totaling \$175 or more are commonplace. If potential tenants don't sign, they lose their money and must pay more fees to apply at a different apartment complex.⁴⁶

To address this array of harms to renters, the FTC should finalize a rule that not only prohibits hidden and misleading fees but also excessive fees, as discussed in more detail below in response to the FTC's specific questions.

Additionally, the FTC should finalize Section 465.4 of the proposed rule, which, in providing that state laws affording consumers greater protections than the FTC rule are consistent with the FTC rule, appropriately recognizes the role that states should play in reining in junk fees. States may be better able to quickly tailor laws or regulations to address the specific types of junk fees that emerge in their jurisdiction. States also could give consumers a private right of action to enforce those laws or regulations.

⁴¹ *Id.* at 16–18.

⁴² *Id.* at 20–21.

⁴³ See Heather Vogell, *When Private Equity Becomes Your Landlord*, ProPublica (Feb. 7, 2022), <https://www.propublica.org/article/when-private-equity-becomes-your-landlord> (“During the past decade, private equity-backed firms . . . have stormed into the multifamily apartment market, snapping up rentals by the thousands and becoming major landlords in American cities . . .”).

⁴⁴ See Aurand et al., *supra* note 8, at 3 (“The past three years—characterized by a global pandemic, widespread job losses, record-breaking inflation, unusually low vacancy rates, and skyrocketing retinal prices—have underlined and exacerbated the financial precarity experienced by the nation's lowest-income renters.”).

⁴⁵ See generally Chi Chi Wu, Ariel Nelson, April Kuehnhoff, & Caroline Cohn, Nat'l Consumer Law Ctr., *Digital Denials: How Abuse Bias, and Lack of Transparency in Tenant Screening Harm Renters* (2023), https://www.nclc.org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf.

⁴⁶ Willoughby Mariano, *'Not outright illegal,'* Atlanta Journal-Constitution (June 16, 2022), <https://www.ajc.com/news/investigations/dwellings/georgia-renter-protections-lease/>.

B. Q3: 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.

With respect to the rental housing market, the proposed rule would benefit consumers and competition. By requiring disclosure of the actual cost of an apartment, the rule would help renters to comparison shop and enable them to find housing that fits their budget.⁴⁷

Because the overwhelming majority of eviction cases are filed due to non-payment of rent,⁴⁸ ensuring that consumers can accurately determine the true cost of rental housing is a critical element to preventing future eviction actions. Preventing eviction filings benefits tenants by preventing families from becoming homeless,⁴⁹ and also benefits landlords by avoiding the expense associated with evictions.⁵⁰ Even if no eviction case is filed, alleged rental debt due to unavoidable junk fees can haunt tenants through debt collection and credit reporting, which in turn create barriers to future housing.⁵¹

Disclosure also may encourage competition among housing providers.⁵² The prohibition on misleading fees, for example, could benefit consumers by compelling housing providers to jettison certain fees that are seemingly inexplicable, like “January fees.” It will also benefit honest landlords who advertise the total price of rent up front, which may make their rents seem more expensive than a landlord that advertises a lower rent but charges hidden fees.

⁴⁷ See White House Fact Sheet on Junk Fees, *supra* note 16 (“A prospective renter may choose one apartment over another thinking it is less expensive, only to learn that after fees and other add-ons the actual cost for their chosen apartment is much higher than they expected or can afford.”).

⁴⁸ See, e.g., Tim Robustelli et al., New America, Displaced in America: Mapping Housing Loss Across the United States (2020), <https://www.newamerica.org/future-land-housing/reports/displaced-america/> (“non-payment of bills is the most common cause of housing loss”); Robert Goodspeed et al., Poverty Solutions University of Michigan, Michigan’s Eviction Crisis, UM Poverty Solutions 5 (2020), <https://poverty.umich.edu/files/2020/05/Michigan-Eviction-Project-policy-brief.pdf> (“In the Washtenaw County sample, 92% of cases were filed for non-payment of rent . . . In Lenawee County, 76% of cases were for nonpayment of rent.”); Eviction Lab, Why Eviction Matters- Why do people get evicted?, <https://evictionlab.org/why-eviction-matters/#why-do-people-get-evicted> (“Most evictions happen because renters cannot or do not pay their rent.”); City of Boston, An Action Plan to Reduce Evictions in Boston (2019), [https://www.boston.gov/sites/default/files/file/2020/01/An Action Plan to Reduce Evictions in Boston \(report\)%20200109_1.pdf](https://www.boston.gov/sites/default/files/file/2020/01/An%20Action%20Plan%20to%20Reduce%20Evictions%20in%20Boston%20-%20Final%20Report.pdf) (“During the three years examined [2015-2017], nonpayment was cited in 70 percent to 78 percent of cases.”); Lawyers’ Committee for Better Housing, Opening the Door on Chicago Evictions 2 (2019) (82% of evictions filed in Chicago from 2010-2017 alleged non-payment of rent), <https://eviction.lcbh.org/sites/default/files/reports/chicago-evictions-2-forced-out-for-less.pdf>.

⁴⁹ See, e.g., Nat’l Low Income Hous. Coal., Eviction Filings Associated with Increases in Homelessness (Apr. 10, 2023), <https://nlihc.org/resource/eviction-filings-associated-increases-homelessness> (“The results [of a recent study] indicate that eviction filings, which are the first recorded step in the legal eviction process, are associated with increases in sheltered homelessness in the following year.”); Nat’l Law Ctr. on Homelessness & Poverty, Protect Tenants, Prevent Homelessness 7 (2018), <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf> (summarizing research about the connection between evictions and homelessness).

⁵⁰ TransUnion, The True Cost of an Eviction (Feb. 10, 2017), <https://www.mysmartmove.com/blog/true-cost-eviction-infographic> (“[T]he true cost of an eviction can range from \$3,500 up to \$10,000.”).

⁵¹ See, NCLC, Too Damn High, *supra* note 3, at 7–8 (discussing how junk fees jeopardize access to future housing and financial stability).

⁵² See White House Fact Sheet on Junk Fees, *supra* note 16.

We urge the FTC to vigilantly enforce any finalized rule and coordinate with other federal and state agencies to ensure that the industry actors do not thwart the rule's pro-competition and consumer-protection purposes.

We also note that it will remain important for the FTC and other federal and state agencies to collaborate to enforce antitrust laws after the implementation of the final rule. In response to requirements to disclose junk fees, landlords are likely to increase the total price of the rent to avoid losing revenue that previously came from undisclosed or misleading junk fees. To avoid losing market share, landlords may try to collude to fix prices. Such an unlawful scheme may be occurring now.⁵³ Any such price-fixing scheme could undermine the FTC rule's ability to foster a competitive rental housing market.

III. Answers to Questions about Definitions: All Provisions of the Rule Should Apply to the Rental Housing Industry

We respond to the following questions about definitions in the proposed rule:

A. Q12: Should the proposed definition for “Business” exclude certain businesses, and if so, why?

The definition for “Business” should not exclude certain businesses. We urge the FTC to adopt a broad and inclusive definition, ensuring that the final rule covers rental housing providers. As discussed in detail in our comments in response to the ANPR, the rental housing market is rife with hidden, unavoidable, vague, and excessive junk fees that make housing even more unaffordable and jeopardize access to future housing and financial stability.⁵⁴ Voluntary efforts alone will not rein in the rampant abuses in this market (see Section II.A. above), so the FTC should not create an exception for this industry in the final rule.

Moreover, with this rule, the FTC would simply be clarifying the FTC Act, which is broadly applicable. The rule would essentially establish a basic floor for most businesses to prevent deception and unfairness: Businesses must communicate the true price of the good or service provided and may not mislead consumers.

B. Q10: Are the proposed definitions clear? Should any changes be made to any definitions? Are additional definitions needed?

The FTC should clarify that “Ancillary Good or Service” includes fees charged by a third-party company and not by the Business directly, but that are part of the same transaction. It would

⁵³ A number of private lawsuits (consolidated into multidistrict litigation) are accusing RealPage, a real estate technology company and provider of pricing software, of conspiring with property managers and owners to overcharge rent in violation of antitrust laws. See Mike Scarcella, *Renters suing RealPage get US backing in pricing lawsuits*, Reuters (Nov. 16, 2023), <https://www.reuters.com/legal/government/renters-suing-realpage-get-us-backing-pricing-lawsuits-2023-11-16/>. The Department of Justice has filed a statement of interest in the litigation and also has opened an investigation into RealPage. See Heather Vogell, *Department of Justice Opens Investigation Into Real Estate Tech Company Accused of Collusion with Landlords* ProPublica (Nov. 23, 2023), <https://www.propublica.org/article/realpage-rent-doj-investigation-antitrust>.

⁵⁴ NCLC, *Too Damn High*, *supra* note 3, at 6–8; see also Members of Congress Maxwell Alejandro Frost, Jimmy Gomez et al., Letter Re: R207011 Proposed Rule, Trade Regulation Rule on Unfair or Deceptive Fees, 88 FR 77420 (November 9, 2023), <https://frost.house.gov/sites/evo-subsites/frost.house.gov/files/evo-media-document/comment-letter-on-ftc-junk-fees-rule-rep.-frost.pdf>.

follow that because 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,” a Business would be required to include any mandatory fees charged by a third-party company that are part of the same transaction in the Total Price. In the rental housing context, this requirement would mean that, for example, landlords would be required to include mandatory fees from third-party companies that bill tenants for utilities-related fees⁵⁵ or collect rent on landlords’ behalf⁵⁶ in the Total Price.

We also urge the FTC to define “mandatory” as discussed below in response to Question 19 (Section III.E.).

C. Q11: Should the scope of any of the proposed definitions be expanded or narrowed, and if so, how and why?

As discussed above in response to FTC Question 12 (Section III.A), the FTC should not narrow any definitions such that the rule excludes the rental housing industry or rental housing junk fees from coverage.

D. Q14: 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 § 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?

...

(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?

No, the FTC should not add a new definition of “Covered Business” to narrow the “Businesses” covered by the rule’s specific requirements. To the extent that the FTC does add a definition that excludes certain businesses from coverage under the rule, it should not limit coverage to the live-event ticketing and short-term lodging industries. Nor should any definition of Covered Business exclude businesses that offer credit, lease, or savings products from any provisions of

⁵⁵ See, e.g., NCLC, *Too Damn High*, *supra* note 3, at 15 (South Carolina advocate reported that many landlords contract with a third party (e.g., Conservice) to meter the tenants’ utilities and bill them. These third parties charge a setup fee and a monthly service fee of around \$5; tenants cannot avoid these fees because a mandatory utility addendum requires them to use the service and allows the service fee to go up).

⁵⁶ See, e.g., *id.* at 17–18 (discussing advocates’ reports that tenants must now pay rent through third party companies that charge “convenience” fees).

the rule.⁵⁷ For the reasons discussed above, the rental housing industry—including housing providers of all sizes and private companies that bill tenants for utilities or who collect rent on landlords' behalf—should be subject to all requirements of the rule.

E. Q19: 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?

We urge the FTC to include a provision defining a fee or charge as “mandatory” if it is not reasonably avoidable or if a reasonable consumer would expect the good or service to be included with the purchase or part of the transaction. We are concerned that landlords will characterize certain fees that are not reasonably avoidable as “optional,” such as fees that landlords automatically impose and that tenants must actively opt out of.

Additionally, how the definition of Total Price would apply to certain rental housing junk fees is not clear. For example, fees that may vary based on usage, such as certain utilities-related fees, are mandatory, though the exact amount that a tenant would be required to pay is not necessarily knowable up front. Additionally, certain fees become mandatory for only some people, such as pet deposits, pet rent, late fees, or some notice fees.

The FTC should clarify that, to the extent that certain fees are de facto “excluded from the Total Price” even though they are fees that consumers “must pay” and would otherwise be required to be disclosed as part of the Total Price, they must be disclosed under Section 464.3(b). In other words, Businesses must disclose all fees, either under Section 464.2(a) as part of the Total Price or under Section 464.3(b) because they are “any amount a consumer may pay that is excluded from the Total Price.”

Finally, to provide clarity around what kinds of industry-specific fees must be disclosed as part of the Total Price, we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions, as described in Section VI below.

IV. Answers to Questions about the Prohibition on Hidden Fees: The Rule Should Require Itemization and Prohibit Fees that Provide Little or No Value to the Consumer and Excessive Fees

We respond to the following questions about the prohibition on hidden fees:

A. Q20: 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?

We urge the FTC to address any ambiguity in this prohibition by requiring itemization of mandatory fees, including the separate listing of one-time fees and ongoing monthly fees, as

⁵⁷ For further discussion of why the Commission should not narrow the definition to exclude Businesses offering these products, see Consumer Fed. of America et al., Comments on Notice of Proposed Rulemaking, Unfair or Deceptive Fees Trade Regulation Rulemaking at 23 (Feb. 7, 2024).

discussed below in our response to FTC Question 22 (Section IV.B). To the extent any other ambiguity exists, we urge the Commission to issue the final rule as quickly as possible, but then to commit to issuing Advisory Opinions or Informal Staff Opinions, as described in Section VI below.

B. Q22: 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?

The proposed rule should require itemization of all rental housing fees and charges that make up the “Total Price.” Itemization is not contrary to “all in” pricing,” and is necessary in the rental housing context because it would enable renters to assess whether their rights are being violated. For example, a renter would be able to determine whether a landlord charged them for services that the landlord is legally obligated to provide as part of renting a habitable premises, such as pest control fees, if the landlord is affirmatively required to itemize the fees and charges. A renter also would be able to ascertain when a landlord imposed a fee that certain jurisdictions prohibit, such as a pet fee for service and emotional support animals.⁵⁸ In some jurisdictions with rent stabilization, such as California, landlords have been unbundling expenses typically covered by rent and charging them as separate fees to circumvent state restrictions on rent increases.⁵⁹ Additionally, for most U.S. Department of Housing and Urban Development’s (HUD) Housing Choice Voucher program, “rent” is statutorily capped at 30% of a voucher holder’s income and is intended to cover the unit itself, as well as reasonable utilities and all essential housing services.⁶⁰ Fees for necessary services or mandatory charges for nonessential services or facilities are illegal if, when added to the rent, the amount exceeds the 30% rent maximum.⁶¹ Thus, because rent is limited by statute and tenants may need to evaluate the legality of extra charges, tenants need to know what is included in their rent.⁶²

The Commission should add a subsection (1) after Section 464.2(a) that requires Businesses to:

- Itemize all mandatory fees.
- If applicable, state which fees are one-time fees and which are ongoing monthly fees.
 - Any one-time fees must be listed together and appear under the header: “One-time fees.”
 - Any monthly fees must be listed together and appear under the header: “Monthly fees.”

⁵⁸ See, e.g., N.Y.C. Comm’n on Human Rights, Frequently Asked Questions: Emotional Support Animals in Housing, <https://www.nyc.gov/assets/cchr/downloads/pdf/materials/EmotionalSupportAnimalsHousingFactSheet.pdf> (last visited Jan. 18, 2024).

⁵⁹ Correspondence with Marie Claire Tran-Leung, Evictions Initiative Project Director & Senior Staff Attorney, National Housing Law Project (Dec. 18, 2023) (on file with the authors).

⁶⁰ Nat’l Hous. Law Proj., *HUD Housing Programs: Tenants’ Rights (The Green Book)* § 4.2.1 (5th Ed.).

⁶¹ *Id.* § 6.3.3.2.

⁶² *Id.* §§ 6.3.3.1, 6.3.3.2; see also *id.* § 6.3.5 (“Some Section 8 voucher landlords have illegally demanded and received ‘under-the-table’ payments from participants. . . . [L]andlords demand extra payments for ‘amenities,’ such as use of a garage or laundry facilities, when these items are already covered under the Section 8 lease and the Housing Assistance Payment (HAP) contract. Unless the PHA has specifically approved such charges in addition to the ‘reasonable’ rent, demanding these payments is illegal because they raise the tenant’s contribution beyond the amount authorized under the statutory scheme, and may also be tortious, fraudulent, or an unfair business practice.”).

Itemization would not be not overly burdensome for housing providers, especially given the significant benefit to consumers. Some rental housing listing platforms already display itemized costs (as shown in Appendix B). AffordableHousing.com explains: “To ensure transparency in rental costs, AffordableHousing.com requires property owners to itemize all fees associated with this rental property. This includes move-in costs, recurring lease charges, and refundable fees.”⁶³ Additionally, at least for some rental properties, Zillow separately lists “monthly costs” and “one-time costs.” These lists also include costs that only become mandatory in certain circumstances. For example, the Zillow listing for the unit in Atlanta, Georgia, captured in Appendix B, lists pet rent as a monthly cost. Apartments.com and AffordableHousing.com similarly list information about pet rent and pet deposits.

That listing platforms already collect and display fee information means that some landlords are already taking steps toward complying with a potential FTC itemization requirement. Moreover, it is possible that listing platforms will adjust how they display fee information in response to the FTC’s rule to help enable landlord compliance.

In addition to adding a subsection after Section 464.2(a), we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions that include examples of how Businesses can comply with any itemization requirement.

C. Q23: 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?

The requirement in Section 464.2(a) may not effectively eliminate fees charged by landlords that provide little or no value to the consumer in exchange for the charge. Under that provision, as long as the landlord includes those junk fees in the Total Price, they can still charge them. On the other hand, the prohibition on misleading fees in Section 464.3(a) could result in landlords eliminating mandatory fees that provide little or no value to the consumer. For example, to the extent that landlords have been misrepresenting the nature and purpose of certain fees and cannot accurately explain them (e.g., “January fees”), the rule compel landlords to eliminate them.

Requiring landlords to itemize all the fees and charges that make up the Total Price, as discussed in response to FTC Question 22 (above in Section IV.B), could similarly prompt landlords to stop charging fees that provide little or no value. Landlords may decide it is not worth the extra effort to itemize valet trash fees or processing fees, for instance, once they have to disclose them in the Total Price. Landlords instead may decide to publish a single Total Price instead. That may not result in landlords immediately offering a lower Total Price (landlords may simply incorporate the fees into the price of the rent itself). However, as discussed above in response to FTC Question 3 (Section II.B), by requiring landlords to clearly state the Total Price, this rule could ultimately lead to more competition in the rental housing market, which could eventually result in lower prices.

⁶³ 2 Bedroom Single Family House 1319 Campbellton Rd SW in Atlanta, GA, AffordableHousing.com, <https://www.affordablehousing.com/atlanta-ga/1319-campbellton-rd-sw-633093/> (last visited Dec. 13, 2023) (this information appears when mouse hovers over “i” icon next to the word “Fees”).

D. Q24: 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?

The rule should prohibit all fees—both mandatory and optional fees—that provide little or no value to the consumer in exchange for the charge. The prohibition on misleading fees in Section 464.3 may already prohibit some such fees. For example, by charging a tenant for services that the landlord is legally obligated to provide as part of renting a habitable premises—such as pest control fees—a landlord would misrepresent the nature and purpose of a fee. Charging a tenant for services that the landlord fails to provide would similarly violate the prohibition on misleading fees. The Commission should clarify and make explicit that these practices violate the rule, both through the text of the rule itself and by committing to issue Advisory Opinions or Staff Interpretations upon request to interpret the final rule.

E. Q25: Should the proposed rule prohibit fees that are excessive? Why or why not? How would such a rule define excessive fees?

The rule should prohibit excessive fees and fees that significantly exceed the cost of providing a good or service. As detailed in our comments in response to the ANPR, many housing providers charge fees that appear to significantly exceed the cost to the housing provider of a service and could be considered excessive in amount. For example, respondents to the survey of legal services and nonprofit attorneys between November and December of 2022 reported that landlords charged notice fees simply for printing and posting a variety of notices.⁶⁴ A Utah advocate stated that landlords charge these notice fees—which are typically \$50—for printing out a piece of paper and taping it to a tenant’s door. Some advocates specifically observed that landlords charge fees for legally required notices. A Virginia advocate reported that some landlords charge an extra “administrative fee” when providing the pre-lawsuit notice required by Virginia law.

The prohibition on misleading fees in Section 464.3 already prohibits certain excessive fees to the extent that the Business has misrepresented the nature and purpose of those fees. As discussed below in Section VI, the Commission should clarify that this is the case by committing to issuing Advisory Opinions or Informal Staff Opinions.

V. Answers to Questions about the Prohibition on Misleading Fees: The Rule Should Prohibit Businesses from Misrepresenting the Nature and Purpose of All Fees, Including Vague Descriptions of Charges

We respond to the following questions about the prohibition on misleading fees:

A. Q26: 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?

⁶⁴ NCLC, *Too Damn High*, *supra* note 3, at 20–21.

The FTC should clarify that vague descriptions of fees that are not understandable to a reasonable consumer misrepresent the nature and purpose of such fees, including because they misrepresent the identity of any good or service for which fees are charged. For example, in the rental housing context, an unspecified “administrative” or “processing” fee would violate this prohibition. As would an “insurance fee” where the landlord misrepresents the nature of the coverage, such as by suggesting that the fee covers the tenant when it actually only covers the landlord.

The FTC also should clarify that a landlord misrepresents the nature and purpose of a fee in violation of Section 464.3(a) if the landlord informs a prospective tenant that they must pay a certain amount for tenant screening, but then the true cost of the screening is less than the amount stated and charged.⁶⁵ Additionally, a landlord violates the provision if they, or a third-party company, represent that charges are based on individual use and then charge fees for water that greatly exceed the tenant’s actual use because they are based on a percent age of all water usage in the entire building.⁶⁶

The FTC should provide guidance and examples explaining the circumstances under which the rule prohibits vague fees through issuing Advisory Opinions or Informal Staff Opinions.

1. *Q26(a): Does § 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?*

Yes, the provision prohibiting misrepresentations regarding “the nature and purpose of any amount a consumer may pay” clearly includes any amount included in the Total Price if that amount is itemized separately. To the extent the provision is not clear, we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions as described in Section VI below.

2. *Q26(b): Does § 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?*

No, this provision is not clear. The FTC should explicitly state that Section 464.3(a) prohibits misrepresentations regarding any amount included in the Total Price as well as any other fee or

⁶⁵ The FTC also should separately prohibit fees like these on the grounds that they are excessive, as discussed above in response to Question 25 (Section IV.E).

⁶⁶ See MacKenzie Elmer, *Ratio Billing in Apartments Leaves Renters in the Dark about Utility Costs* Voice of San Diego (Apr. 26, 2023), <https://voiceofsandiego.org/2023/04/26/ratio-billing-in-apartments-leaves-renters-in-the-dark-about-utility-costs/>; see also NCLC, *Too Damn High*, *supra* note 3, at 14–15 (California advocate commented that corporate landlords in particular charge “ratio utility billing system” contract fees, which are onerous and impossible for the tenant to investigate or challenge; Maryland advocate reported that there has been a shift from all or some utilities being included in the rent to ratio billing systems, often with a third-party billing company involved, where bills can fluctuate wildly and be redundant; South Carolina advocate stated that landlords and thirdparty companies bill for a split of the utilities among the whole complex, which results in splits that seem unreasonable and bills that are higher than what a tenant’s independent usage would be).

charge the consumer may pay, such as Shipping Charges, Government Charges, fines, penalties, optional charges, voluntary gratuities, and invitations to tip.

We recommend that the Commission modify Section 464.3(a) so that it reads:

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 **included in the Total Price and any other fee, charge, or other amount the consumer may pay, including but not limited to Shipping Charges, Government Charges, fines, penalties, optional charges, voluntary gratuities, and invitations to tip. Violations of this part include misrepresenting the refundability of fees and the identity of any good or service for which fees are charged.**

In addition to implementing these changes, we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions as described in Section VI below.

B. Q27: 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?

The FTC should ensure that Section 464.3(b) requires an itemized disclosure of any amounts that a consumer may pay, such as optional fees, that may be excluded from the Total Price. We discuss the specifics of this itemized disclosure below in response to FTC Question 27(b) (Section IV.B.2).

Additionally, the FTC should clarify that any fees that may not be encompassed by the Total Price and therefore are not disclosed under Section 464.2(a) must be disclosed under Section 464.3(b). In other words, as discussed in response to FTC Question 22 (Section IV.B), Businesses must disclose and itemize all fees, either under Section 464.2(a) as part of the Total Price or under Section 464.3(b) because they are “any amount a consumer may pay that is excluded from the Total Price.”

Finally, consistent with the response to FTC Question 26 (Section IV.A), the FTC should clarify that vague descriptions of fees that are not understandable to a reasonable consumer misrepresent the nature and purpose of such fees, including because they misrepresent the identity of any good or service for which fees are charged. Thus, a disclosure that includes such vague descriptions of fees would be inadequate and violate Section 464.3(b).

1. *Q27(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”?*

The FTC should ensure that consumers receive as much notice as possible of the existence of certain mandatory fees, even if the amount they will owe is not knowable until usage occurs or if they will only owe the fees under certain circumstances, meaning that such fees may be de

facto excluded from the Total Price. For example, landlords often charge fees for late payment. Although the landlord cannot quantify this fee at the outset of the lease because it is unknown whether and how many times it will be incurred, and thus cannot be included in the Total Price (see discussion in Appendix A), the landlord should still be able to disclose the fee's existence in advertisements and certainly must disclose its existence before the consumer consents to pay any amount.

To address circumstances like these, the FTC should clarify that "before the consumer consents to pay" means before the consumer agrees to "make any payment" that is part of the transaction (this clarification to the provision's text is reflected below in response to FTC Question 27(b) (Section IV.B.2)). A Business would comply with this requirement by including the information in any offer, display, or advertisement or by disclosing the information before the consumer makes any payment. In the rental housing context "any payment" would include application fees.

Complying with such a requirement should not be too onerous, especially given the benefit to consumers. Some rental housing listing platforms already include fee information, as shown in Appendix B. To enable landlords to fully comply with all disclosures required under the rule, these listing platforms could expand the range of fees listed to include mandatory fees that tenants might incur, like late fees. As long as the Total Price was displayed more prominently than other Pricing Information, as Section 464.2(b) demands, such an itemization practice would comply with the rule.

2. *Q27(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?*

Section 464.3(b) should require Businesses to provide an itemized disclosure of any amounts that a consumer may pay that are excluded from the Total Price (either because they are truly optional fees or because they are de facto excluded from the Total Price as discussed above in response to FTC Question 19 (Section III.E)). To ensure the rule is clear as to what kinds of charges must be disclosed (and as to the timing of disclosure, as discussed above in response to FTC Question 27(a) (Section IV.B.1)), we suggest the following edits to Section 464.3(b):

A Business must disclose Clearly and Conspicuously before the consumer consents to **make any payment** the nature, **purpose, and amount of any costs** that a consumer may pay that **are** excluded from the Total Price, **such as Shipping Charges, Government Charges, fines, penalties, optional charges, charges incurred if certain criteria or conditions are met, voluntary gratuities, and invitations to tip. Where the additional costs are variable, the Business must disclose the existence of such costs and any formula or method for their calculation. The Business's disclosure must include** ~~including~~ the refundability of such fees and the identity of any good or service for which fees are charged.

These proposed changes clarify that, in the rental housing context, housing providers must disclose and itemize fees that become mandatory if certain conditions are met (e.g., pet rent, pet deposits, late fees) and fees that vary based on usage (e.g., utilities-related fees).

VI. The FTC Should Commit to Issuing Advisory Opinions and Staff Interpretations to Interpret the Final Rule

The proposed rule is relatively concise, consisting of general standards with broad applicability. It will cover a range of Businesses. Questions about its application to specific fees or circumstances likely will arise. We recommend that the FTC address this possibility by including a discussion in the Statement of Basis and Purpose stating that it will answer such questions with formal FTC Advisory Opinions or Informal Staff Opinion Letters.

The proposed rule primarily regulates junk fees through disclosure mechanisms. In our experience, disclosure regimes sometimes require clarification or refinement with respect to specific fees or circumstances. For example, Regulation Z (Truth in Lending) and its Official Staff Interpretations include numerous provisions that deal with specific issues, circumstances, and fees.

As noted in our responses to the FTC's questions, such as Question 19, the treatment of certain rental housing junk fees, such as utility-related fees, could benefit from specific guidance. Such guidance could be in the form of FTC Advisory Opinions or Informal Staff Opinion Letters. There is certainly precedent for both types of issuances. The FTC issued four formal Advisory Opinions under the Fair Debt Collection Practices Act prior to the Dodd-Frank Act amendments,⁶⁷ and one formal Advisory Opinion interpreting the Holder Rule.⁶⁸ The FTC staff had issued hundreds of informal staff opinion letters over the decades interpreting the Credit Practices Rule,⁶⁹ as well as the Fair Credit Reporting Act⁷⁰ before Dodd-Frank amended it to transfer authority to the Consumer Financial Protection Bureau.

We recommend that the FTC explicitly acknowledge its willingness to address issues of specific application through the use of formal Advisory Opinions or Informal Staff Opinion Letters. Such a commitment could be made in the Statement of Basis and Purpose. As the FTC knows, the Statement of Basis and Purpose is a key component required for any final FTC trade regulation rule and will be examined closely by a court in any potential legal challenge.⁷¹ Explaining in the Statement how the FTC will deal with issues of specific application might allay any concerns on the part of industry or the courts that the rule does not provide specific enough guidance.

VII. Conclusion

Junk fees make securing and maintaining rental housing even more difficult for rent-burdened households—households who are disproportionately people of color and continue to face the financial fallout from the COVID-19 pandemic. To help ensure that renters can find safe, decent, and affordable housing, we urge the Commission to adopt a final rule that applies to rental

⁶⁷ Nat'l Consumer Law Ctr., *Fair Debt Collection* § 3.4.4.3 & Appendix C.1 (10th ed. 2022), updated at www.nclc.org/library (discussing and summarizing formal FTC Advisory Opinions).

⁶⁸ Nat'l Consumer Law Ctr., *Federal Deception Law*, Appendix A.5.2 (4th ed. 2022), updated at www.nclc.org/library (text of FTC Advisory Opinion re Holder Rule).

⁶⁹ *Id.* at § 2.3.

⁷⁰ See Nat'l Consumer Law Ctr., *Fair Credit Reporting* § 1.3.3.2.2 & Appendix E.3 (10th ed. 2022), updated at www.nclc.org/library (discussion and index of FTC Informal Staff Opinion Letters regarding the FCRA).

⁷¹ 15 U.S.C. § 57a(d); see Nat'l Consumer Law Ctr., *Federal Deception Law* § 2.2.1 (4th ed. 2022), updated at www.nclc.org/library.

housing and protects renters and rental housing applicants from hidden, misleading, and excessive fees.

If you have any questions about these comments, please contact Ariel Nelson at

[REDACTED]

Appendix A

Applying the Proposed Rule to Different Rental Housing Junk Fees

This Appendix considers how the FTC's proposed rule, as currently drafted, would apply to each of the different rental housing junk fees identified in NCLC's report, *Too Damn High: How Junk Fees Add to Skyrocketing Rents*.⁷² We consider the fees in the order that they are discussed in that report.⁷³ This Appendix does not provide an exhaustive analysis of how the fees and practices discussed below could violate the FTC's proposed rule. Nor does it provide a full analysis of all of the ways that the fees discussed below might violate other federal, state, or local laws.

1. Application fees⁷⁴

When someone applies to rent a unit, they often must pay a mandatory application fee. These fees are incurred before actually leasing the rental property, typically per adult seeking to live at that location.

As mandatory fees, application fees fall within the definition of Total Price at Section 464.1(g) ("all fees or charges a consumer must pay"), and would thus need to be disclosed under Section 464.2(a). However, advertising the rental property with such fees included in the Total Price would be difficult where the application fees, and therefore the Total Price, vary based on the number of people applying.

Because the variable nature of application fees make them difficult to disclose as part of the "Total Price," they are de facto "excluded from the Total Price" even though they are fees that tenants "must pay" and would otherwise be required to be disclosed as part of the "Total Price." As a result, the landlord would still be required to comply with Section 464.3(b), which would require such fees to be disclosed "before the consumer consents to pay."

To the extent that a landlord charges application fees for properties that are not actually available for rent or when they know that the prospective tenant would not meet their tenant screening criteria and would therefore not be eligible, these misleading practices would be unfair and deceptive as outlined by Section 464.3(a).

Additionally, to the extent that a landlord informs a prospective tenant that they must pay a certain amount for tenant screening, but the true cost of the screening is less than the amount stated and charged, then the landlord would violate Section 464.3(a) by "misrepresenting the nature and purpose of any amount a consumer may pay."

2. Late Fees⁷⁵

Landlords often charge late fees when the tenant pays the rent late. These fees are mandatory for tenants who pay late but do not apply to all tenants because not everyone pays late.

⁷² NCLC, *Too Damn High*, *supra* note 3.

⁷³ Because they encompass a variety of fees, some of which we separately discuss here, we do not discuss "new fees charged by corporate or private landlords who purchased the building." The NCLC report *Too Damn High* covers this phenomenon on page 22.

⁷⁴ *Id.* at 10–11.

⁷⁵ *Id.* at 11–14.

Even though late fees are mandatory for renters that pay late, it would not be possible to disclose these fees as part of the Total Price because the amount of late fees varies based on whether the tenant pays late and if so, the number of times the consumer pays late. Some late fees may also vary based on the length of time that the renter is late.

Because the indeterminate nature of late fees makes them difficult to disclose as part of the “Total Price,” they are de facto “excluded from the Total Price” even though they are fees that tenants “must pay” and would otherwise be required to be disclosed as part of the “Total Price.” As a result, the landlord would still be required to comply with Section 464.3(b), which would require such fees to be disclosed “before the consumer consents to pay.”

3. Utilities-related fees⁷⁶

In addition to charges related to actual use of utilities, tenants may be required to pay monthly utilities-related processing, administrative, and service fees. The details of these fees vary, but they are generally mandatory fees for all tenants.

As mandatory fees, they need to be disclosed under Section 464.2(a) as part of the Total Price. Because 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,” any utilities-related fees would need to be included in the Total Price even if the fee is being charged by a third-party group utility billing company and not by the landlord directly.

4. Processing or administrative fees⁷⁷

Processing or administrative fees can either be one-time fees or recurring monthly fees. They are mandatory although their purpose may be unclear.

Regardless of whether these processing or administrative fees are one-time or ongoing monthly fees, these mandatory fees need to be disclosed under Section 464.2(a) as part of the Total Price.

While misrepresentation of the nature or purpose of processing or administrative fees is prohibited under Section 464.3(a), it does not appear that the proposed rule would prohibit charging such fees if the landlord accurately describes their nature and purpose, including their identity and refundability.

5. Convenience fees⁷⁸

Convenience fees are fees charged to tenants to pay rent online. Despite being called “convenience” fees, online payment may be mandatory and not optional.

To the extent that tenants have payment options that do not cause them to incur a fee and the convenience fees are truly optional fees that consumers may end up paying, they would need to be disclosed “before the consumer consents to pay.” Because Section 464.3(b) requires disclosure of “any amount a consumer may pay that is excluded from the Total Price,” any

⁷⁶ *Id.* at 14–16.

⁷⁷ *Id.* at 16–17.

⁷⁸ *Id.* at 17–18.

optional convenience fee would need to be disclosed even if the fee is being charged by a third-party billing company and not by the landlord directly.

To the extent that convenience fees are mandatory fees that must be paid in order to pay the rent, these are ongoing monthly fees that need to be disclosed under Section 464.2(a) as part of the Total Price. Because 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,” any convenience fee would need to be included in the Total Price even if the fee is being charged by a third-party billing company and not by the landlord directly.

To the extent that a landlord misrepresents a convenience fee as optional when there is no free payment option, that misrepresentation would be an unfair and deceptive practice as outlined in Section 464.3(a).

6. Insurance fees⁷⁹

Insurance fees are mandatory fees⁸⁰ that may be charged either for coverage for the landlord, the tenant, or both.

To the extent that the insurance fees are mandatory fees that must be paid every month in order to rent the property, these are ongoing monthly fees that need to be disclosed under Section 464.2(a) as part of the Total Price. Because 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,” any insurance fees would need to be included in the Total Price even if the fees are being charged by third-party insurance companies and not by the landlord directly.

Any misrepresentation by the landlord that the required insurance fees cover the tenant when they actually only cover the landlord would be an unfair and deceptive practice in violation of Section 464.3(a), which prohibits misrepresentation about “the nature and purpose of any amount a consumer may pay.”

7. Notice fees⁸¹

Landlords charge notice fees for printing and posting notices on the tenant’s door. They may be notices of non-payment of rent, eviction notices, or other types of notices. These are mandatory fees but not all tenants will incur them because not all tenants will require the notice.

Even though notice fees are mandatory for renters that receive notices, it would not be possible to disclose these as part of the Total Price because the amount of notice fees varies based on whether the renter receives notices during their tenancy and the number of times this occurs.

Because the indeterminate nature of notice fees makes them difficult to disclose as part of the “Total Price,” they are de facto “excluded from the Total Price” even though they are fees that tenants “must pay” and would otherwise be required to be disclosed as part of the “Total Price.”

⁷⁹ *Id.* at 18–20.

⁸⁰ This Appendix does not address voluntary insurance fees for tenants such as renter’s insurance that a tenant may decide to purchase.

⁸¹ *Id.* at 20–21.

As a result, the landlord would still be required to comply with Section 464.3(b), which would require such fees to be disclosed “before the consumer consents to pay.”

8. High-risk fees⁸²

High-risk fees are additional fees charged to tenants deemed “high risk” due to “insufficient” rental history, an eviction record, a low credit score, a criminal record, or other “adverse” information in a tenant screening report. These are mandatory fees but not all tenants will incur them because not all tenants will be deemed “high risk.”

As mandatory fees, they need to be disclosed under Section 464.2(a) as part of the Total Price. However, the landlord would not know that a particular tenant was going to be charged high-risk fees until they investigate a prospective tenant, typically using a tenant screening report obtained from a third-party tenant screening company. Thus, it would not be possible to disclose these fees as part of the Total Price in the initial offer or advertisement because the landlord would only identify “high risks” after the tenant submits an application and the landlord obtains a tenant screening report.

Because high-risk fees are only assessed after investigating a prospective tenant and cannot be disclosed as part of the “Total Price,” they are de facto “excluded from the Total Price” even though they are fees that tenants “must pay” and would otherwise be required to be disclosed as part of the “Total Price.” As a result, the landlord would still be required to comply with Section 464.3(b), which would require such fees to be disclosed “before the consumer consents to pay.”

Charging high-risk fees to all tenants or without engaging in an investigation and determining that a particular tenant supposedly created a “higher risk” for the landlord would misrepresent the “nature and purpose of any amount a consumer must pay” in violation of Section 464.3(a).

9. Charges in lieu of a security deposit⁸³

In an attempt to avoid state laws governing security deposits, some landlords charge fees instead of a security deposit. Unlike with a traditional security deposit, tenants do not receive these fees back at the end of the tenancy. These can take the form of a one-time, up-front fee or ongoing monthly payments to security deposit alternative companies.

To the extent that charges in lieu of a security deposit are ongoing monthly fees, landlords need to disclose them under Section 464.2(a) as part of the Total Price. Because 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,” any charges in lieu of a security deposit would need to be included in the Total Price even if the fee is being charged by a third-party security deposit alternative companies.

To the extent that charges in lieu of a security deposit are one-time fees, these mandatory fees would still need to be disclosed in the Total Price.

⁸² *Id.* at 22–23.

⁸³ *Id.* at 23–24.

To the extent that landlords are misleading tenants about the nature and purpose of charges in lieu of a security deposit—including by misrepresenting the refundability of such fees—that would be an unfair and deceptive practice under Section 464.3(a).

10. Check cashing fees⁸⁴

Check cashing fees are fees imposed when the tenant pays rent via check. They are mandatory fees when a consumer pays by check, which landlords may require in some cases.⁸⁵

To the extent that tenants have payment options that do not cause them to incur a fee and the check cashing fees are truly optional fees that consumers may end up paying if they choose to pay by check, they would need to be disclosed “before the consumer consents to pay” pursuant to Section 464.3(b).

To the extent that check cashing fees are mandatory fees that must be paid in order to pay the rent every month, these are ongoing monthly fees that need to be disclosed under Section 464.2(a) as part of the Total Price.

11. Fees to report payment information to the credit bureaus⁸⁶

Some housing providers charge tenants a mandatory monthly fee to send their rental payment information to the credit bureaus. These are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

12. Pet fees or pet rent⁸⁷

Pet fees can show up as either ongoing monthly pet rent or as up-front, one-time, non-refundable fees called pet deposits or pet application fees. Such fees are mandatory for pet owners but would not be charged to non-pet owners.

Because not everyone is a pet owner and the amount of the fees may vary based on the number or type of pets, it would not be possible to disclose these mandatory fees for pet owners in the Total Price advertised to everyone as required by Section 464.2(a).

Because the applicability and amount of pet fees varies and makes it difficult to disclose these as part of the “Total Price,” they are de facto “excluded from the Total Price” even though they are fees that tenants “must pay” and would otherwise be required to be disclosed as part of the “Total Price.” As a result, the landlord would still be required to comply with Section 464.3(b), which would require such fees to be disclosed “before the consumer consents to pay.”

To the extent that landlords are misleading tenants about the nature and purpose of pet-related fees, that would be an unfair and deceptive practice under Section 464.3(a). For example, “pet deposit” is misleading because the amount charged is not actually refundable despite being named a “deposit.” Similarly, the term “pet application” would be misleading if the landlord does not actually do a background check on the animal in question or otherwise evaluate the animal to decide whether or not to admit that pet.

⁸⁴ *Id.* at 24.

⁸⁵ *Id.*

⁸⁶ *Id.* at 24–25.

⁸⁷ *Id.* at 25.

13. Trash fees⁸⁸

Some housing providers charge tenants additional fees for trash collection. These are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

14. Valet trash fees⁸⁹

Some landlords charge mandatory fees for “valet” or “concierge” trash service. Despite charging these fees, landlords may not actually provide any kind of additional service beyond collecting the trash from a central location. In those cases, the name “valet” trash fees is misleading and charging such fees would be unfair and deceptive under Section 464.3(a).

To the extent that there is an actual additional service being provided for “valet” trash fees, these are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

15. Pest control fees⁹⁰

Some landlords charge monthly fees for pest control.

These are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

To the extent that state law requires landlords to provide a habitable premises and that this requirement includes maintaining the property free of pests, charging an additional fee for pest control services is misleading and would be unfair and deceptive under Section 464.3(a).

16. Technology package/internet and cable-related fees⁹¹

Some landlords charge mandatory fees for technology packages such as internet and cable services.

These are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

Where such fees are charged but no services are actually provided, the fees are misleading and charging such fees would be unfair and deceptive under Section 464.3(a). Similarly, if a fee is listed as optional but the tenant cannot actually opt out of the fee, this would also be misleading and charging such fees would be unfair and deceptive under Section 464.3(a).

⁸⁸ *Id.*

⁸⁹ *Id.* at 25–26.

⁹⁰ *Id.* at 26.

⁹¹ *Id.*

17. Fees to “hold” an apartment⁹²

Holding fees are additional, mandatory one-time payments that some landlords require to prevent them from renting to someone else. They may be either refundable or non-refundable.

As mandatory fees, they need to be disclosed under Section 464.2(a) as part of the Total Price.

To the extent that the tenant has already put down a security deposit or first month’s rent, such fees are misleading because the consumer has already put down money to hold the apartment. It would also be misleading to require a holding fee where the land lord is not going to rent the property to other tenants in the short time span that it will take the landlord to run any background checks. Describing the holding fee as refundable and then not promptly refunding the amount is also misleading. In each of these scenarios, charging the misleading fee would be unfair and deceptive under Section 464.3(a).

18. Fees to rent month-to-month instead of on an annual basis⁹³

Some landlords charge mandatory additional fees to rent property on a monthly basis instead of an annual basis.

Month-to-month rental fees are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

To the extent that these fees are being added to rent month to month but no annual lease option was offered, the fees are misleading and charging such fees would be unfair and deceptive under Section 464.3(a).

19. Court costs and attorney’s fees⁹⁴

Some landlords charge “legal fees” or attorney’s fees and costs related to eviction proceedings when they file the case, before filing, or even in cases where they never file.

Because not everyone will owe attorney’s fees and the amount of the fees may vary based on the number of eviction proceedings or length of such proceedings, it would not be possible to disclose these mandatory fees in the Total Price advertised to everyone as required by Section 464.2(a).

Because the indeterminate nature of attorney’s fees make s them difficult to disclose as part of the “Total Price,” they are de facto “excluded from the Total Price” even though they are fees that tenants “must pay” and would otherwise be required to be disclosed as part of the “Total Price.” As a result, the landlord would still be required to comply with Section 464.3(b), which would require such fees to be disclosed “before the consumer consents to pay.”

To the extent that state law allows for recovery of fees and costs to the prevailing party in an eviction case, charging such fees prior to prevailing in the case is misleading and would be an unfair and deceptive practice under Section 464.3(a).

⁹² *Id.*

⁹³ *Id.* at 26–27.

⁹⁴ *Id.* at 27–28.

20. Common area and amenity-related fees⁹⁵

Landlords may charge tenants mandatory additional fees for common areas or amenities.

These are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

Charging these fees but not providing access to or use of the common areas or amenities the fees are for would be an unfair and deceptive practice under Section 464.3(a).

21. Roommate and guest-related fees⁹⁶

Additional fees for roommates are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

Additional fees for guests would be periodic fees that consumers could avoid. The landlord would need to disclose these fees “before the consumer consents to pay” pursuant to Section 464.3(b).

22. Cleaning and repair fees⁹⁷

Some landlords may charge additional fees for cleaning and repairs at the time that the tenant moves in or out of the property.

To the extent that these fees are mandatory, they need to be disclosed under Section 464.2(a) as part of the Total Price.

Where the cleaning or repair fees are not mandatory, the landlord would need to disclose them “before the consumer consents to pay” pursuant to Section 464.3(b).

Such fees may be misleading to the extent that the tenant leaves the property in broom-swept condition and any repairs needed are attributable to reasonable wear and tear. Additional fees for cleaning prior to move in may also be misleading to the extent that state law requires the property to be clean when delivered to the tenant. These misleading fees would be an unfair and deceptive practice under Section 464.3(a).

23. Maintenance fees⁹⁸

Some landlords charge mandatory monthly fees for maintenance of furnaces and appliances that the landlords own. Landlords may also assess fees when tenants submit maintenance requests.

To the extent these are ongoing monthly fees, they need to be disclosed under Section 464.2(a) as part of the Total Price. Because 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,”

⁹⁵*Id.* at 28.

⁹⁶ *Id.*

⁹⁷ *Id.* at 29.

⁹⁸ *Id.*

these fees would need to be included in the Total Price even if the fee is paid to a third-party company and not directly to the landlord.

To the extent that maintenance fees are mandatory fees that are only incurred once a tenant submits a maintenance request, it may not be possible to disclose these fees as part of the Total Price because the amount of the maintenance fees varies based on the number of maintenance requests that the renter submits during their tenancy.

Because the indeterminate nature of maintenance fees assessed per request makes them difficult to disclose as part of the “Total Price,” they are de facto “excluded from the Total Price” even though they are fees that tenants “must pay” and would otherwise be required to be disclosed as part of the “Total Price.” As a result, the landlord would still be required to comply with Section 464.3(b), which would require such fees to be disclosed “before the consumer consents to pay.”

To the extent that state law requires landlords to provide heat (or cooling), additional fees to maintain furnaces are misleading. Similarly, additional fees to maintain other appliances that either must be provided pursuant to state law or are advertised as part of the lease are also likely misleading. Charging these misleading fees would be an unfair and deceptive practice under Section 464.3(a).

24. Inspection fees⁹⁹

Some landlords charge additional fees to inspect the property.

As mandatory fees, they would need to be disclosed as part of the Total Price under Section 464.2(a).

To the extent that such inspections are required by law and the landlord misrepresents this as a service to the tenant, additional fees to inspect the property are misleading. They could also be misleading to the extent that the landlord does not take action to address problems identified in the inspection since that would misrepresent the visit to the property as an inspection. Charging these misleading fees would be an unfair and deceptive practice under Section 464.3(a).

25. Mail sorting fees¹⁰⁰

Additional fees for mail sorting are ongoing mandatory monthly fees that would need to be disclosed under Section 464.2(a) as part of the Total Price.

To the extent the mail carrier provides this service for free, charging a mail sorting fee would be a misrepresentation of the nature and purpose of the fee and a violation of Section 464.3(a).

26. Fees charged each January¹⁰¹

A fee charged each January but that provides no additional services to the tenant would be misleading because it would misrepresent that the landlord was doing something or providing

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

something different in January to warrant an additional fee. As a misleading fee, it would be an unfair and deceptive practice under Section 464.3(a).

Appendix B

How Some Rental Housing Listing Platforms Currently Provide Fee Information

In July 2023, the White House announced it secured commitments from three rental housing platforms—Zillow, Apartments.com, and AffordableHousing.com—to provide consumers with total, upfront cost information on rental properties.¹⁰² Those platforms now provide that service, which is a laudable step in the right direction.

However, fee information is not always consistent across the listing platforms or easy to interpret. Consumers therefore cannot be confident that the listings reflect complete information about price and fees. Disclaimers on the listing platforms reflect and affirm this reality:

Zillow: “Pricing is subject to change. All calculations are estimates provided for informational purposes only. Actual amounts may include additional mandatory or optional fees. Please consult the community manager for a complete breakdown of all rental costs.”¹⁰³

AffordableHousing.com: “To ensure transparency in rental costs, AffordableHousing.com requires property owners to itemize all fees associated with this rental property. This includes move-in costs, recurring lease charges, and refundable fees. Please note that the accuracy of this information has not been verified by AffordableHousing.com, and renters are advised to confirm final expenses with the property owner before entering into a lease agreement.”¹⁰⁴

Apartments.com: “The fees below are based on community-supplied data and independent market research.”¹⁰⁵

The lack of consistency across platforms potentially could reflect technical challenges; different opinions about which fees are part of the total cost of renting; and/or landlords’ failure to provide consistent, complete, and/or easy to understand information. Regardless of cause, these issues demonstrate the need for an FTC rule that covers rental housing.

To show how rental housing platforms currently provide fee information, this Appendix provides screenshots of the fee-related portions of the listings for the same rental property in two different U.S. cities—Atlanta, Georgia and Columbus, Ohio—from at least two of the rental housing platforms providing fee information.

For the Atlanta listing, our observations include:

- Only the AffordableHousing.com listing includes fees in the estimated total monthly cost.

¹⁰² White House Fact Sheet on Junk Fees, *supra* note 16.

¹⁰³ See, e.g., Ashley Village Apartments, 2272 Sunshine Pl, Columbus, OH 43232, Zillow, <https://www.zillow.com/apartments/columbus-oh/ashley-village-apartments/5XrfZF/> (last visited Dec. 13, 2023) (disclaimer appears below section of the listing labeled “Rental fees & costs”).

¹⁰⁴ 2 Bedroom Single Family House 1319 Campbellton Rd SW in Atlanta, GA, AffordableHousing.com, <https://www.affordablehousing.com/atlanta-ga/1319-campbellton-rd-sw-633093/> (last visited Dec. 13, 2023) (this disclaimer information appears when mouse hovers over “i” icon next to the word “Fees”).

¹⁰⁵ 1 Bedroom Solstice Morningside Apartments 1989 Cheshire Bridge Rd NE Atlanta GA, apartments.com, <https://www.apartments.com/solstice-morningside-apartments-atlanta-ga/hhx38z2/> (disclaimer listed at the top of the “Fees and Policies” section).

- Only the AffordableHousing.com and Zillow listings appear to provide information about move-in costs, but the estimated amounts are different.
- The listings do not provide the same information about which utilities the tenant must pay. For example, the AffordableHousing.com listing indicates that the landlord will not cover any utilities, while the Apartments.com listing indicates that the landlord covers water. The Zillow listing directs the potential tenant to contact the manager.


For the Columbus listing (which was not available on AffordableHousing.com), our observations include:

- The Apartments.com listing includes a \$150 “Administrative Fee,” while Zillow listing leaves the “Administrative fee” field blank.
- The Zillow listing indicates that the security deposit ranges from \$250 to \$500, while the Apartments.com listing notes a \$250 deposit.
- The Zillow listing separately itemizes monthly costs and one-time costs.
- The Apartments.com listing separates “Required Fees” from other fees.

1. Atlanta, Georgia

Listing for 1319 Campbellton Rd SW

A. AffordableHousing.com listing¹⁰⁶

Renters ▾ Owners ▾

[← Back](#)

2 Bedroom Single Family House [REDACTED] in Atlanta, GA

2 Beds | 1 Bath | 1,622 sqft | \$1,525

[Photos](#) [Details](#) [Fees](#) [Utilities](#) [Affordability](#) [Features & Amenities](#) [Schools](#) [Map](#)

[Flag](#) [Property](#) [Share](#)

2 Bedroom Single Family House [REDACTED] in Atlanta, GA

2 Beds | 1 Bath | 1,622 sqft | \$1,525

[Photos](#) [Details](#) [Fees](#) [Utilities](#) [Affordability](#) [Features & Amenities](#) [Schools](#) [Map](#)

Fees ⓘ

Monthly	
Pet fee	\$0
Parking	Unknown
Trash pickup	\$50
Lawn care / Snow removal	\$50
Pest control	\$30
Admin Fee	\$15
Monthly estimate (including rent)	\$1,670 ⓘ

¹⁰⁶ 2 Bedroom Single Family House 1319 Campbellton Rd SW in Atlanta, GA, AffordableHousing.com, <https://www.affordablehousing.com/atlanta-ga/1319-campbellton-rd-sw-633093/> (last visited Dec. 13, 2023).

2 Bedroom Single Family House [REDACTED] in Atlanta, GA

2 Beds | 1 Bath | 1,622 sqft | \$1,525

[Photos](#) [Details](#) [Fees](#) [Utilities](#) [Affordability](#) [Features & Amenities](#) [Schools](#) [Map](#)

One-time

Application fee	\$49/per person ⓘ
-----------------	-------------------

Security deposit	\$1,425
------------------	---------

Pet deposit	\$0
-------------	-----

Pet fee	\$199/per pet
---------	---------------

Move-In Fee	\$199
-------------	-------

Move-in estimate	\$1,872 ⓘ
------------------	-----------

Tenant will be required to purchase renters insurance.

2 Bedroom Single Family House [REDACTED] in Atlanta, GA

2 Beds | 1 Bath | 1,622 sqft | \$1,525

[Photos](#) [Details](#) [Fees](#) [Utilities](#) [Affordability](#) [Features & Amenities](#) [Schools](#) [Map](#)

Utilities


Paid by Tenant

Electric
Cooking Fuel (Electric)
Water (City Water)
Cooling (Central)
Sewer (Public Sewer)
Heating (Electric)
Hot Water (Electric)
Trash pickup
Lawn care/Snow removal
Pest control

Paid by Owner

ⓘ No utilities covered by the owner.
Tenant must pay all utilities.

B. Zillow listing¹⁰⁷

 [Save](#) [Share](#) [Hide](#) [More](#)

\$1,525/mo 2 bd 1 ba 1,622 sqft
[REDACTED] Atlanta, GA 30310

● Apartment for rent

[List your rental on Zillow](#)

Request a tour


Request to apply

Overview








Facts and features

Price History

Nearby school >


 2 available units in this apartment building


[→ Full building details](#)

 Type	Apartment	 Parking	Contact manager
 Cooling	Contact manager	 Laundry	Contact manager
 Heating	Contact manager	 Deposit & fees	\$1,425
 Pets	Contact manager		

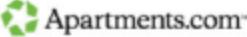
¹⁰⁷ 1319 Cambellton Rd SW, #A, Atlanta, GA 30310, Zillow, https://www.zillow.com/homedetails/1319-Campbellton-Rd-SW-A-Atlanta-GA-30310/2059754170_zpid/ (last visited Dec. 13, 2023) (listing does not contain detailed fee information or “Rental costs & fees” calculator pictured below in the Zillow listing for the Columbus, Ohio unit).

C. Apartments.com listing¹⁰⁸

 Map

 Menu



English



Houses / Georgia / Fulton County / Atlanta / 2 br, 1 bath House - [REDACTED]

Today

2 br, 1 bath House - [REDACTED] ...

[REDACTED] Atlanta, GA 30310


Venetian Hills


Monthly Rent	Bedrooms	Bathrooms	Square Feet
\$1,525	2 bd	1 ba	831 sq ft

Details

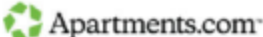
Available Now

* Prices and availability subject to change without notice.
* Square footage definitions vary. Displayed square footage is approximate.

 Map

 Menu

English



2 br, 1 bath House - [REDACTED] ...

About Contact Amenities **Fees and Policies** Location Education Transportation Points of Interest

Fees and Policies

The fees below are based on community-supplied data and independent market research.

Pets

Dogs Allowed	Cats Allowed
Fees not specified	Fees not specified
Weight limit	-- Weight limit --
Pet Limit	-- Pet Limit --

Details

Utilities Included


- Water




¹⁰⁸ 2 br, 1 bath House - 1319 Campbellton Rd SW, Apartments.com, <https://www.apartments.com/2-br-1-bath-house-1319-campbellton-rd-s-atlanta-ga/jsx29z7/#descriptionSection> (last visited Dec. 13, 2023).

2. Columbus, Ohio

Listing for Ashley Village Apartments [REDACTED]


A. Zillow listing¹⁰⁹





Ashley Village Apartments
[REDACTED] Columbus, OH [REDACTED]


Request to apply

 Book tour now

[Units](#) [Overview](#) [Facts & Features](#) [Policies](#) [Nearby school](#)

Apartment floorplans


All1 Bed2 Bed3+ Bed







A1
\$920
1 bd | 1 ba | 864 sqft
3 units - Available now

Building overview

This property is managed by Beztak, 2023 recipient of the US Best Managed Companies for the fourth year in a row, sponsored by Deloitte Private and The Wall Street Journal. Call and let us tell you why! Your new home awaits at Ashley Apartments, an inviting community that answers your need for a comfortable, charming, and centrally-located home in Columbus, Ohio. Our gated community provides one, two, three, and four-bedroom pet-friendly homes that feature


 Read More





Ashley Village Apartments
[REDACTED] Columbus, OH [REDACTED]

Request to apply

 Book tour now

[Units](#) [Overview](#) [Facts & Features](#) [Policies](#) [Nearby school](#)

Policies

Lease Terms

- 3, 6, 9, 12
- \$250 - \$550 deposit fee

Parking

- Parking lot

Pets

Dogs

- Allowed
- \$150 pet deposit
- \$35 monthly pet fee

Cats

- Allowed
- \$150 pet deposit
- \$35 monthly pet fee

¹⁰⁹ Ashley Village Apartments, 2272 Sunshine Pl, Columbus, OH 43232, Zillow, <https://www.zillow.com/apartments/columbus-oh/ashley-village-apartments/5XrfZF/> (last visited Dec. 13, 2023).

Ashley Village Apartments

Columbus, OH

[Request to apply](#)
[Book tour now](#)

[Units](#)
[Overview](#)
[Facts & Features](#)
[Policies](#)
[Nearby school](#)

Rental costs & fees

Select a unit-type to view your estimated move-in costs.

1 bed

Monthly costs

Monthly rent

\$920

Parking fee

\$---/mo

Pet fee

\$35/mo

Est. monthly cost

\$955

One-time costs

Security deposit

\$250 - \$550

Application fee

\$---

Administration fee

\$---

Ashley Village Apartments

Columbus, OH

[Request to apply](#)
[Book tour now](#)

[Units](#)
[Overview](#)
[Facts & Features](#)
[Policies](#)
[Nearby school](#)

Est. monthly cost

\$955

One-time costs

Security deposit

\$250 - \$550

Application fee

\$---

Administration fee

\$---

Pet deposit

\$150

Est. one-time cost

\$400 - \$700

Est. move-in cost

\$1,355 - \$1,655

Pricing is subject to change. All calculations are estimates and provided for informational purposes only. Actual amounts may include additional mandatory or optional fees. Please consult the community manager for a complete breakdown of all rental costs.

[See less details](#)

B. Apartments.com listing¹¹⁰

Map

Menu

English

Apartment.com

Ohio / Franklin County / Columbus / Ashley Village Apartments

Today

Ashley Village Apartments

Columbus, OH

Eastland

3.5 (19 reviews) Verified Listing

RENTAL

Monthly Rent \$920 - \$1,490	Bedrooms 1 - 4 bd	Bathrooms 1 - 3 ba	Square Feet 864 - 1,728 sq ft
---------------------------------	----------------------	-----------------------	----------------------------------

This property is managed by Bertak, 2023 recipient of the US Best Managed Companies for the fourth year in a row, sponsored by Deloitte Private and The Wall Street Journal. Call and let us tell you why Your new home awaits at Ashley Apartments, an inviting community that...

[Read More](#)

Pricing & Floor Plans

All	1 Bedroom	2 Bedrooms	3+ Bedrooms
-----	-----------	------------	-------------

A1

\$920

1 bed, 1 bath, 864 sq ft

\$250 deposit


Tour This Floor Plan

Floor Plans

Virtual Tour

Show Floor Plan Details

3 Available Units



Map

Menu

English

Apartment.com

Ashley Village Apartments

Pricing About Contact Amenities Fees and Policies Location Education Transportation Points of Interest Reviews

Fees and Policies

The fees below are based on community-supplied data and independent market research.

Required Fees	Pets	Parking
<h4>Move-In Fees</h4>		
Administrative Fee		\$150
<h4>Details</h4>		
<h5>Utilities Included</h5> <ul style="list-style-type: none">Trash Removal	<h5>Lease Options</h5> <ul style="list-style-type: none">3, 6, 9, 12Short term lease	
<h5>Property Information</h5> <ul style="list-style-type: none">Built in 1988220 units/2 stories		

¹¹⁰ Ashley Village Apartments, 2272 Sunshine Pl, Columbus, OH 43232, Apartments.Com, <https://www.apartments.com/ashley-village-apartments-columbus-oh/xdqg1qr/#feesSection> (last visited Dec. 13, 2023).

Ashley Village Apartments

Pricing About Contact Amenities **Fees and Policies** Location Education Transportation Points of Interest Reviews

Fees and Policies

The fees below are based on community-supplied data and independent market research.

Required Fees **Pets** Parking

Dogs Allowed

Monthly pet rent	\$35
One time Fee	--
Pet deposit	\$150
Weight limit	--
Pet Limit	2
Requirements:	
Pet interview	

Cats Allowed

Monthly pet rent	\$35
One time Fee	--
Pet deposit	\$150
Weight limit	--
Pet Limit	2
Requirements:	
Pet interview	

Details

Utilities Included

- Trash Removal

Lease Options

- 3, 6, 9, 12
- Short term lease

Ashley Village Apartments

Pricing About Contact Amenities **Fees and Policies** Location Education Transportation Points of Interest Reviews

Fees and Policies

The fees below are based on community-supplied data and independent market research.

Required Fees Pets **Parking**

Parking

Garage	\$50/mo	Other	--
1 space			

Details

Utilities Included

- Trash Removal

Lease Options

- 3, 6, 9, 12
- Short term lease

Property Information

- Built in 1988
- 220 units/2 stories

Appendix C

Excerpts from Other Comments Addressing Rental Housing Junk Fees

In this Appendix, we provide excerpts from selected comments discussing rental housing junk fees submitted through January 29, 2024 in response to the FTC's Notice of Proposed Rulemaking.¹¹¹ These comments demonstrate some of the significant issues that tenants face and the need for a broad FTC rule. We have categorized them based on the key issue they raise, though many comments discuss more than one type of fee and a variety of issues.

1. Undisclosed fees

- "As a Housing Counselor, I see numerous fees for all kinds of things on rental leases. Tenants may see the advertised price for rent on the site, but then there are all sorts of fees they are not told about. These fees are tacked onto rent and given as an invoice. Even if the tenant pays rent, they can still end up being evicted for non-payment of rent, because the fees are attached separately, then the entire invoice is billed making a total due as 'rent.'" FTC-2023-0064-0902.
- "I have an apartment that requires a number of fixed, non-negotiable mandatory fees that used to be (and should have been) included in the normal monthly rent. In addition, the utility billing company charges a fee for the "convenience" of paying your bill. **In my opinion, these fees allow the company to advertise a lower monthly rental rate, intentionally making it difficult for a prospective tenant to comparison shop and compare rents from different organizations.** These fees (see also attached) are: Common Area Electrical -- Fixed \$15/month/unit (not metered; note that common area natural gas charges are metered); Pest Control -- Fixed \$5/unit/month (regardless of whether you request pest inspection or control measured); Trash -- Fixed \$10/unit/month (mandatory and fixed; should be included in the monthly rent unless tenants are responsible for arranging and paying for trash service on their own).; Service Fee -- \$7.90/unit/month (mandatory for the convenience of paying your bill online); I am not opposed to the landlord charging these fees, however, I feel that because they are mandatory they should be included as part of the normal monthly rent. **These fees are not disclosed on the advertised rate. Only the trash and pest fees are disclosed on the initial rent quote, the remaining fees are not disclosed until the offer to sign a lease has been provided.**" FTC-2023-0064-0923 (emphasis added).
- "My daughter is a low wage employee and we live in Kentucky. Six months ago she rented an apartment that she thought she could afford based on rent and projected utilities. **Turns out she owes fees (most undisclosed in the lease) that add up to nearly 20% of the rent. That's a heck of a jump. As of December there will be no way to pay the rent that doesn't involve a transaction fee. Not one method.**" FTC-2023-0064-0958 (emphasis added).
- "I would like to know if you can also include possible hidden items where supposedly human landlord hides rent fees for another fee type and tells a tenant

¹¹¹ This Appendix does not provide an exhaustive list of all comments discussing rental housing junk fees submitted in response to the NPRM. Nor does it purport to cover all types of fees or issues related to these fees.

to refer to contract about rent and what if the contract didn't state any rent toward the tenant? I speak for someone I know about this issue.” FTC-2023-0064-1455.

- “Some of the apartments end up having a Broker's Fee, but at no point in time in the process is this made clear by the listing on StreetEasy, by the brokers, or the landlord. It is only upon signing the lease, or explicitly asking where the Broker's fee comes up. This usually amounts to a massive amount of money, typically 15% of the yearly rental, which is at minimum thousands of dollars.” FTC-2023-0064-1942.
- “Rental company Greystar has lot of junk fees attached to apartments buildings they have purchased in the last ten years. Example we pay the local electric authority Georgia Power, but recently two \$14 line items (\$28) were added to our rent without our permission. The line items are two fees related to electricity. Also we pay two trash fees. And some other junk fees. They should be forced to disclose all fees before lease signing and never be able to add fees after the lease has been signed.” FTC-2023-0064-0146.
- “I am writing in support of ‘junk fee# regulation. As someone monitoring rentals in different areas, many times landlords list a monthly rent, but on reading the fine print, tenants will have to pay for a ‘residents benefit package’ of up to \$50 a month extra for credit building, change of air filters, identity theft, renter's insurance, concierge utility turn-ons and more. Tenants are not given a right to opt out; for example my credit is excellent, I can change an air filter myself as well as get my utilities connected and I carry my own renters insurance so I don't need a ‘residents benefit package.’ Landlords should not be allowed to force tenants into paying these fees with no opt out or if the fees are allowed, then the landlord must add that to the total monthly rent in advertisements so prospective tenants have an accurate scope of what the real monthly costs are.” FTC-2023-0064-0157.
- “My rent was supposed to be \$1,866 for a 12 month lease as advertised, but as soon as I ended up signing and getting everything approved, it was 2,125 a month!!! To make matters worse, the advertised amount was for a 15 month lease with a bunch of added fees, so I had to take a lease that was 3 months longer than I wanted and pay more money.” FTC-2023-0064-0168.
- “I urge regulators to tackle junk fees in the housing context. The apartment building I live in charges a monthly fee for trash, a monthly fee for landscaping, and an annual fee for access to shared amenities. This feels excessive. It also masks the true cost of living here, since public-facing apartment listings only show base rent, not add-on charges.” FTC-2023-0064-0937.

2. Excessive fees

- **“To be put on an apt waitlist that can be 6 months to 2 years long apts charge non-refundable \$100-\$300 to be added to the list with no guarantee you will ever be called nor that they will call at the time you can end your current lease to take the available apt.** The actual work involved for the apt personnel is typing your name and ph# on the list and maybe actually calling a person on the list to say an apt is available. . . . Renewing your lease

"administrative fees" for them to figure out how much more you will pay in rent the next year and printing out a lease for you to sign. These lease renewal fees are added on to your first months rent. So your renewal rate ends up being more than what they tell you it will be to get you to stay in the apt but its too late cause you already passed the 60 day notification to them to not renew your lease deadline." FTC-2023-0064-0180 (emphasis added).

- "I agree with forcing companies to show up front all fees. I am looking at a place to rent and **they tack on an extra \$255 in mandatory fees, for services I don't even want.**" FTC-2023-0064-0267 (emphasis added).
- "When we signed a lease last year for an apartment in Lake Oswego OR, we were given to understand that water, sewer, and garbage fees would be charged over and above the base rent we agreed to. However, **w e did not know these fees could add as much as \$250 extra per month to our rent.**" FTC-2023-0064-0454 (emphasis added).
- "On each month's rent statement, there's a mandatory \$25 fee for "valet trash," for the luxury of a management employee to pick up my trash and throw it away for me. I have never, ever needed nor requested this service. My apartment is about 50 feet from the trash chute, where I deposit my trash weekly. **This valet trash fee amounts to an additional \$300 fee for management each year, for a service I have never used, nor desire.** This apartment complex is large, with more than 500 apartments. I wonder how many other residents find themselves in the same predicament? It's infuriating." FTC-2023-0064-0975 (emphasis added).
- "My roommate and I carefully reviewed the lease. In the section titled "Utilities" about the utilities the lessee would be responsible for, the last sentence started 'A **\$1250 administrative fee will be charged for changes to the occupancy of this home.**' We quickly asked the leasing office about it because we were never aware of this fee even though we asked multiple times what the fees were, and their response was they couldn't possibly list all the fees when we had asked. They also said it was included in the utilities section because they didn't know where else to put it. Even though the lease has 28 subsections in it. We asked the leasing office to remove it since we were never aware of this fee, but they said the lease was computer-created and they didn't have that authority. We are working with the property management company to see if there is a way to remove it. I only see this fee as a way to get more money out of tenants in a city where people are constantly moving." FTC-2023-0064-1085 (emphasis added).
- "I urge you to pass this rule to not only save consumers tens of billions of dollars each year, but to level the playing field for honest businesses who are transparent about the their costs and fees. **Orange County Property Management is trying to make renters sign a "technology fee" addendum that adds 1% fee of total rent on top of rental cost. For me that is an extra \$22.70/month!! What the heck dude!!**" FTC-2023-0064-1233 (emphasis added).
- "My boyfriend pays \$1500 for a one bedroom apt in Atlanta but **every month when he gets the invoice, they tack on \$90 extra in fees.** Those fees should

be included in the base rent since they're mandatory and consistent every month. These junk fees are a predatory tactic to charge consumers when they have few or no options left to shop around and avoid the fee." FTC-2023-0064-2323 (emphasis added).

- "I work as a Development Manager at Jesse Tree in Boise. We serve both Ada and Canyon County with eviction court services, case management, and rental assistance. We have been seeing exorbitant fees for the past few years, including excessive late fees, landlords charging to post a three-day notice to pay or quit on the tenants' door, and pet fees for bugs that a renter's child caught in a jar and left inside. Some of the late rent fees we've seen have amounted to hundreds of dollars. **For the third example mentioned, a landlord charged the family an expensive lease violation because their child caught a praying mantis in a jar.**" FTC-2023-0064-2749 (emphasis added).
- **"My disabled daughter is paying a \$30 "set up" fee EVERY MONTH to the company that bills for rent and utilities.** Plus an additional fee to connect a debit or credit card. This is a ridiculous fee that the company charges 200 tenants for the one building. **The building owners are ALSO charging a \$6 'set up' fee EACH MONTH for a service they can't describe.** This in addition to higher rents is inching her and her two sons closer to homelessness every day, even as she is dying from Wilson's disease." FTC-2023-0064-2830 (emphasis added).

3. Fees to pay rent

- "In my case, the property manager for my rental has started charging a \$25 processing fee for paying rent with a check, money order, or cashier's check. The only way to avoid a fee is to pay through automatic deduction from my checking account, and that was only after I complained when they started charging a fee for that as well." FTC-2023-0064-0069.
- "In order to pay my rent online, I am required to pay a convenience fee every month for \$2.95 when and only if I use the realtor's payment processor. If I want to use my bank, I have to pay \$70 for each onetime use. I pay lots of bills online and even Paypal and Venmo don't charge me a fee. My bank doesn't even charge a transfer funds fee. So why do I have to pay my rental office a fee just to accept my money. Where exactly would a charge for \$70 come from to use my bank to pay my rent." FTC-2023-0064-0149.
- "In the past year the landlords for the apartments of two of my children have both implemented junk fees for paying rent online, even if paying via ACH withdrawal. **This means there is no way for a renter to pay rent without paying an additional fee to do so.**" FTC-2023-0064-0150 (emphasis added).
- "I am writing about junk fees. When I rented an apartment in Hyattsville, MD I used a credit card to pay. The service we used charges outrageous user fees. As high as \$60." FTC-2023-0064-0927.
- "I am currently renting an apartment in another city from my main home for employment purposes. The rent is \$1300 a month. I always had the option to pay electronically if I chose to do so. In August a \$2.65 fee was imposed to pay

electronically. The property management company insisted it was a fee being charged by the software company who owned the software for electronic payments.” FTC-2023-0064-1015.

- “I pay \$1,600/month for a very tiny, but lovely apartment in Northern California. I wouldn’t say it’s worth \$1,600, but I enjoy it here regardless. The problem I’m having is that one day a few months ago, my rent went up \$2.49, for some kind of “transaction fee”, that hadn’t been there all year.” FTC-2023-0064-1052.
- “Appfolio, a company used by my property manager, charges renters \$2.49 to pay their rent. Since Appfolio is a service to landlords, I do not see why this fee should be charged to renters.” FTC-2023-0064-1066.
- “[M]y rent payment is required to be automatic withdrawal from my checking account. There is a \$2.49 charge fee for each automatic payment. As the landlord chooses this as the only method of payment, why aren't they paying their own operational overhead? We are being exploited because we all pay the fee.” FTC-2023-0064-1435.
- “The service used by my landlord for online rent payments, Appfolio, has instituted a mandatory \$2.49 fee per payment for bank wire transfers. This means my options for paying rent and associated fees are: Bank Transfer/\$2.49, credit card/3.49%, debit card/\$9.99, paper check or money order/\$25, cash/\$25. **Feels pretty unfair that there are zero ways to pay my rent and not incur fees.**” FTC-2023-0064-1442 (emphasis added).
- “I am being charged an additional \$2.49 to pay my rent every month. My apartment building had the choice to pay \$1 to AppFolio every month for every unit they managed, or pass along a \$2.49 fee to each tenant. They chose the latter. I've tried mailing my checks a few times, but this has resulted in chaos - the management company has repeatedly said they never received my checks, only to suddenly find them on someone's desk a few days later.” FTC-2023-0064-1549.
- “I'd like to propose also banning convenience fees when making payments on necessities (utilities, paying rent), especially when the provider of the necessity doesn't allow for a fee-less option.” FTC-2023-0064-1553.
- “My landlord recently switched to a new service, AppFolio, that lets us pay rent through an online portal. Paying via credit card cost 1% of the transaction total, but eCheck used to be free. It was recently switched and now I have to pay this company an extra \$2.49 to pay my rent. It's not a ton of money, but I shouldn't have to pay it every month.” FTC-2023-0064-1554.
- “Why must we, as renters, be subjected to additional fees when we pay our rent online as requested by the landlord? This is ridiculous and unacceptable. There are hidden fees for everything one purchase from our cellphone bill to paying rent. When will this deceptive practice stop!!?” FTC-2023-0064-1833.
- “This property was formerly owned by a local company and when I paid our rent online, I was NOT charged any fees if the rental payment was paid via my bank account. After Advenir purchased the complex, they changed our payment portal and started charging a \$2.95 per month "convenience fee" to pay online via a

bank account. They also offer all sorts of nonsense rent payment options like breaking your rent up into several monthly payments, etc. etc. These 'options' probably come with fees, but I don't know for sure since I've never used them." FTC-2023-0064-2321.

- "The online tenant rental portfolio, called AppFolio, charges a 3.49% fee when paying by credit card, a \$9.99 fee when paying by debit card, and a \$2.49 fee when paying by "eCheck" (online bank payment)." FTC-2023-0064-2791.
- "About 5 months ago, Appfolio started charging a \$2.49 transaction fee for anyone paying their rent online. As of December 2023, they increased that transaction fee to \$9.99. No reason has been cited for the original transaction fee, and there has been no public statement on why that fee was increased by 400% less than 6 months later." FTC-2023-0064-2800.
- "I am a graduate student and renter, I try to be frugal, but am frustrated with hidden fees. **Currently, I have to pay a ten dollar "convenience fee" every time I pay rent, which was not in my lease.**" FTC-2023-0064-2895 (emphasis added).
- "Recently, AppFolio has implemented a \$2.49 fee on rent payments, which were previously free, under the guise of transaction fees." FTC-2023-0064-2903.
- "One of the most egregious fees I have dealt with is a monthly 'convenience fee' for paying my rent online, when there is no other option." FTC-2023-0064-2980.

4. Costly application fees

- "I work for a non-profit that helps to keep families housed or to find housing for homeless families, and the fees that are involved in getting the application for housing approved are ridiculous. If you are not approved the application fee is just money gone, no refund." FTC-2023-0064-1431.
- "People with conviction records are disproportionately impacted by costly and repeated application fees. I encountered application fees when I was looking to rent. Soon I realized I Can't afford to apply to many places because of the fees. **These fees cost anywhere from \$30-75 dollars and most People often don't have enough money for application fees on top of rent, security deposit.**" FTC-2023-0064-2696 (emphasis added).
- "It is difficult enough to save up enough money to have two or three months' rent to afford a place to live. **And hard enough to purchase the basic home items, like dishes, bathroom items, bed and a chair. Adding on hundreds of dollars in application fees, particularly if someone is ineligible to rent an apartment, is simply cruel and unusual punishment.** This is an example of how the punishment never ends. Any society that is serious about second chances, who supports crime prevention, must affirmatively further fair housing opportunities, free of deception and profiteering." FTC-2023-0064-2915 (emphasis added).

5. Excessive pet fees

- “We moved from Texas to Washington in June. While looking for a house to rent, we were shocked at the fees being requested both to apply for a house and rent a house. **For example, if you had one household dog, some landlords required every adult who would be residing in the home to pay a non refundable fee to register for a service that assigns the dog a score—just to *apply*.** To move in, we were asked to pay a non refundable “cleaning deposit” even though we’re required to clean the house when we move out and paid a security deposit and non refundable pet deposit, and Washington prohibits tenants from being charged for ordinary wear and tear. **Some landlords wanted us to pay credit check and application fees before they would even show us a house, even if we might decide not to apply to live there.** They wanted an application/credit check fee for my adult disabled son, who would not be paying rent. Others required monthly “filter” fees for the heating system instead of letting you buy your own. There should be one universal application landlords have to accept from prospective tenants. I was shocked at how much it cost just to hunt for houses to rent.” FTC-2023-0064-0191 (emphasis added).
- “Landlords are effectively double-charging pet owners. You pay monthly rent for the pet, for unknown reasons, for the duration of your lease -- and then pay again to repair any wear or damage caused by the pet when you move out. The monthly pet rent practice is predatory. Landlords are strong-arming pet owners who don't want to abandon their pets when they need to move to a new apartment. I don't see how ‘misrepresenting the total costs of the goods’ or ‘misrepresenting the nature and purpose of the fees’ covers this predatory pricing case. The pet rent fee is an example of a clearly stated fee for which there is no rational explanation. I believe what is missing is a clause to protect against ‘omitting the nature or purpose of the fee’. Since the pet rent fee is never explained, it can't be misrepresented. But listing “pet rent fee” clearly on the website also means the landlord is not misrepresenting the total cost of the apartment. I've attached an example screenshot of a landlord's website advertising the rent, as well as the pet rent, with no justification for why the pet requires an ongoing fee. The rent is \$3,060/month and the pet rent is \$75/month. This means that the unfair pet rent amounts to a 2.4% increase in rent for pet owners.” FTC-2023-0064-0006.