Consumer and Worker Protection

Comments Received by the Department of Consumer and Worker Protection on

Proposed Rules related to Junk Fees

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

From: C A
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comment on junk fees
Date: Wednesday, July 8, 2026 8:45:44 PM

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I support the Department's proposed rule requiring businesses to advertise the total price and mandatory fees.

As a New York City consumer, every purchasing decision requires an investment before I even reach the checkout. Traveling to a business costs time, transportation expenses, physical and mental energy, and always involves some degree of risk. Consumers also invest time researching and comparing prices before deciding where to shop.

When businesses advertise prices that exclude mandatory fees, consumers may make decisions based on incomplete information. They may travel to a location or spend significant time pursuing a purchase only to discover that the actual price is substantially higher.

Requiring businesses to disclose the full mandatory price upfront allows consumers to make informed decisions before investing their limited time, money, and energy. It promotes fair competition, reduces wasted resources, and respects the value of a consumer's time as well as their money.

I encourage the Department to adopt this rule.

Sent from my iPhone

From: [redacted]
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comment on the Proposed Rule: Junk Fees
Date: Friday, July 17, 2026 8:50:39 PM

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Dear Department of Consumer and Worker Protection,

Thank you for the opportunity to comment on the proposed Rules Regarding Junk Fees.

I strongly support the Department's goal of improving price transparency and protecting consumers from deceptive pricing practices. Clear and honest pricing benefits both consumers and businesses.

I respectfully request that the Department consider allowing businesses to disclose a payment processing fee of up to 3%, provided that the fee is clearly and conspicuously disclosed before the consumer completes the transaction.

Many small businesses, independent retailers, artisans, and market vendors absorb significant credit card processing costs that continue to rise. Unlike larger corporations, many small businesses operate on narrow profit margins and may not have the financial ability to absorb these fees without increasing the price of every product they sell.

Allowing a clearly disclosed processing fee, capped at 3%, would:

Maintain transparency by informing consumers before purchase.
Help small businesses recover actual payment processing costs rather than embedding those costs into the advertised price of every item.
Give consumers the option to avoid the fee by using alternative payment methods, when available.
Promote fairness by recognizing the different economic realities faced by small businesses compared to large national retailers.

If the Department chooses not to allow a separate processing fee, I encourage consideration of a safe harbor provision or additional guidance for small businesses that incur unavoidable third-party payment processing costs.

Thank you for considering these comments and for your efforts to create fair and transparent consumer protection regulations.

Respectfully,

Tamara Thompson
Social Lights Inc.

Queens, New York

From: Randi Gesslein
To: rulecomments (DCWP)
Subject: [EXTERNAL] Junk Fee rules
Date: Saturday, July 18, 2026 1:48:15 PM

You don't often get email from [redacted]. Learn why this is important

I receive cable tv through Optimum. They have instituted a $10/ mo. "discount" which I strongly consider a junk fee. I had a "discount" for auto-pay using a credit card. That has been eliminated. There is a new "discount" if I give them direct access to my checking account. Linking to a debit card isnt better.

I dont trust this gathering of my personal data. I had some protection through the credit card. There are junk fees disguised as discounts. I realize that this example may require a state law. However the City could expand the definition of junk fees.

Randi Gesslein
[redacted]
Brooklyn NY
[redacted]

From: Courtney Gillespie
To: rulecomments (DCWP)
Cc: Danna DeBlasio; Caroline Engel; Angela Fletes
Subject: [EXTERNAL] Taskrabbit Submission - DCWP Proposed Junk Fee Rules
Date: Tuesday, July 21, 2026 2:09:56 PM
Attachments: Taskrabbit Comments - DCWP Junk Fee Rule.pdf

Good afternoon,

Please find Taskrabbit's submission to the Department of Consumer and Worker Protection's proposed 'junk fee' rules attached for consideration. Taskrabbit supports the Department's goal of eliminating hidden fees and appreciates the opportunity to help shape workable rule language for marketplaces with variable pricing.

We welcome the opportunity to discuss these comments further, and are happy to make our team available to DCWP staff before the rule is finalized.

Respectfully submitted,

Courtney Gillespie

--

Courtney Gillespie (she/her) | **Senior Director, Government Affairs and Social Impact** | **Taskrabbit**

[redacted]

See available positions here.

MEMORANDUM

To: New York City Department of Consumer and Worker Protection (Rulecomments@dcwp.nyc.gov)

From: Taskrabbit, Inc. — Government Affairs

Date: July 21, 2026

Re: Comments on Proposed Rule Regarding Junk Fees — New 6 RCNY §5-16, “General Fee Disclosures” (DCWP Ref. Nos. 2026 RG 027 / DCWP-75)

Introduction

Taskrabbit appreciates the opportunity to comment on the Department's proposed rule addressing hidden “junk fees,” published in the City Record on July 8, 2026. Taskrabbit fully supports the Department's goal of pricing transparency and shares DCWP's interest in ensuring New Yorkers can clearly see and compare the cost of services before they buy.

We also appreciate that the proposed rule, as drafted, contemplates pricing that is “tied to a variable, like an hourly rate or service based on a unit of measurement,” rather than assuming every good or service has a single, fixed price known in advance. We think that is the right starting point, and our comments below are aimed at helping the Department build out clear, workable disclosure mechanics for that kind of variable pricing — which describes Taskrabbit's model. The current rule as drafted does not clarify situations where total price is not known at the time a price is first displayed. We are concerned that this lack of clarity could have an unintended negative impact on clients and Taskers - the independent contractors who provide home services through the Taskrabbit platform.

By way of background: Taskrabbit is a marketplace connecting clients with independent Taskers for on-demand tasks (e.g., furniture assembly, moving help, home repair). Taskers set or choose their own hourly rates. On top of that rate, Taskrabbit charges the client a service and Trust & Support Fee. We believe that fee — and a client's ability to compare it against a Tasker's rate — is important information, and we want to work with the Department to ensure it is disclosed in a way that is accurate and useful, rather than one that requires us to publish a number before we are able to know it.

Why “Total Price” Cannot Be Known at the Time of Display

The proposed rule requires a business to “clearly and conspicuously” disclose the “total price” any time it offers, displays, or advertises a price — defined as “the maximum total of all charges and fees that a consumer must pay, including all mandatory fees and charges, but excluding taxes and fees imposed by a government, and postage or carriage charges… reasonably and actually incurred.” (6 RCNY §5-16(a), (c).)

Taskrabbit does not have the information necessary to state a single “total price” at the time a Tasker's rate is first offered or displayed. The eventual amount a client pays depends on:

- The Tasker's hourly rate (known to Taskrabbit);
- Taskrabbit's service and Trust & Support Fee, applied to that rate (known to Taskrabbit);
- The actual duration of the task (not known to Taskrabbit until the task is complete); and
- Additional expenses a Tasker may separately negotiate with the client (not known to Taskrabbit).

Taskers and clients agree on an estimated time prior to booking; the Tasker keeps track of their actual time worked and invoices the Client. For example, a Tasker scoping a furniture-assembly task directly with a client might estimate two hours, but the job could take two and a half if the client asks the Tasker, on the spot, to also haul the empty boxes to a recycling center — a term negotiated directly between Tasker and client, outside Taskrabbit's visibility. Similarly, Taskers and clients sometimes agree between themselves that the client will cover incidentals like bridge tolls or gas — terms Taskrabbit does not monitor and cannot know in advance.

We raise this not to resist disclosure, but because the rule's current text — built around a single, static “total price” disclosed “at the time of the offer or advertisement” — does not yet describe how a marketplace like ours, where price is variable and finalized only after service delivery, is meant to comply.

Recommended Clarification: Variable Pricing

We recommend the Department add language to 6 RCNY §5-16 that expressly addresses variable pricing models, consistent with approaches other jurisdictions have taken for services priced by rate rather than a fixed sum. Where the total price is derived from a rate (e.g., an hourly rate), time and potential expenses, and therefore cannot be determined at the time of the offer or advertisement, a business should satisfy this section by disclosing the variables together with any mandatory fees and charges that apply to it. As an example, Illinois legislators and Attorney General added the following language to their junk fee bill to account for models like Taskrabbit:

- *A person offering services where the total cost of a service is determined by consumer selections and preferences, or where the total cost of the service relates to distance or time, is compliant with this Section if the person discloses in a clear and conspicuous manner: (i) the factors that determine the total price; (ii) any mandatory fees associated with the transaction; and (iii) that the total cost of the services may vary.*

We believe this is consistent with the Department's own recognition, in the Statement of Basis and Purpose, that the "all-in" pricing requirement is meant to apply to variable, unit-based pricing generally. Adding it directly to the rule text would simply make the mechanics of compliance explicit for marketplaces like ours, rather than leaving it to case-by-case interpretation.

Taskrabbit supports the Department's goal of eliminating hidden fees and appreciates the opportunity to help shape workable rule language for marketplaces with variable pricing. We would welcome the opportunity to discuss these comments further, in writing or at the August 7, 2026 public hearing, and are happy to make our team available to DCWP staff before the rule is finalized.

Respectfully submitted,

Courtney Gillespie

Senior Director, Government Affairs and Social Impact, Taskrabbit, Inc.

From:	Vlad Burlutskiy
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Proposed Rules Relating to Junk Fees — Notice of Public Hearing, August 7, 2026
Date:	Wednesday, August 5, 2026 7:48:41 PM

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I write as a New York City parent in support of the proposed rule, and to raise one narrow point the Department may wish to address in the final text: mandatory fees tied to payment frequency, and how they interact with advertised periodic prices.

The pattern

My child attends an online after-school mathematics program. The provider publishes a tuition table with a column headed "Tuition Per Month," giving a specific figure for each grade band and class length. That figure is the advertised monthly price.

No family paying monthly actually pays it. Monthly billing carries a mandatory per-account administration fee on top. The advertised monthly price is available only to families who do not pay monthly — that is, to families who prepay a full semester or year.

I want to be precise about what is and is not wrong here, because I think the distinction is the useful part of this comment. The provider discloses the fee well at the point of selection. The payment-plan dropdown in the enrollment portal labels the option itself with the additional fee, before the consumer submits the application. On the pre-consent disclosure requirement in the proposed rule, this provider would likely comply.

The problem is upstream of consent. The advertised figure — the one a parent uses to compare programs, budget for the year, and decide whether to enroll at all — is a monthly price that is not obtainable on a monthly schedule. By the time the fee is disclosed, the family has selected classes and a schedule and is at the signature step.

Why this is worth addressing in the rule

1. Pre-consent disclosure and all-in advertising are not the same protection. A business can disclose every mandatory charge correctly at checkout and still advertise a headline periodic price that no consumer on that payment schedule can obtain. If the final rule is read to permit this, the all-in pricing requirement will do less work than intended for any subscription-like or installment-billed service. I would urge the Department to state expressly that where a price is advertised on a periodic basis, the advertised figure must include mandatory charges applicable to consumers paying on that period.

2. Fees tied to payment frequency fall on households by liquidity, not by choice. A family able to front a full semester avoids the charge entirely. A family that must spread payments cannot. Whatever the administrative justification, the incidence is regressive: the surcharge applies only to households with less cash on hand, and it is not avoidable by declining an add-on or a service. I would ask the Department to consider whether a charge that is unavoidable for a class of consumers should be treated as a mandatory fee for total-price purposes even where the business characterizes it as optional.

3. The sector is not represented in the current record. The Statement of Basis and Purpose identifies third-party delivery, rentals, hotels, and live event tickets. After-school education and enrichment is a substantial market in this city, tuition runs into the thousands of dollars per child per year, families frequently enroll more than one child, and

payment plans are the norm rather than the exception. I would ask that the Department confirm the rule's industry-neutral scope reaches educational and enrichment services sold to New York City consumers, including services delivered online by providers headquartered outside the city.

A related note

The same tuition table omits a separate mandatory annual registration fee, disclosed elsewhere in the enrollment agreement and non-refundable. I raise it only to note that the gap between an advertised periodic tuition figure and the total mandatory cost of enrollment can involve more than one charge.

Thank you for the opportunity to comment, and for the Department's work on this rule.

Respectfully submitted,

Vlad Burlutskiy
New York, NY

From:	Andrew Rigie
To:	Revina, Reina (DCWP); Ortiz, Carlos (DCWP); Radecker, Hali (DCWP); Aldana, Miriam (DCWP); Jung, Karline (DCWP); rulecomments (DCWP)
Cc:	Andrew Rigie; Edward Amador
Subject:	[EXTERNAL] Comments on DCWP"s Proposed Rules on Junk Fees
Date:	Wednesday, August 5, 2026 6:32:25 AM
Attachments:	img-2138e433-4e7f-4437-af78-158c02a0c9da.png 2026-08-07 DCWP Junk Fee Rule Hearing Comments NYC Hospitality Alliance FINAL.pdf

Hi team - please find our comments below and attached. Thank you for your consideration.

August 7, 2026

re: Department of Consumer and Worker Protection's Proposed Rules on Junk Fees

The New York City Hospitality Alliance represents restaurants, bars, and nightlife venues across the five boroughs. We appreciate that the Department of Consumer and Worker Protection has clearly explained the purpose and intent of these proposed rules. We support the general goal of ensuring that consumers are not surprised by hidden mandatory fees after an initial price has been advertised.

The proposed rule however requires clarification regarding variable or transaction-specific charges, including restaurant delivery fees and mandatory gratuities that depend on factors such as delivery distance, order size, party size, and additional work. These charges often cannot be calculated when an individual menu item is first displayed and cannot feasibly be incorporated into the advertised price of every item.

Some restaurants charge a flat delivery fee—for example, $5—regardless of the number of items in an order. Because the fee does not vary based on the number of items purchased, it cannot be reasonably allocated across individual menu item prices. For example, the same $5 delivery fee applies whether a customer orders one item or five items, making it impossible to accurately incorporate that charge into the listed price of each menu item.

Compliance would be even more burdensome where delivery fees vary based on factors such as the customer's distance from the restaurant. In those circumstances, the applicable fee cannot be determined when the menu is displayed because it depends on the customer's delivery location. As a result, it would be impractical, if not impossible, to reflect the fee in the price of each menu item because the customer may not input their address until after reviewing the menu.

Similarly, if a restaurant applies a percentage-based surcharge for large parties, as permitted under DCWP rules, it would be unreasonable to require the restaurant to display a separate price for every menu item to account for a charge that applies only in limited circumstances. The same is true for other permissible charges, such as a fee for splitting a menu item. Requiring restaurants to maintain separate menu prices for these contingent charges would impose significant compliance burdens while providing little meaningful benefit to consumers.

DCWP should clarify that compliance does not require a restaurant or third-party platform to incorporate a variable transaction-level charge into the displayed price of each menu item, provided the basis for the charge is clearly disclosed and the exact charge and final total are presented before the consumer consents to pay.

Our additional concerns relate to the proposed enforcement provisions.

First, the recordkeeping requirement is broad and potentially burdensome. The rule would require businesses to maintain records establishing the nature, purpose, amount, and refundability of any fee or charge. DCWP should clarify precisely which records must be retained, how long they must be kept, and what documentation will be considered sufficient. Small businesses should not face violations because they failed to anticipate an undefined documentation requirement. This would add to the extensive recordkeeping obligations already imposed on small business owners.

Second, the proposed rule creates a presumption that an allegation is true when a business fails to maintain or produce a required record. The agency should bear the responsibility of proving an alleged violation. Shifting the burden to the respondent through an adverse presumption is unnecessarily punitive, particularly when the scope of the recordkeeping obligation is not clearly defined. It may also exceed DCWP’s statutory authority, as there appears to be no express authorization for the agency to alter the applicable evidentiary or due process standard through regulation.

Third, the rule provides no warning or opportunity to cure a first-time violation. Instead, a business may immediately face a $525 penalty. We urge DCWP to provide a warning and opportunity to cure first-time violations, consistent with the administration’s commitment to supporting small businesses and a regulatory approach that prioritizes education, training, and compliance.

We are also concerned that separate advertisements, menus, contracts, transactions, or online listings could each be treated as individual violations. This could expose a small business to multiple penalties arising from the same price disclosure and tens of thousands of dollars in fines for a single mistake. The proposal should make clear that repeated publication or display of the same price listing before a business receives notice constitutes a single violation, rather than a separate violation for every appearance or transaction.

We respectfully urge DCWP to revise the proposed rule to clarify the treatment of variable and transaction-specific charges, establish clear and limited recordkeeping standards, eliminate or narrow the adverse presumption arising from missing records, and provide a warning and cure period for first-time violations that do not involve intentional deception or consumer harm. The Department should also clarify that substantially similar disclosures arising from the same underlying practice will not be multiplied into excessive per-instance penalties.

Andrew Rigie
Executive Director

NYC HOSPITALITY ALLIANCE

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NYC HOSPITALITY ALLIANCE

New York City Hospitality Alliance
244 Fifth Avenue, Suite 2947
New York, NY 10001

August 7, 2026

re: Department of Consumer and Worker Protection's Proposed Rules on Junk Fees

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We respectfully urge DCWP to revise the proposed rule to clarify the treatment of variable and transaction-specific charges, establish clear and limited recordkeeping standards, eliminate or narrow the adverse presumption arising from missing records, and provide a warning and cure period for first-time violations that do not involve intentional deception or consumer harm. The Department should also clarify that substantially similar disclosures arising from the same underlying practice will not be multiplied into excessive per-instance penalties.

From: Carl Hum
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comments to Junk Fees Rule
Date: Thursday, August 6, 2026 12:24:41 PM
Attachments: 20260807 REBNY Comment Letter to DWCP re Junk Fees.pdf

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Attached please find the Real Estate Board of New York's comments on the proposed rules to prohibit charging consumers hidden "junk fees."

Please let us know if there are any further questions.

Thank you,

Carl Hum
General Counsel

Carl Hum (he/him)
Senior Vice President & General Counsel
Legal

The Real Estate Board of New York
570 Lexington Ave., New York, NY 10022
[redacted] | [redacted] | www.rebny.com

Visit: REBNY.com

REBNY Comment | August 7, 2026

The Real Estate Board of New York to The New York City Department of Consumer and Worker Protection re: Proposed Rule Regarding Junk Fees

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to comment on the Department of Consumer and Worker Protection's (the "Department") proposed rule regarding junk fees (the "Proposed Rule").

The Proposed Rule "applies to any person who offers, displays or advertises goods or services in New York City," and establishes that "[i]t is a deceptive and unconscionable trade practice for any person to offer, display, or advertise the price of a good or service without disclosing the total price in a clear and conspicuous manner."[1] For the reasons outlined below, the Proposed Rule's broad application to include the real estate brokerage industry is concerning for the REBNY broker members who earn commissions upon the successful transaction of real property.

Commissions are negotiable and not set by law.[2] Consumers hiring a real estate broker are free to negotiate how the broker will be compensated for their services. Compensation forms vary. They could be based upon a percentage of the property's final sale price, a flat fee, or some other formula. Moreover, each real estate transaction is different and could involve fees that are not immediately disclosed until a subject property is identified. For example, certain housing cooperatives may charge an application fee while others may not.[3] Therefore, it is not possible to calculate the "total price," as defined by the Proposed Rule, of a real estate broker's service at the time the service is advertised.

Notwithstanding the above, the Proposed Rule applies "except to the extent that regulation of such offer, display or advertisement is preempted by federal or state laws or regulations."[4]

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[1] Proposed Rule, §§ 5-16(b) and (c)

[2] National Association of REALTORS®, *What the NAR Settlement Means for Home Buyers and Sellers* (May 24, 2024) ("broker fees and commissions are fully negotiable and not set by law"), https://www.nar.realtor/the-facts/what-the-nar-settlement-means-for-home-buyers-and-sellers, accessed August 6, 2026

[3] Even the amount of application fees vary among cooperative housing corporations.

[4] *Op. Cit.*, § 5-16(b)

The Proposed Rule should be amended to expressly recognize applicable local laws. For example, the City of New York recently enacted legislation requiring the disclosure of certain fees associated with rental housing. Accordingly, state and local laws that may preempt the Proposed Rule's application include:

- New York State's Housing Stability and Tenant Protection Act (HSTPA) of 2019, which limits background and credit check fees to $20 and waives such fees if the tenant presents a credit check conducted within the past 30 days. HSTPA also limits late fees in connection to rental payments made after five days of the due date to the lesser of $50 or 5% of the monthly rent.[5]

- New York City's Fairness in Apartment Rental Expenses Act (Local Law 2024/119), which requires disclosure of any fee to be paid by the prospective tenant for the rental of real property and an itemized written disclosure of any fees that the tenant must pay to the landlord in connection with such rental.[6]

In conclusion, REBNY respectfully requests that real estate brokers and brokerages be exempted from the Proposed Rule. Absent such an exemption, REBNY requests further guidance from the Department regarding the application of the Proposed Rule, including its "total price" disclosure requirement to real estate brokers and brokerages.

CONTACT:
Zach Steinberg
Executive Vice President
Real Estate Board of New York
zsteinberg@rebny.com

[5] New York Real Property Law §238-a.
[6] Local Law 61 of 2025

From:	Jared Burns
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] NYSAR Public Comment - DCWP Proposed rules regarding hidden "junk fees"
Date:	Thursday, August 6, 2026 2:44:25 PM
Attachments:	2026_NYSAR Testimony - DCWP proposed rule on junk fees.docx

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Good afternoon,
Please see the attached public comment on behalf of the New York State Association of REALTORS® regarding DCWP's proposed rules regarding hidden "junk fees."

Thank you

Jared Burns
Government Affairs Associate
New York State Association of REALTORS®, Inc.
130 Washington Ave
Albany, NY 12210
[redacted]
http://www.nysar.com/

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info@nysar.com | www.NYSAR.com

August 6, 2026

NYSAR Testimony

New York City Department of Consumer and Worker Protection Public Hearing – Proposed rules regarding hidden "junk fees"

The New York State Association of REALTORS®, Inc. (NYSAR) is a not-for-profit trade organization representing more than 60,000 of New York State's real estate professionals. NYSAR appreciates the opportunity to provide comment on DCWP's proposed rule prohibiting charging consumers hidden "junk fees."

While NYSAR understands the intent of the proposed rule, its overly broad nature as currently drafted raises several substantive concerns from licensed real estate professionals conducting business in New York City. Truly excessive and unwarranted "junk" fees warrant government scrutiny, however NYSAR is particularly interested in further clarity as to whether the proposed rule would apply to the legitimate fees charged by licensed real estate professionals and/or their clients.

The proposed rule requiring clear and conspicuous disclosure of "any fee or charge" is problematic as these fees can vary when taking into account real estate broker compensation. All compensation rates and fee structures are fully negotiable directly between consumers and their respective agent in any real estate transaction or lease agreement. Displaying these "fees" or attempting to factor them into the "total price" would be careless and possibly misleading due to the nature of the transaction.

Furthermore, if brokers are required to display compensation on all real estate listings and advertisements, this raises significant anti-trust concerns and could adversely impact competition among real estate brokerages thereby creating potential harm to consumers.

Additionally, existing state and local laws already address the issue of allowable fees and the disclosure of such fees that can be charged by a landlord.

Other types of paid services that are associated with a real estate transaction such as home inspections and title insurance as well as fees charged for applying to purchase or rent a cooperative unit may fall under this rule. These amounts may not be known at the time a real estate licensee lists or advertises a property for sale or rent.

Through this public hearing process, NYSAR is seeking more clarity around the applicability of the proposed rule and is hopeful that any final rule takes into consideration the above concerns in order to protect both consumers and licensed real estate professionals that serve them.

From:	Laura Chadwick
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Travel Tech Comments Rules Regarding Junk Fees
Date:	Thursday, August 6, 2026 2:51:40 PM
Attachments:	8.7.26 NYC Rules Regarding Junk Fees Travel Tech Comments.pdf

Dear Commissioner:

On behalf of Travel Tech Association (Travel Tech) and our member platforms, we write regarding Rules Regarding Junk Fees. The proposed rules, as currently drafted, would impose new requirements governing price displays, recordkeeping, and enforcement for businesses offering or advertising goods and services.

Travel Tech shares the Department's goal of protecting consumers from hidden fees, and our members support clear, all-in pricing. Companies already display total prices in compliance with the Federal Trade Commission's Rule on Unfair or Deceptive Fees (16 C.F.R. Part 464), which took effect on May 12, 2025, and covers short-term lodging and live-event tickets. Adopted in a bipartisan vote, that rule defines the "total price" a business must disclose as "the maximum total of all fees or charges a consumer must pay for any good[s] or service[s] and any mandatory ancillary good or service, except that government charges, shipping charges, and fees or charges for any optional ancillary good or service may be excluded." The Department's proposed Section 5-16 defines "total price" in nearly identical terms.

Travel Tech supports transparent, all-in pricing, and our members already provide it under the federal lodging rule. We urge the Department to narrow the geographic scope of Section 5-16(b) to transactions with a genuine New York City connection, to remove the adverse presumption in Section 5-16(f)(2) and clarify the associated recordkeeping obligation, and to provide a safe harbor deeming federally compliant pricing compliant with the rule. These changes would allow the Department to achieve its consumer-protection goals without imposing an unworkable global standard or an unfair burden of proof on businesses acting in good faith.

We appreciate the opportunity to comment and welcome the chance to serve as a resource to the Department as it finalizes this rule.

Sincerely,

Laura Chadwick

Laura Chadwick | President & CEO
Travel Tech Association
1800 Diagonal Rd, Suite 600, Alexandria, VA 22314
[redacted] | [redacted]
Follow Us | www.traveltech.org

TRAVEL TECH
ASSOCIATION

August 7, 2026

Submitted via email to Rulecomments@dcwp.nyc.gov and via http://rules.cityofnewyork.us

New York City Department of Consumer and Worker Protection
42 Broadway New York, NY 10004

Re: Comments on Proposed Rule, "Rules Regarding Junk Fees," 6 RCNY § 5-16 (Reference Nos. 2026 RG 027 / DCWP-75)

Dear Commissioner:

Travel Tech Association (Travel Tech) submits these comments on the Department's proposed rule adding Section 5-16 to Title 6 of the Rules of the City of New York.

Travel Tech Association is a nonprofit membership organization and the unified voice for the travel technology ecosystem. Travel Tech represents the leading innovators in travel technology, including online travel agencies (OTAs), metasearch engines, short-term rental platforms, Global Distribution Systems, Travel Management Companies, and early-stage travel tech startups. Our members connect millions of consumers to travel options around the world and play a critical role in fostering competition, transparency, and consumer choice in the travel marketplace.

Travel Tech shares the Department's goal of protecting consumers from hidden fees, and our members support clear, all-in pricing. Companies already display total prices in compliance with the Federal Trade Commission's Rule on Unfair or Deceptive Fees (16 C.F.R. Part 464), which took effect on May 12, 2025, and covers short-term lodging and live-event tickets. Adopted in a bipartisan vote, that rule defines the "total price" a business must disclose as "the maximum total of all fees or charges a consumer must pay for any good[s] or service[s] and any mandatory ancillary good or service, except that government charges, shipping charges, and fees or charges for any optional ancillary good or service may be excluded." The Department's proposed Section 5-16 defines "total price" in nearly identical terms.

Because the proposed rule so closely tracks the federal standard our members already meet, we first recommend a straightforward way to align the two and avoid a conflicting local requirement, as set out in Section I below. We do not write to defend hidden fees. We write in support of consistency and to highlight two provisions of the proposed rule that, as drafted, would reach far beyond New York City, shift the burden of proof onto businesses in a manner that raises serious fairness concerns, and fall especially hard on the intermediary platforms that display prices set by third parties. We respectfully urge the Department to revise the rule as described below.

I. The Department Should Provide a Safe Harbor for Pricing That Complies with the Federal Standard

Because the Federal Trade Commission's rule already governs all-in price display for short-term lodging and live-event tickets, and our members already comply with it, the most direct way for the Department to achieve consistent, transparent pricing without creating a conflicting local standard is to deem federally compliant pricing compliant with Section 5-16. A safe harbor of this kind would give New York City consumers the same protection they already receive under the federal rule, while sparing businesses the burden and confusion of maintaining a separate, City-specific display standard for the same transactions. We respectfully recommend that the Department add the following provision to Section 5-16:

"An offer, display, or advertisement for short-term lodging, including temporary sleeping accommodations at a hotel, motel, inn, short-term rental, or vacation rental, or for live-event tickets, that complies with Part 464 of Chapter I of Title 16 of the Code of Federal Regulations shall be deemed in compliance with this section."

II. The Geographic Scope in Section 5-16(b) Reaches Far Beyond New York City and Should Be Narrowed to Transactions with a Genuine City Nexus

Section 5-16(b) applies the rule to "any person who offers, displays or advertises goods or services in New York City, or to a New York City consumer." The phrase "or to a New York City consumer" extends the rule to any business, anywhere in the country or the world, that advertises to a resident of New York City, regardless of whether that business has any physical presence, transactional nexus, or other connection to the City.

For the travel industry, this scope is unworkable. Travel is inherently interstate and international. A national or global travel platform serves users everywhere, and a resident of New York City may search for a hotel in Miami, a rental car in Denver, or a flight to London. Under the proposed language, every one of those advertisements would be subject to a New York City rule, even though the transaction, the supplier, and the good or service have no connection to the City. Businesses cannot reliably identify which of their users are "New York City consumers" when a price is displayed, and they cannot practically maintain a separate New York City price-display standard for those users alone. The realistic effect is that a single City agency's rule would govern pricing displays worldwide. This is precisely with we advocated for a federal rule on this matter.

This scope is broader than the very laws the Department cites as models. California's SB 478, the Massachusetts junk-fee regulations, and Minnesota's price-transparency law apply to businesses doing business within those states. The Department's own longstanding practice, and the statutes it cites as authority, likewise govern sales and advertising within the City. Extending this rule to any advertisement seen by a City resident anywhere is a departure from that practice that also raises constitutional concerns under the dormant Commerce Clause regarding a municipality's regulation of wholly out-of-jurisdiction commerce.

Recommendation: The Department should strike "or to a New York City consumer" or revise Section 5-16(b) to apply only to offers, displays, and advertisements with a genuine New York City nexus, such as transactions for goods or services to be provided or delivered in the City, or advertisements directed at consumers physically located in the City. This would achieve the Department's consumer protection purpose within the City while remaining consistent with the state models the rule cites and with the Department's existing authority.

III. The Recordkeeping Requirement and Adverse Presumption in Section 5-16(f) Shift the Burden of Proof and Fall Unfairly on Platforms Displaying Third-Party Prices

Section 5-16(f)(1) requires any covered person to maintain records "sufficient to establish the basis, including the nature, purpose, amount or refundability" of any fee or charge in a covered advertisement or fee breakdown. Section 5-16(f)(2) then provides that a failure to maintain, retain, or produce such a record relevant to a material fact alleged by the Department "creates a presumption that such fact is true."

This burden-shifting presumption raises two serious concerns:

First, it reverses the ordinary burden of proof. Under Section 5-16(f)(2), the Department may allege a violation, and if a business cannot produce records the Department deems sufficient, the Department's allegation is presumed true. Combined with the absence of any cure period, which the accompanying certification expressly declines to provide, and escalating per-violation penalties, this structure exposes businesses to liability based not on a demonstrated deceptive practice but on a documentation gap. This raises due process concerns. A business acting in good faith should not be presumed to have violated the law because it did not retain a particular record in the form the Department later requests. The recordkeeping obligation itself is also open-ended: "records sufficient to establish the basis" of every fee gives businesses no clear standard for what must be kept or for how long. There is also no provision for a situation where records are destroyed through no fault of the business, such as by a cyberattack.

Second, and of particular concern for our members, the provision falls hardest on intermediary platforms that display prices and fees set by third-party suppliers. When an online travel platform displays a hotel's rate, including a mandatory fee the hotel has set, the platform is passing through pricing established by the supplier. The platform does not set that fee and often has no visibility into its "nature, purpose, amount or refundability," which is information within the hotel's control, not the platform's. Under Section 5-16(f), if the Department alleges that a supplier-set fee was improperly excluded or characterized, and the platform cannot produce records establishing the basis of a fee it did not create, the Department's allegation would be presumed true against the platform. That holds intermediaries responsible for information they cannot access and for pricing decisions they did not make.

Recommendation: The Department should remove the adverse presumption in Section 5-16(f)(2). If the Department retains a recordkeeping requirement, it should (1) define with specificity what records are required and for how long, (2) provide a reasonable cure period before penalties attach, and (3) expressly account for intermediaries by limiting a platform's recordkeeping obligation to the pricing information the platform itself sets or controls, rather than fees established by third-party suppliers.

IV. Conclusion

Travel Tech supports transparent, all-in pricing, and our members already provide it under the federal lodging rule. We urge the Department to narrow the geographic scope of Section 5-16(b) to transactions with a genuine New York City connection, to remove the adverse presumption in Section 5-16(f)(2) and clarify the associated recordkeeping obligation, and to provide a safe harbor deeming federally compliant pricing compliant with the rule. These changes would allow the Department to achieve its consumer-protection goals without imposing an unworkable global standard or an unfair burden of proof on businesses acting in good faith.

We appreciate the opportunity to comment and welcome the chance to serve as a resource to the Department as it finalizes this rule.

Thank you for your consideration.

Sincerely,

Laura Chadwick

Laura Chadwick
President & CEO
Travel Tech Association
www.traveltech.org

From: Matthew Spring
To: rulecomments (DCWP)
Subject: [EXTERNAL] Shipt comments on proposed junk fee rules
Date: Thursday, August 6, 2026 5:23:11 PM
Attachments: ATT00001.png
Shipt Comments on NYC DCWP Proposed Rules Relating to Junk Fees (6 RCNY § 5-16) - Submitted.pdf

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Hello,

Attached are Shipt's comments on the proposed rules regarding general fee disclosures (6 RCNY § 5-16).

We appreciate the opportunity to submit these comments and for your consideration. Please let me know if you have any questions or would like to discuss further.

Best Regards,
Matt

--

Shipt
MATTHEW SPRING | SENIOR MANAGER
Government Affairs (New York, NY)
[redacted]
Shipt.com

August 7, 2026
To: New York City Department of Consumer and Worker Protection (DCWP)

Comments on Proposed Rules Relating to "Junk Fees" (6 RCNY § 5-16)

Dear Commissioner Levine:

Shipt, Inc. ("Shipt") appreciates the opportunity to submit these comments in response to the New York City Department of Consumer and Worker Protection's ("DCWP" or "Department") proposed rules regarding general fee disclosures (6 RCNY § 5-16). As a platform that connects New Yorkers to high-quality grocery delivery services and a trusted network of local personal shoppers, we care deeply about making sure our customers have clear, simple pricing with no surprises to guide their shopping decisions and that reflect the value they receive from our platform. Our comments are offered in a spirit of collaboration to help refine the final rule so that it protects consumers while remaining practical for businesses attempting to comply in good faith.

Accommodating Indivisible Order-Level Charges (§ 5-16(c))

We agree that consumers should know exactly what they are paying before they check out. However, applying a "total price" rule to a flat, order-level charge creates a real practical challenge when customers are browsing individual items.

Because a flat fee applies once to the entire shopping cart, there is no accurate way to build it into the price of a single item before a customer starts shopping. Doing so would distort item costs and make it impossible for New Yorkers to compare grocery prices accurately. Furthermore, because we cannot predict a consumer's final basket size while they are browsing, attempting to distribute a flat fee across items risks displaying inaccurate cumulative fees or overstating the true cost of the transaction.

We respectfully request that the DCWP clarify that flat, order-level charges do not need to be divided and added to individual item prices during browsing. Instead, businesses can satisfy the rule by clearly disclosing the flat fee at the start of the shopping journey on a given retailer's marketplace storefront—such as on a prominent homepage banner or a persistent cart preview. This dual-disclosure approach gives consumers complete, upfront transparency with zero checkout surprises, while keeping product prices accurate and easy to compare.

Tailoring Recordkeeping and Supporting Fair Compliance (§ 5-16(f))

We also want to make sure the rule's administrative requirements are balanced and fair for businesses striving to comply in good faith. We have two requests for the recordkeeping provisions in § 5-16(f):

<u>Limit Recordkeeping to Mandatory Fees</u>: As drafted, § 5-16(f)(1) requires businesses to maintain substantiation records for all fees, including optional charges. Documenting completely voluntary customer choices—creates administrative complexity. Limiting this requirement strictly to mandatory fees keeps compliance straightforward, helps businesses keep operational costs low, and directly protects affordability for New Yorkers.

<u>Establish a Fair Notice-and-Cure Standard</u>: Under § 5-16(f)(2), any clerical recordkeeping gap automatically creates a legal "presumption of truth" regarding allegations of deceptiveness. This automatic trigger feels overly punitive for businesses trying to do the right thing. We suggest that this presumption should only apply if the DCWP issues a formal, written request for records and the business fails to produce them within a reasonable, cooperative cure period (such as 30 business days). This simple change protects due process while keeping the DCWP's enforcement tools fully intact.

By addressing these changes in the final rule, DCWP can achieve robust consumer protection while supporting businesses that strive to provide a trusted service that consumers value and rely on for their everyday grocery and essentials. We thank you for your consideration of these comments.

Sincerely,

Matthew Spring
Senior Manager, Government Affairs
matthew.spring@shipt.com

From: Adira Siman
To: rulecomments (DCWP)
Cc: Ellen Gustafson; Jake Capistran
Subject: [EXTERNAL] Junk Fees Rule Comments
Date: Thursday, August 6, 2026 7:04:21 PM
Attachments: DCWP Junk Fee Rule_Partnership for NYC Comments_20260807-Final.pdf

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Please see the attached comments on the proposed rule.
-Adira

Adira M. Siman
Senior Vice President and General Counsel
Partnership for New York City
[redacted]

Comments of the Partnership for New York City

Proposed Rule Adding 6 RCNY § 5-16 (General Fee Disclosures)

August 7, 2026

Thank you for the opportunity to submit comments on the proposed rule adding 6 RCNY § 5-16, which would impose new "total price" and fee-disclosure obligations on any person who offers, displays, or advertises goods or services in New York City or to a New York City consumer. The Partnership for New York City mobilizes private sector resources and expertise to advance New York City's standing as a global center of economic opportunity, upward mobility, and innovation. We are a nonprofit organization whose members are preeminent business leaders and companies that support nearly 1 million jobs in New York City and deliver approximately $370 billion in economic output.

The Partnership opposes the proposed rule as currently drafted. Although we share the goal of protecting consumers from hidden fees, the current proposed rule's industry-neutral, one-size-fits-all approach conflicts with comprehensive disclosure regimes that already govern many of our members' industries, imposes disclosure obligations that are operationally unworkable for certain business models, and pairs a broad recordkeeping mandate with an evidentiary presumption that could reach fees a business neither sets nor controls. We urge the Department of Consumer and Worker Protection (the "Department") to adopt the targeted revisions described below before finalizing the rule.

I. The Rule Should Exempt Industries Already Subject to Comprehensive Federal and State Fee-Disclosure Regimes

The proposed rule applies broadly to "any person" advertising in New York City, subject only to a general preemption carve-out in subdivision (b). That standard is too imprecise for industries that are already comprehensively regulated at the federal and state level, and it will produce duplicative, and in some cases conflicting, compliance obligations.

A. Financial services and insurance

Banks, credit unions, and entities regulated by the New York State Department of Financial Services (DFS) already operate under comprehensive fee-disclosure regimes, including the Truth in Lending Act (TILA), the Truth in Savings Act, the Electronic Fund Transfer Act, the Gramm-Leach-Bliley Act, and Office of the Comptroller of the Currency and DFS regulations. DFS already maintains a comprehensive disclosure framework for these products. Layering a local, generic total-price mandate on top of these regimes would not improve consumer protection — it would create conflicting obligations without a corresponding benefit.

Notably, the City's own recently enacted "Click to Cancel" rule recognized this concern and expressly exempted "any entity, or subsidiary or affiliate thereof, regulated by the Department of Financial Services" and "banks, bank holding companies, and their subsidiaries and affiliates; credit unions; and other financial institutions licensed under state or federal law." We urge the Department to include the same exemption language in 6 RCNY § 5-16.

A DFS-based exemption alone, however, may not reach every regulated financial actor. Nationally chartered banks, broker-dealers registered under the Securities Exchange Act of 1934, and investment advisers registered under the Investment Advisers Act of 1940 are not necessarily "regulated by DFS," even though each is subject to its own comprehensive federal fee-disclosure framework, including Regulation DD, and New York's own unfair and deceptive practices statutes. We recommend the Department instead define the exempt category more broadly, along the lines of the definition of "financial institution" in § 801 of the New York Financial Services Law, to reach banks, insurers, broker-dealers, and investment advisers regardless of which regulator supervises them. We also note that several members believe the rule, if applied to nationally chartered banks and federally regulated securities activity, would raise preemption concerns under the National Bank Act and the National Securities Markets Improvement Act, and we recommend the Department add both statutes to the list of federal laws it has identified as potentially conflicting with the proposed rule.

Separately, the concept of a single "total price" does not translate well to many financial products. A mortgage's cost is conveyed through a series of TILA-governed disclosures (e.g., lender fees, the interest rate, the annual percentage rate, the finance charge, and the total of payments) that are produced at different stages of a lending relationship and are often based on preliminary information a consumer has provided before a full application is submitted. Requiring that level of detail in early, general audience estimates would force lenders either to collect more personal financial information earlier than necessary or to stop offering preliminary pricing information altogether. Deposit accounts present a similar problem: a checking or savings account may carry a monthly fee and pay interest that both vary over time and with the customer's balance, so there is no fixed "total price" to disclose in the first place. These products are already governed by their own detailed disclosure requirements, and we recommend the Department exempt them from § 5-16 rather than attempt to fit them into a total-price framework that was not designed with them in mind.

B. Communications and broadband

Communications and broadband providers are subject to detailed, sector-specific federal disclosure mandates that already achieve the transparency goals underlying the proposed rule, including the Federal Communications Commission's (FCC) Broadband Consumer Label (47 C.F.R. § 8.1(a)), Truth-in-Billing requirements for cable and direct broadcast satellite service (47 C.F.R. § 76.310) and telephone service (47 C.F.R. § 64.2401), NYS Public Service Commission rules governing cable operator billing practices (16 N.Y.C.R.R. § 890.63), and New York's Television Viewer Protection Act.

Applying the proposed rule's generic "total price" requirement on top of these regimes would create direct conflicts rather than added protection. The FCC label requires providers to display a base monthly charge as a distinct line item, while the proposed rule would require a single, bundled all-in figure, thus presenting consumers with two different "price" figures for the same service. A single static total price is also incompatible with how these services are actually sold: plans are highly customizable (bundles, add-ons, device financing), certain mandatory fees such as the federal Universal Service Fund contribution are adjusted quarterly by federal regulators, and advertising in the New York media market (New York, New Jersey, and Connecticut) cannot reflect a single total price that varies by the consumer's precise location because cable television franchise fees and certain other franchise-related assessments vary based on locality.

Acknowledging existing law and these market realities, the New York Legislature's pending Junk Fee Prevention Act (S.363-B) expressly provides that providers complying with the FCC's Broadband Consumer Label requirements or the FCC's Truth-in-Billing and Advertising rules are deemed compliant with the statute. California's junk-fee statute, which the Department cites as a model for this proposal, also expressly exempts providers that comply with the FCC's Broadband Consumer Label requirements. We urge the Department to adopt the same approach and deem compliance with the FCC's Broadband Consumer Label and Truth-in-Billing rules sufficient to satisfy 6 RCNY § 5-16. Additionally, the final rule should specifically exempt any fee that is required by law; authorized by federal, state, or local law; and/or authorized under a franchise agreement.

II. Item-Level "Total Price" Disclosure Is Operationally Unworkable for Businesses With Variable, Order-Dependent Fees

For platforms such as grocery-delivery services, the all-in pricing requirement would require every product listed to display a price inclusive of service fees, delivery fees, and other charges before a customer has even begun building a cart. A gallon of milk that retails for $4.99 might display as $8.50 or more once fees are proportionally allocated to that single item, even though delivery and service fees are not fixed per item; they vary by order size, distance, retailer, time of day, and membership status. Because the allocation shifts with every item a customer adds to the cart, the displayed "all-in" price for the same product would change throughout the shopping experience. This would be both confusing and affirmatively inaccurate, and would undermine consumer trust rather than build it.

For a platform operating across thousands of retailers and millions of products, building the dynamic, real-time infrastructure needed to support item-level, order-dependent fee display is not achievable within any reasonable compliance timeline. We recommend the Department clarify that the total-price disclosure requirement applies to the price displayed once a consumer's order is assembled and fees are calculable, rather than to each individual item before a cart exists.

III. The Rule Should Accommodate How Restaurant and Retail Transactions Actually Work and Should Clarify the Interaction with Existing Sector-Specific Requirements

<u>A. Variable, transaction-specific charges cannot be built into a per-item advertised price</u>

Charges such as delivery fees and mandatory gratuities are often contingent on facts that are not known when a menu item is first displayed (*e.g.*, delivery distance, order size, party size, and the amount of additional labor a particular order requires) and cannot feasibly be folded into the advertised price of every item. A flat delivery fee, for example, does not vary with the number of items in an order, so there is no way to allocate it across individual menu prices without either overstating the cost of a small order or understating the cost of a large one. Where the fee instead varies with the customer's distance from the restaurant, it cannot be calculated at all until the customer supplies a delivery address — which often happens only after the customer has already reviewed the menu. The same problem arises with permissible contingent charges such as a large-party surcharge or a fee for splitting a single menu item: these charges apply only in limited circumstances, and requiring a restaurant to maintain and display a separate item price for every possible combination of contingencies would impose a significant compliance burden for little corresponding benefit to consumers.

We recommend the Department clarify that a restaurant or third-party delivery platform does not have to add variable, transaction-specific charges into individual menu prices so long as the basis for the charge is clearly disclosed and the exact charge and final total are presented before the consumer consents to pay.

B. A restaurant or retailer should not have to display a tax-inclusive total before a customer orders or checks out

Although the definition of “total price” excludes government-imposed taxes, subdivision (d) separately requires disclosure of the “final amount the consumer must pay,” which would typically include tax, before the consumer consents to pay. That sequence does not reflect how a restaurant or retail transaction ordinarily works. A diner orders from a menu and does not receive a tax-inclusive total until the check arrives at the end of the meal; a retail customer selects items and learns the tax-inclusive total only once those items are rung up at the register. In neither case is it standard, or generally even possible, to show a customer a final, tax-inclusive figure at the moment an item is selected, because the applicable tax depends on the final combination of items purchased. We recommend the Department clarify that a restaurant or retail business satisfies subdivision (d) by presenting the final, tax-inclusive total at the point of checkout or on the check, consistent with ordinary practice, and that nothing in the rule requires a tax-inclusive total to be disclosed earlier in the ordering or shopping process.

D. The rule should not duplicate enforcement of charges already governed by other, more specific rules

Subdivision (g) states that the proposed rule does not replace or supersede existing price-disclosure requirements elsewhere in Title 6 or Title 20 of the Administrative Code. That savings clause is helpful, but it does not address whether the separate recordkeeping presumption and penalty schedule in § 5-16 could still attach independently to a fee practice (*e.g.*, automatic gratuities in food service) that is already governed by other, more specific rules. Restaurants and other hospitality businesses should not face duplicative recordkeeping obligations and separate enforcement exposure under § 5-16 for a charge that another provision of the City's rules already regulates in detail. We recommend the Department clarify that where a fee or charge is governed by another specific New York City or state disclosure requirement, that requirement controls, and the recordkeeping presumption and penalty provisions of § 5-16 do not independently apply to the same fee.

IV. The Recordkeeping and Presumption Provisions Should Not Reach Fees a Business Neither Sets nor Retains

Subdivision (f) requires a business to maintain records establishing the basis for any fee it discloses and provides that a failure to produce such records creates a presumption that a Department allegation is true. As drafted, this obligation would extend even to fees that a business collects solely as a pass-through, on behalf of a third party, with no discretion to set, waive, or adjust the amount and no portion retained by the business itself. Holding a business to the same recordkeeping standard (and the same adverse presumption) for a fee it does not control is disproportionate to the Department's stated purpose of preventing businesses from disguising the true nature of their own charges.

We recommend the Department add an express carve-out providing that a person is not required to maintain records under subdivision (f) where a fee is imposed by a third party, the person has no discretion to set, waive, reduce, or determine the amount or applicability of the fee, and the person remits the fee to the third party without markup. We further recommend that the definition of "mandatory fees and charges" in subdivision (a) expressly exclude any fee or charge imposed by a federal, state, tribal, or local governmental agency, consistent with the exclusion already applied to taxes and government fees in the definition of "total price."

V. The recordkeeping, presumption, and penalty provisions need more precise limits and an opportunity to cure

The recordkeeping requirement does not specify which records must be kept, for how long, or what level of documentation is sufficient. Businesses should not be found in violation for failing to anticipate a documentation standard the rule does not itself define, particularly given the recordkeeping obligations business owners already carry under other laws. We recommend the Department set out clear and limited recordkeeping standards rather than leaving the scope of subdivision (f) to be defined case by case through enforcement.

We similarly recommend narrowing or eliminating the presumption that an allegation is true whenever a business fails to produce a requested record. The burden of proving a violation should remain with the Department, particularly where the underlying recordkeeping obligation is not clearly defined; shifting that burden to the business is unnecessarily punitive and may exceed the Department's authority absent express legislative authorization to alter the applicable evidentiary standard by rule.

We also recommend that the rule provide a warning and an opportunity to cure a first-time violation that does not involve intentional deception or consumer harm, rather than exposing a business to an immediate monetary penalty, and that it make clear that the repeated display of the same price listing (*e.g.*, across multiple advertisements, menus, contracts, or online listings) constitutes a single violation rather than a separate violation for every appearance or transaction, until the business has received notice of the deficiency. Without that clarification, a single pricing error could expose a business to penalties that compound far beyond what is proportionate to the underlying mistake.

VI. Summary of Recommended Revisions

- Add an express exemption for entities regulated by the Department of Financial Services, banks, bank holding companies, credit unions, and other state or federally licensed financial institutions, consistent with the City's Click to Cancel rule.
- Broaden the financial-services exemption beyond DFS-regulated entities to also reach nationally chartered banks, registered broker-dealers, and registered investment advisers by, for example, by adopting a "financial institution" definition modeled on § 801 of the New York Financial Services Law.
- Add the National Bank Act and the National Securities Markets Improvement Act to the list of federal laws the Department has identified as potentially conflicting with the proposed rule.
- Exempt deposit accounts and mortgage-related pricing disclosures from the total-price requirement, given that both are already governed by detailed federal and state disclosure regimes and neither fits a single, fixed "total price" concept.

- Add a safe harbor providing that compliance with the FCC's Broadband Consumer Label and Truth-in-Billing rules constitutes compliance with § 5-16 for broadband, cable/direct broadcast satellite, and telephone services.
- Clarify that the total-price disclosure requirement applies once a consumer's order is assembled and fees are calculable, not to individual items before a cart exists.
- Clarify that a restaurant or delivery platform need not incorporate a variable, transaction-specific charge (e.g., distance-based delivery fees, large-party surcharges, item-splitting fees) into the displayed price of each menu item, so long as the basis for the charge is disclosed and the exact charge and final total are shown before the consumer consents to pay.
- Clarify that a restaurant or retail business satisfies the pre-payment disclosure requirement by presenting the final, tax-inclusive total at checkout or on the check, consistent with ordinary practice, rather than requiring that figure earlier in the ordering or shopping process.
- Clarify that where another specific City or state disclosure requirement already governs a fee practice, that requirement controls and § 5-16's recordkeeping presumption and penalties do not separately attach.
- Exempt from the recordkeeping requirement any fee that a business collects solely as a pass-through for a third party without markup or discretion to set the amount.
- Exclude fees imposed by a governmental agency from the definition of “mandatory fees and charges.”
- Define clear and limited recordkeeping standards (*e.g.*, what must be kept, for how long, and in what form) rather than leaving subdivision (f)'s scope to enforcement discretion.
- Narrow or eliminate the presumption that an unproduced record establishes the truth of a Department allegation, and keep the burden of proving a violation on the Department.
- Provide a warning and cure period for first-time violations that do not involve intentional deception or consumer harm, rather than an immediate penalty.
- Clarify that repeated display of the same price listing across advertisements, menus, contracts, or online listings is a single violation, not a separate violation per appearance or transaction, until the business has received notice.

Thank you.

From: Paul Zuber
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comments Regarding Total Price Rule
Date: Friday, August 7, 2026 6:49:42 AM
Attachments: BCNYS Letter.docx

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Please find attached comments from The Business Council of New York State on the proposed "Total Price" Rule (Ref. No. 2026 RG 027/DCWP-75)

Thank you.

Paul Zuber
Executive Vice President
The Business Council of New York State, Inc.
111 Washington Avenue Suite 400 | Albany, NY 12210
[redacted] | **www.bcnys.org**

Working to create economic growth, good jobs and strong communities across New York State.
Your Voice, Our Voice, One Voice.

August 7, 2026

Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

RE: Proposed "Total Price" Rule (Ref. No. 2026 RG 027 / DCWP-75)

Dear Commissioner Levine:

On behalf of The Business Council of New York State, I am writing to share my concerns with the Department of Consumer and Worker Protection's proposed rule requiring disclosure of the "total price" of a good or service whenever a price is advertised. Although The Business Council believes the intent of these rules are coming from a good place and we support goal of preventing hidden fees, we are concerned that creating a one-size-fits-all rule will have an undesired impact that will ultimately not benefit the consumer.

The Business Council of New York State represents over 3500 businesses throughout New York State, The Council serves as both the State Chamber of Commerce and the State Manufacturing Chamber. Our membership is deep and diverse in terms of business size, business type and geographically. Although The Business Council serves the interest of many of the larger corporations in New York State, over 70% of our association member are small businesses. In terms of New York City over 50% of our business members are located within New York City. Thus, The Business Council has a broad and diverse perspective in relations to the business community and how legislation and regulations impact the entire business community.

As noted, The Business Council has several concerns with the proposed rules. First, the requirements of the rules are already required under federal law. Thus, some of our members are already abiding by the federal requirements and are displaying their prices in a specific way. required by federal law to display their prices in a specific way and this rule does not necessarily follow those federal guidelines thus forcing our business members to display prices differently. This would force some businesses to have to adopt two separate procedures, one under federal law and one under city law thus creating an operational burden on these businesses. As New York State, under Governor Kathy Hochul, looks to refine our state regulations to remove burdensome rules that only add to the cost of doing business, this provision will do just that for many businesses. In particular, it will become a burden for many of our small business members who do not have the operational capacity to follow two different sets of rules. For example, small Internet service providers must publish a federally prescribed label showing a base monthly charge with fees itemized beneath it. A local rule requiring a single all-in figure would leave these businesses advertising two different official prices for the same service, with no ability to drop either one. That is why. California and Massachusetts both exempted businesses already complying with federal price-disclosure requirements from their junk-fee laws. We ask the Department to do the same.

Second, many of our members can't calculate a "maximum" price up front, because their prices depend on the customer. A moving company's rates may depend on load size and elevator access; an event venue may charge varying fees depending on the size of a gathering. The same is true of bundled and customized services, where the final cost depends on which components and optional add-ons a customer picks. And for the many members who serve customers across the metropolitan area — contractors, caterers, movers, and service companies working in Westchester, Nassau, and New Jersey as well as the five boroughs — the tax owed on the same job changes with the customer's address, not the businesses. Forcing these businesses to advertise a worst-case number won't make prices clearer — it will make ordinary businesses look far more expensive than they are. We ask the Department to add an exception for businesses whose price depends on the customer's own choices, configuration, or location.

Third, the rule should not require one-time charges to be folded into an advertised recurring price. A gym charges an initiation fee and then a monthly rate. An alarm company charges for installation and then for monitoring. A pest control or landscaping firm may charge for an initial treatment and then a service plan. Rolling those one-time charges into the advertised monthly figure overstates what the customer will actually pay every month for as long as they stay. That misinforms the consumer rather than informing them. The clearer approach — and the one customer already understands — is to disclose the recurring price and any one-time charge separately and prominently.

Fourth, we're concerned about how this rule would affect the many small restaurants and other merchants in our membership that rely on third-party delivery platforms to reach customers. If a platform has to include its own fees in a restaurant's advertised item price on the platform, as the rule ostensibly requires, then that restaurant's food will look far more expensive than it actually is — even though the merchant has no control over what the platform charges. Customers will see a higher number and become confused, or order less, or go elsewhere. And the hardest hit will likely be small, locally-owned restaurants and retailers.

Fifth, we are troubled by the rule's recordkeeping provisions. As drafted, businesses must retain documentation justifying every fee, indefinitely, in no defined format — and a business that cannot produce records establishing the precise cost basis for a service charge or shipping fee faces a presumption that the fee was deceptive. That inverts the ordinary burden of proof and turns a bookkeeping gap into evidence of wrongdoing. It's not clear why a requirement of this kind is necessary at all; as written, it would be very onerous for small businesses, could raise significant consumer privacy concerns, and would expose neighborhood shops to summonses and penalties for what amount to recordkeeping errors rather than deceptive conduct. We ask the Department to strike the presumption, define the records actually required, and set a reasonable retention period.

Finally, the rule includes no cure period, meaning a business can be fined for a first, honest mistake with no chance to fix it. Relatedly, the rule does not provide any delay after it is finalized before it goes into effect. Both of these issues would increase the compliance burden on small businesses that don't have large teams of lawyers advising them on compliance.

The Business Council of New York State believes the goals of these rules come from a good place, protecting the consumer. We commend the Department for your efforts, but we also believe that one-size-fits-all approach that leads to customer confusion and hefty fines for businesses who can't afford them. These are the types of issues that only make business growth in New York City difficult. In our recent report, Blue Print for New York (https://www.ppinys.org/sites/default/files/reports/Blueprint%20for%20New%20York%20–%20Creating%20a%20Roadmap%20for%20Change.pdf) we outlined many of the difficulties facing businesses in New York State. In most cases businesses, both large and small, pointed to confusing, repetitive and burdensome regulations that impact a business's operational costs that ultimately get passed onto the consumer. We hope that the Department takes a look at this study and views these rules in the context of that study by adjusting the rules the implement these guidelines in a way that benefits both the consumer and businsses.

Thank you for the opportunity to provide comments on the proposed rule and for your consideration of these requests.

Sincerely,

Paul Zuber
Executive Vice President
The Business Council of New York State

From: Greenspan, Ashley
To: rulecomments (DCWP)
Subject: [EXTERNAL] Verizon"s testimony on proposed "Junk Fees" Rule
Date: Friday, August 7, 2026 9:42:19 AM
Attachments: Verizon DCWP Testimony 7-21-26.pdf

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Attached is Verizon's testimony regarding the NYC Department of Consumer and Worker Protection's proposed Rule on "Junk Fees".

Thank you,
Ashley Greenspan

Ashley Greenspan
State & Local Government Affairs
NYC | Long Island
[redacted]

verizon

Public Testimony of Verizon
Submitted to the NYC Department of Consumer and Worker Protection
RE: Proposed Rule on "Junk Fees"
Submitted by: Ashley Greenspan, State & Local Government Affairs
July 21, 2026

Verizon appreciates the opportunity to submit testimony to the Department of Consumer and Worker Protection (DCWP) regarding the proposed rules to prohibit charging consumers hidden "junk fees." At Verizon, our commitment to transparency is a foundational element of how we do business and earn the trust of our customers every day.

As a company proudly headquartered in New York City, Verizon is deeply woven into the economic, civic, and social fabric of the five boroughs. Our investments and presence reflect an unparalleled dedication to the city's future. In 2025 alone, Verizon invested over $220 million in network investments in NYC, building upon more than $155 million invested in 2024. These capital injections power America's most reliable 5G network, delivering top-tier performance, speed, and responsiveness across NYC and the Tri-State area. Today, Verizon's fast, high-capacity Ultra-Wideband 5G service covers 99% of NYC's 19+ million population. Beyond infrastructure, Verizon supports the local economy, employing over 5,000 Verizon employees working across the five boroughs.

Given our deep roots in the city, Verizon strongly supports the DCWP's goal of protecting consumers from deceptive trade practices. However, applying a generic local "all-in pricing" rule to the highly regulated telecommunications sector will yield operational conflicts, duplicate comprehensive federal mandates, and ultimately confuse the very consumers it aims to protect.

Broadband internet access services and telephone services are subject to detailed, sector-specific federal disclosure mandates—including the FCC's Broadband Consumer Label (47 C.F.R. § 8.1(a)) and Truth-in-Billing rules (47 C.F.R. §§ 76.310, 64.2401)—that already achieve the consumer transparency objectives animating the proposed rule. Layering a generic "total price" mandate on top of these tailored federal regimes would not enhance consumer protection; instead, it would create conflicting disclosure obligations, confuse consumers, and impose substantial compliance burdens without incremental benefit.

We respectfully request that DCWP amend 6 RCNY § 5-16(b) to provide that compliance with these FCC disclosure regimes constitutes compliance with the proposed rule—an approach consistent with California's analogous junk fee law, which DCWP itself cites as a model for the proposed rule.

1. Comprehensive Federal Regulations Already Ensure Price Transparency
Unlike many consumer-facing industries, telecommunications and broadband providers are already subject to multiple, detailed FCC disclosure mandates specifically designed to ensure that consumers can understand and compare service costs:

- **FCC Broadband Consumer Label (47 C.F.R. § 8.1(a)):** All broadband providers must display a standardized "Nutrition Label" at the point of sale and on their websites, presenting pricing and fee information in a uniform, FCC-designed format that enables consumers to make informed comparison-shopping decisions. The label itemizes the monthly charge, additional fees, discounts, data allowances, and speeds in a consistent layout prescribed by federal regulation. The FCC contemplated an all-in pricing requirement when it adopted the Broadband Consumer Label, but ultimately declined to do so, stating that an all-in price would not only be "difficult" for providers as well as "potentially misleading for consumers."

- **Truth-in-Billing — Cable/DBS (47 C.F.R. § 76.310):** Cable operators and direct broadcast satellite providers must issue bills that are clearly organized, with all charges accompanied by clear, brief, non-misleading, plain-language explanations, and clear and conspicuous disclosure of information subscribers need to make inquiries about or contest charges.
- **Truth-in-Billing — Telephone (47 C.F.R. § 64.2401):** Wireline and wireless telephone providers are subject to parallel truth-in-billing requirements mandating clearly organized bills with plain-language charge descriptions and conspicuous disclosure of subscriber inquiry information.
- **Television Viewer Protection Act:** Video service providers (e.g., Fios TV) must disclose the total monthly charge upfront before a sale is finalized, including discount expiration dates, provider-imposed fees, and estimated taxes and government fees.

These overlapping federal mandates form a comprehensive disclosure regime that already accomplishes what the proposed rule seeks to achieve—transparency regarding the full cost of service—but does so in a manner tailored to the unique structural characteristics of telecommunications services.

2. Operational and Regulatory Conflicts from Applying the NYC Rule to FCC-Regulated Services
Applying the proposed rule's generic "total price" requirement to FCC-regulated broadband and telephone services would create direct conflicts with existing federal disclosure obligations and impose operationally unworkable requirements:

A. **Direct Conflict with FCC Label Format:** The FCC Broadband Consumer Label explicitly requires providers to display the base "monthly charge" as a distinct, separate line item, with fees listed below. The proposed rule, by contrast, would require advertisement of a single bundled "total price," inclusive of fees. Requiring providers to simultaneously comply with both mandates—displaying a base monthly charge per the FCC and a different, all-in total per the City—would present consumers with two different "price" figures for the same service, creating confusion rather than clarity.
B. **High Customization and Bundling:** Telecommunications plans are highly customizable. Final prices depend on each customer's individualized selections: service bundles (wireless + wireline), add-on layers (streaming apps, premium channels), and paired elements (device financing). Because each configuration alters the underlying rate and corresponding fees, it is not possible to display a single "total price" in a general advertisement before a customer builds their specific package.
C. **Dynamic and Fluctuating Mandatory Fees:** Certain mandatory fees—most notably the Federal Universal Service Fund (USF) contribution—are adjusted quarterly by federal regulators. Requiring a static "total price" in advertisements would necessitate updating all advertising materials (including physical signage, billboards, and printed collateral) every quarter, which is operationally infeasible and prohibitively costly.
D. **Geographic and Jurisdictional Variation:** Telecom services are subject to federal, state, and local taxes and fees that vary at the municipality level. For advertisements in media markets that span jurisdictional boundaries—as is common in the New York metropolitan area, which encompasses parts of New York, New Jersey, and Connecticut—an accurate "total price" cannot be displayed because the total varies by the consumer's precise location.
E. **One-Time vs. Recurring Charges:** Some telecommunications transactions involve mandatory one-time fees (e.g., equipment installation). Folding a one-time charge into an advertised

monthly "total price" would misstate the consumer's ongoing recurring cost, undermining the very transparency the rule seeks to promote.

F. **Unintended Harm to Consumers:** The compliance challenges described above could lead providers to remove pricing information from advertisements altogether, forcing consumers to undertake additional steps (e.g., visiting a store, entering detailed location information online) simply to learn approximate costs—the opposite of the rule's intended consumer benefit.

3. Consistency with Other Jurisdictions

Exempting FCC Broadband Label-compliant and Truth-in-Billing-compliant providers from the proposed rule is consistent with the approach taken by other jurisdictions that have enacted analogous junk fee or all-in pricing laws:

- **California (Cal. Civ. Code § 1770(a)(29)):** California's landmark junk fee law—which DCWP itself cites as a model for the proposed rule (see Statement of Basis and Purpose, footnotes 11–13)—expressly exempts providers that comply with the FCC's Broadband Consumer Label requirements. If DCWP is modeling its rule on California's framework, it should adopt the same sectoral exemption that California determined was necessary and appropriate.
- **Massachusetts (MA 940 C.M.R. 38.00; Office of the Attorney General, *Guidance with Respect to Unfair and Deceptive Fees*):** Massachusetts, another jurisdiction cited by DCWP as a model, similarly accounts for existing federal regulatory frameworks when applying its consumer protection statutes to federally regulated industries.

The logic underlying these exemptions is straightforward: where comprehensive federal disclosure rules already protect consumers, layering additional local mandates does not enhance protection—it creates regulatory conflicts and compliance costs that are ultimately borne by consumers.

4. Recommended Exemption Language

We respectfully request that DCWP amend 6 RCNY § 5-16(b) to add the following provision alongside the existing preemption language:

Proposed Addition to 6 RCNY § 5-16(b):

"For entities that provide broadband Internet access service, on its own or as part of a bundle as defined by 47 C.F.R. § 8.1(b), and which comply with the consumer broadband label requirements of 47 C.F.R. § 8.1(a); cable operators and direct broadcast satellite (DBS) providers that comply with the pricing disclosure requirements of 47 C.F.R. § 76.310; and telecommunications carriers that comply with the truth-in-billing requirements of 47 C.F.R. § 64.2401—compliance with these respective federal regulations and their implementing orders shall constitute compliance with this section."

This language is narrowly tailored: it does not exempt any provider from the rule generally, but rather deems compliance with specific, identified federal disclosure regimes—which DCWP itself has flagged as potentially conflicting—to constitute compliance with the local rule. This approach:

- Preserves DCWP's authority over all other industries and transactions not subject to FCC disclosure mandates;
- Avoids regulatory conflict by utilizing the FCC's prescribed disclosure format and content requirements;
- Maintains robust consumer protection through the comprehensive federal framework already in place; and
- Aligns New York City with other jurisdictions.

5. Policy Context: Why Telecom Is Different

The proposed rule is well-suited to industries where consumers face hidden fees at the point of purchase, lack competitive alternatives, or are locked into long-term commitments. The wireless and broadband marketplace, by contrast, is characterized by:

- **Robust competition:** Consumers in New York City can choose among multiple wireline and wireless broadband providers and can switch providers freely.
- **No long-term lock-in:** The vast majority of wireless and broadband plans are month-to-month with no early termination fees.
- **FCC-mandated portability:** Wireless number portability rules ensure consumers can switch carriers without losing their phone numbers, further lowering switching costs.
- **Existing comprehensive disclosure:** As described above, the FCC's Broadband Label and Truth-in-Billing rules already provide consumers with the fee information needed to make informed choices.

In this competitive marketplace where consumers can take their business elsewhere if they are unhappy with any aspect of the cost of service, combined with existing federal pricing regulations, a local total-price mandate is duplicative and unnecessary.

Conclusion

Verizon remains an unwavering partner to New York City and is upfront pricing. Because federal regulators already impose exhaustive, specialized transparency requirements on our industry, a local "total price" rule creates unnecessary friction without providing any added consumer benefit.

Verizon respectfully urges DCWP to amend 6 RCNY § 5-16(b) to recognize that compliance with the FCC's Broadband Consumer Label (47 C.F.R. § 8.1(a)), cable/DBS Truth-in-Billing rules (47 C.F.R. § 76.310), and telephone Truth-in-Billing rules (47 C.F.R. § 64.2401) constitutes compliance with the proposed rule.

From: Julian Kline
To: rulecomments (DCWP)
Cc: Matthew Henning
Subject: [EXTERNAL] Tech:NYC Comments on Junk Fees Proposed Rule
Date: Friday, August 7, 2026 11:21:40 AM
Attachments: Tech_NYC Comments NYC Junk Fees.pdf

Hi DCWP Team,

On behalf of Tech:NYC, please find attached their comments on the Junk Fees proposed rule. Please feel free to let Matt Henning (cc'd here) know if you have any questions or would like to discuss these comments further. Thank you for your consideration,

Julian

--
Julian Kline | Kline Public Strategies
[redacted] | [redacted]
KlineStrategies.com

NYC DCWP Junk Fees Proposed Rules

Tech:NYC Comments

August 7, 2026

Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

RE: Proposed "General Fee Disclosures" Rule (6 RCNY § 5-16), Ref. No. 2026 RG 027 / DCWP-75

Dear Commissioner Levine:

On behalf of Tech:NYC, thank you for the opportunity to comment on the Department of Consumer and Worker Protection's ("DCWP" or "Department") proposed rule adding 6 RCNY § 5-16 and amending 6 RCNY § 6-47. Tech:NYC is a trade association representing more than 900 companies across New York City's technology industry, from early-stage startups to some of the world's largest technology companies, spanning marketplaces, software, e-commerce, fintech, and consumer-facing digital services.

Tech:NYC and our members share the Department's goal of ensuring that consumers can see the true cost of what they are buying before they pay. Hidden fees erode consumer trust, and none of our members benefit from competitors who obscure costs to win a sale.

At the same time, we want to be direct with the Department about a set of implementation issues that we believe are serious, and that we urge DCWP to resolve before the rule is finalized rather than leaving them to case-by-case enforcement. The rule as drafted carries real penalty exposure, applies broadly to any person advertising to a New York City consumer, and uses several undefined, fact-specific standards. Given those stakes, we think it is important that the following issues be addressed now so that businesses acting in good faith have a clear and workable path to compliance. We would welcome the chance to discuss any of the below items further with the Department's staff.

I. The Rule Should Clarify How Fee Disclosure Applies to Multi-Party, Marketplace Transactions

Many Tech:NYC members operate, or depend on, platforms that connect independent third-party sellers or merchants with consumers — including delivery apps, e-commerce marketplaces, and services and ticketing platforms. In these transactions, the final price a consumer sees is typically made up of components set by more than one party: a base price set by the underlying merchant, and a separate service or delivery fee set by the platform. Section 5-16 does not currently address how the disclosure obligation applies when no single "person" controls the full transaction.

If a platform is required to fold its own fee into the advertised price of a good the platform itself did not set, the merchant's item will appear more expensive for reasons the merchant does not control and cannot itself disclose or explain. That outcome risks the same consumer confusion the rule is meant to prevent, and it falls hardest on the small, independently owned businesses that rely on these platforms to reach customers.

We respectfully request that the final rule clarify that, in a multi-party transaction, each party is responsible for disclosing the fees and charges it itself sets and controls, so long as the consumer ultimately sees an accurate total price before paying. This clarification belongs in the rule text itself, not only in guidance, given how central marketplace transactions are to the industries this rule identifies as central to the problem it is trying to solve.

II. The Rule Should Account for Variable, Usage-Based, and Configurable Digital Pricing

Many technology products and services are not sold at a single fixed price. Software subscriptions, cloud and API services, and other digital products are frequently priced by usage — per seat, per unit of consumption, per storage amount, or by tier — such that the final amount a customer pays depends on choices the customer makes after purchase. This is materially different from a hidden fee: the pricing structure itself, not any individual charge, is disclosed and known in advance, even though a single dollar total cannot be.

Subdivision (c) already recognizes that some prices are "tied to a variable like an hourly rate or service based on a unit of measurement." We ask the Department to confirm that this same logic extends to usage-based and configurable digital pricing — that is, that disclosing the applicable rate, unit, and methodology satisfies the total price requirement for these products, and that the rule does not require a business to calculate and advertise a single worst-case aggregate figure for an open-ended digital service. Without this clarification, businesses may be forced to advertise inflated, worst-case numbers that make ordinary, competitively priced products look far more expensive than they are — which would not make pricing clearer for consumers.

III. The Recordkeeping Requirement Should Be Scoped and Time-Limited

Subdivision (f) requires that a business maintain records "sufficient to establish the basis" for any fee, with no defined retention period or format, and provides that failure to produce such a record creates a presumption that a Department-alleged fact is true. We understand and support the Department's interest in effective enforcement. But as drafted, this creates an open-ended and indefinite record-retention obligation, paired with a significant evidentiary consequence for noncompliance, that will be especially burdensome for smaller and growing technology companies without dedicated compliance infrastructure.

We also note that indefinite retention obligations can sit in tension with the data minimization practices that many of our members follow for consumer privacy and security reasons. We ask the Department to specify a defined, reasonable retention period, consistent with recordkeeping periods used elsewhere in the Department's rules, and to clarify the scope of records that are "sufficient" so that the requirement is not read as an open-ended discovery obligation.

IV. The Rule Should Include a Reasonable Phase-In Period and a Cure Period for First Violations

The rule as drafted takes effect immediately upon adoption and does not provide a cure period, even for a first-time, good-faith violation. Bringing advertising, checkout flows, and in-app disclosures into compliance takes real engineering and design time, particularly for a rule that reaches every digital surface where a price is displayed. We ask the Department to build in a reasonable phase-in period between adoption and enforcement, along with a cure period for first violations, consistent with the Department's own stated commitment to minimizing compliance costs under its Charter § 1043(d) analysis of this rule.

V. The Final Statement of Basis and Purpose Should Address Novel Digital Business Models

Terms such as "reasonably avoidable" and fees for "aspects… a reasonable person would expect to be included" are inherently fact-specific, and we recognize the Department cannot anticipate every scenario. But applied to digital products — free trials that convert to paid plans, freemium products with optional add-ons, tiered feature sets — these standards could be read more broadly than intended. The Statement of Basis and Purpose already offers helpful examples for hourly and per-room pricing; we ask that the final version include comparable examples specific to software, subscription, and platform business models, so that companies operating in good faith have a clearer basis for compliance.

Hidden fees are a real problem, and clear, upfront pricing benefits consumers and honest businesses alike. Precisely because this rule will apply broadly across the technology sector and carries meaningful penalty exposure, we believe the issues above are significant enough to warrant resolution before the rule is finalized, rather than being worked out through enforcement after the fact. We would welcome the opportunity to provide additional technical input to the Department as it finalizes this rule, and we thank you again for your consideration of these comments.

Respectfully submitted,

Tech:NYC

From:	Jessica Walker
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] written comments
Date:	Friday, August 7, 2026 12:49:59 PM
Attachments:	image.png Five Chamber comments for DCWP - Aug 7 2026.pdf

Attached, please find written comments from the Five Chamber Alliance on proposed new rules that prohibit charging customers hidden "junk fees."

photo

Jessica Walker
President & CEO, Manhattan Chamber of Commerce

[redacted] www.manhattancc.org
[redacted]
575 Fifth Avenue, 14th Floor; New York, NY 10017

MANHATTAN
CHAMBER OF COMMERCE
STOREFRONT TRACKER

THE NYC FIVE CHAMBER ALLIANCE

August 7, 2026

Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

RE: Proposed "Total Price" Rule (Ref. No. 2026 RG 027 / DCWP-75)

Dear Commissioner Levine:

On behalf of the Five-Borough Chamber Alliance, we write to share our concerns with the Department of Consumer and Worker Protection's proposed rule requiring disclosure of the "total price" of a good or service whenever a price is advertised. The Five-Borough Chamber Alliance includes the Bronx, Brooklyn, Manhattan, Staten Island, and Queens Chambers of Commerce, and represents most of the 200,000 small businesses throughout New York City. 85% of our membership consists of companies with ten or fewer employees; however, collectively these companies account for the majority of New York City's employment.

We support the Department's goal of preventing hidden fees, and none of our members benefit from competitors who hide costs from customers. But we are concerned about the impacts this one-size-fits-all rule would have on our members.

First, some of our members are already required by federal law to display their prices in a specific way — and this rule would require them to display the same prices differently. Small internet service providers and resellers, for example, must publish a federally prescribed label showing a base monthly charge with fees itemized beneath it. Moving companies work from federally prescribed estimate forms. A local rule requiring a single all-in figure would leave these businesses advertising two different official prices for the same service, with no ability to drop either one. That doesn't help the customer understand what they'll pay; it confuses them, and it exposes the business to penalties no matter which number it leads with. California and Massachusetts both exempted businesses already complying with federal price-disclosure requirements from their junk-fee laws. We ask the Department to do the same.

Second, many of our members can't calculate a "maximum" price up front, because their prices depend on the customer. A moving company's rates may depend on load size and elevator access; an event venue may charge varying fees depending on the size of a gathering. The same is true of bundled and customized services, where the final cost depends on which components and optional add-ons a customer picks. And for the many members who serve customers across the metropolitan area — contractors, caterers, movers, and service companies working in Westchester, Nassau, and New Jersey as well as the five boroughs — the tax owed on the same job changes with the customer's address, not the business's. Forcing these businesses to advertise a worst-case number won't make prices clearer — it will make ordinary businesses look far more expensive than they actually are. We ask the Department to add an exception for businesses whose price depends on the customer's own choices, configuration, or location.

Third, the rule should not require one-time charges to be folded into an advertised recurring price. A gym charges an initiation fee and then a monthly rate. An alarm company charges for installation and then for monitoring. A pest control or landscaping firm may charge for an initial treatment and then a service plan. Rolling those one-time charges into the advertised monthly figure overstates what the customer will actually pay every month for as long as they stay. That misinforms the consumer rather than informing them. The clearer approach — and the one customers already understand — is to disclose the recurring price and any one-time charge separately and prominently.

Fourth, we're concerned about how this rule would affect the many small restaurants and other merchants in our membership that rely on third-party delivery platforms to reach customers. If a platform has to include its own fees in a restaurant's advertised item price on the platform, as the rule ostensibly requires, then that restaurant's food will look far more expensive than it actually is — even though the merchant has no control over what the platform charges. Customers will see a higher number and become confused, or order less, or go elsewhere. And the hardest hit will likely be small, locally-owned restaurants and retailers.

Fifth, we are troubled by the rule's recordkeeping provisions. As drafted, businesses must retain documentation justifying every fee, indefinitely, in no defined format — and a business that cannot produce records establishing the precise cost basis for a service charge or shipping fee faces a presumption that the fee was deceptive. That inverts the ordinary burden of proof and turns a bookkeeping gap into evidence of wrongdoing. It's not clear why a requirement of this kind is necessary at all; as written, it would be very onerous for small businesses, could raise significant consumer privacy concerns, and would expose neighborhood shops to summonses and penalties for what amount to recordkeeping errors rather than deceptive conduct. We ask the Department to strike the presumption, define the records actually required, and set a reasonable retention period.

Finally, the rule includes no cure period, meaning a business can be fined for a first, honest mistake with no chance to fix it. Relatedly, the rule does not provide any delay after it is finalized before it goes into effect. Both of these issues would increase the compliance burden on small businesses that don't have large teams of lawyers advising them on compliance.

We share the Department's goal of honest pricing, but it is important not to turn this into a one-size-fits-all approach that leads to customer confusion and hefty fines for businesses who can't afford them.

Thank you for the opportunity to provide comments on the proposed rule and for your consideration of these requests.

Sincerely,

Lisa Sorin
President & Chief Executive Officer
Bronx Chamber of Commerce

Randy Peers
President & Chief Executive Officer
Brooklyn Chamber of Commerce

Jessica Walker
President & Chief Executive Officer
Manhattan Chamber of Commerce

Linda Baran
President & Chief Executive Officer
Staten Island Chamber of Commerce

Thomas Grech
President & Chief Executive Officer
Queens Chamber of Commerce

From: Brent G. Weitzberg
To: rulecomments (DCWP)
Subject: [EXTERNAL] NYBA Comment Letter re: Proposed Rules Relating to Junk Fees (6 RCNY § 5-16)
Date: Friday, August 7, 2026 1:52:45 PM
Attachments: nyba_logo_300_ee20915e-aeb5-4989-96ab-05bb124a7a41.png
061_sm_fb_781b9f7d-2d9a-41bc-82f7-95d3079ca0dc.png
061_sm_in_ce2a0f25-1834-4e4e-9ff4-641f505131b6.png
icons8-twitterx-100_29511a05-0c66-4441-8c37-7c7394e7e8d4.png
NYBA_NYC Junk Fee Comment Letter_DCWP_8-6-26.pdf

To Whom It May Concern,

Please find the attached comment letter on behalf of the New York Bankers Association regarding the New York City Department of Consumer and Worker Protection's (DCWP) proposed rules relating to junk fees (6 RCNY § 5-16).

Sincerely,
Brent

Brent G. Weitzberg
Vice President, Government Relations
New York Bankers Association
[redacted] | [redacted]

August 7, 2026

Via Electronic Submission
Rulecomments@dcwp.nyc.gov
New York City Department of Consumer and Worker Protection
42 Broadway
New York, New York 10004

Re: Proposed Rules Relating to Junk Fees (6 RCNY § 5-16)

To Whom It May Concern:

The New York Bankers Association ("NYBA")[1] appreciates the opportunity to comment on the New York City Department of Consumer and Worker Protection's ("DCWP" or the "Department") proposed rule relating to junk fees. NYBA supports the Department's objective of promoting price transparency and ensuring that consumers receive meaningful information regarding the costs of goods and services. However, the proposed rule is drafted broadly and, as written, would create significant uncertainty for financial institutions already subject to a comprehensive federal and state framework governing the disclosure of fees, costs, rates, and other material terms associated with consumer financial products and services. Accordingly, NYBA respectfully urges the Department to amend the proposal to expressly exempt regulated financial institutions, their affiliates, and service providers.

I. The Proposal's "Total Price" Framework Does Not Readily Translate to Financial Products and Services

The proposed rule would make it a deceptive and unconscionable trade practice to advertise, offer, or display the price of a good or service without clearly and conspicuously disclosing the "total price," including all mandatory fees and charges.[2] While such an approach may be appropriate in industries involving fixed-price consumer goods and services, it does not readily apply to many banking products and services.

For example, unlike a hotel reservation, event ticket, or consumer purchase, financial products frequently do not have a single fixed "total price." Mortgage transactions for example involve interest rates, annual percentage rates, lender fees, title charges, appraisal fees, recording costs, prepaid items, and other customer-specific charges. Deposit accounts may involve maintenance fees while simultaneously generating interest that fluctuates over time.

As a result, applying the concept of a single "maximum total" charge to financial products is often impracticable and inconsistent with how such products are designed, disclosed, and regulated.[3]

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[1] NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans. NYBA members also support their communities through an estimated $200 million in community donations and 500,000 employee volunteer hours.
[2] *See* Proposed 6 RCNY § 5-16(c).
[3] *See* Proposed 6 RCNY § 5-16(a).

The proposal's definition of "mandatory fees and charges" further adds to this uncertainty. The rule requires disclosure of fees that are "not reasonably avoidable" and fees that a reasonable consumer would expect to be included in the advertised good or service.[4] It is unclear how this standard would apply to charges imposed by third parties in connection with mortgage transactions, including appraisal fees, title insurance premiums, recording fees, flood certifications, and other charges that are established by third parties, required by law, or dependent upon transaction-specific circumstances. Additional clarification is needed regarding fees that are not reasonably avoidable and fees that a reasonable consumer would expect to be included. These standards may be difficult to apply consistently to financial products where fees depend on future account usage, optional elections, or transaction-specific activity. For example, balance transfer fees, cash advance fees, wire transfer fees, and overdraft fees may never be incurred by many consumers.[5]

For many financial transactions, the total amount of all fees and charges cannot reasonably be determined when advertising occurs. Total mortgage costs for example may depend on third-party providers, underwriting outcomes, appraisal results, title services, recording charges, property-specific circumstances, or consumer selections that are unknown when advertising first occurs. Additional guidance regarding how businesses should comply when all potentially applicable charges cannot reasonably be determined at the time of advertising would be necessary in the absence of a broader preemption provision.[6]

Similarly, the proposal requires that the "total price" appears at least as prominently as any other pricing information.[7] Financial institutions routinely advertise products using disclosures prescribed by federal law. The proposal provides no meaningful guidance regarding how institutions should reconcile these requirements with existing federal disclosure standards applicable to lending, deposit accounts, and other regulated financial products.[8] This lack of clarity imposes additional challenges given the existing disclosure requirements under federal law. Unclear standards may be difficult to interpret alongside those separate requirements, or worse, may be interpreted to conflict with those requirements.

The proposal's pre-transaction disclosure requirements also warrant clarification. Complex financial transactions often involve multiple counterparties, third-party settlement providers, financing arrangements, pass-through charges, and bundled services. Additional guidance concerning how businesses should identify the nature and purpose of charges would promote consistent compliance.[9]

II. Financial Institutions Already Operate Under Comprehensive Federal and State Disclosure Regimes

Banks are already subject to extensive consumer protection and disclosure requirements. Consumer lending disclosures are governed by detailed federal laws and regulations prescribing how interest rates, annual percentage rates, finance charges, payment

[4] *See* Proposed 6 RCNY § 5-16(a).
[5] *See* Proposed 6 RCNY § 5-16(a); *see generally Statement of Basis and Purpose*, Rules Relating to Junk Fees, N.Y.C. Department of Consumer and Worker Protection (July 8, 2026).
[6] *See* Proposed 6 RCNY §§ 5-16(a), (c).
[7] *See* Proposed 6 RCNY § 5-16(c).
[8] *See generally* Truth in Lending Act, 15 U.S.C. §§ 1601-1667f; Regulation Z, 12 C.F.R. pt. 1026; Truth in Savings Act, 12 U.S.C. §§ 4301-4313; Regulation DD, 12 C.F.R. pt. 1030.
[9] *See* Proposed 6 RCNY § 5-16(d).

obligations, and other key terms must be disclosed to consumers.[10] Mortgage transactions are subject to additional federal disclosure requirements governing settlement costs, loan estimates, and closing disclosures.[11] Deposit accounts and electronic banking services are likewise governed by comprehensive disclosure frameworks established under federal law.[12]

The Department expressly acknowledged in its *Statement of Basis and Purpose* that numerous federal statutes and regulations may overlap with the proposed rule, including the Truth in Lending Act, the Truth in Savings Act, the Electronic Fund Transfer Act, the Real Estate Settlement Procedures Act, and related federal regulations.[13] The Department further states that the rule "will not apply to price disclosures as to which regulation is preempted by federal or state laws or regulations."[14] NYBA appreciates the Department's recognition that federal law may constrain application of the proposal. However, the current language provides insufficient certainty to regulated institutions. Rather than establishing a clear exemption, the proposal leaves institutions to determine on a case-by-case basis whether federal law preempts particular applications of the rule. This approach invites uncertainty, inconsistent interpretations, and potential enforcement disputes despite the existence of extensive federal disclosure frameworks specifically tailored to financial products and services.[15] Further, parts of this proposed rule may be preempted by federal laws including the National Bank Act and the National Securities Markets Improvement Act of 1996 for entities subject to those laws.

The proposal also risks creating duplicative and potentially inconsistent obligations. Consumers already receive standardized disclosures regarding the costs and terms of financial products through federal disclosure regimes developed specifically for mortgage lending, deposit accounts, electronic banking services, credit cards, and other consumer financial products.[16] Regulated institutions also operate within a multilayered supervisory framework that includes federal banking agencies, the Consumer Financial Protection Bureau ("CFPB"), and the New York State Department of Financial Services ("DFS").[17] Imposing an additional municipal disclosure regime may complicate compliance without providing a corresponding consumer benefit.

III. <u>The Proposal's Jurisdictional Scope Creates Additional Uncertainty</u>

The proposed rule applies to any person who offers, displays, or advertises goods or services "in New York City, or to a New York City consumer."[18] While NYBA understands the Department's objective of preventing circumvention of the rule, this language raises significant practical concerns regarding the proposal's jurisdictional scope. Financial institutions routinely advertise products and services across local, regional, statewide, and national markets through a variety of media. The proposal provides little guidance regarding when advertising is considered directed "to a New York City consumer" or how businesses are expected to determine whether such a standard has been met. The absence of clear parameters creates uncertainty for institutions that market products outside New York City, but whose

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[10] *See* Truth in Lending Act, 15 U.S.C. §§ 1601-1667f; Regulation Z, 12 C.F.R. pt. 1026.
[11] *See generally* Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601–2617; Regulation X, 12 C.F.R. pt. 1024; Truth in Lending Act, 15 U.S.C. §§ 1601–1667f; Regulation Z, 12 C.F.R. pt. 1026.
[12] *See generally* Truth in Savings Act, 12 U.S.C. §§ 4301-4313; Regulation DD, 12 C.F.R. Part 1030; Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 et seq.; Regulation E, 12 C.F.R. pt. 1005.
[13] *See* Statement of Basis and Purpose, Rules Relating to Junk Fees, N.Y.C. Dep't of Consumer and Worker Protection, at 2901 n.15 (July 8, 2026).
[14] *See* Id.
[15] *See generally Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996).
[16] *See generally* 15 U.S.C. §§ 1601–1667f; 12 U.S.C. §§ 2601–2617; 12 U.S.C. §§ 4301–4313; 15 U.S.C. §§ 1693–1693r.
[17] *See generally* N.Y. Banking Law § 10.
[18] *See* Proposed 6 RCNY § 5-16(b).

advertisements may nevertheless be viewed by City residents. Given the potentially significant penalties associated with noncompliance, regulated institutions should not be required to speculate as to when advertisements directed at broader audiences may be deemed subject to the rule. The proposal is also unclear as to whether it applies solely to consumer transactions or may extend to commercial and small-business products and services.

IV. <u>The Department Should Explicitly Exempt Financial Institutions, their Affiliates, and Service Providers</u>

NYBA respectfully urges the Department to adopt an express exemption for regulated financial institutions, their affiliates, and their service providers. Such an exemption would be consistent with approaches adopted or considered in other jurisdictions and would recognize that financial institutions already operate under extensive federal and state consumer protection requirements.[19]

An explicit exemption would also avoid future disputes concerning the interaction between the proposed rule and the comprehensive federal and state regulatory frameworks governing financial institutions and financial services providers, including potential preemption issues applicable to federally chartered institutions under the National Bank Act, as well as to securities firms and investment advisers under applicable federal securities laws, including the National Securities Markets Improvement Act.[20]

Further, any exemption should extend not only to financial institutions themselves, but also to their affiliates, subsidiaries, and service providers acting on their behalf. Financial institutions do not perform these regulated functions alone. Federal supervisory guidance recognizes the extensive role of third-party relationships in supporting lending, payments, compliance, fraud prevention, customer verification, and other operational activities, and establishes expectations for financial institutions' management and oversight of those relationships that support lending, payments, compliance, fraud prevention, customer verification, and other operational activities.[21] Exempting only financial institutions while leaving their regulated vendors subject to the proposal would undermine the effectiveness of the exemption and create unnecessary ambiguity regarding routine banking operations.

Accordingly, NYBA recommends that the Department adopt language substantially similar to the following:

> This section shall not apply to any financial institution chartered, licensed, supervised, or regulated under federal or state law, including any financial institution as defined in Section 801 of the New York Financial Services Law, any affiliate or subsidiary of such institution, any insurer authorized under the New York Insurance Law, any registered broker-dealer, any registered investment adviser, or any service provider acting on behalf of such entities in connection with the offering or provision of regulated financial products or services.

The proposal's recordkeeping requirements also create uncertainty. The rule does not

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[19] *See Cal. Civ. Code § 1770(a)(29); see also Statement of Basis and Purpose,* Rules Relating to Junk Fees, N.Y.C. Dep't of Consumer and Worker Protection, at 2901 n.11 (July 8, 2026) (citing California's approach to junk fee regulation).
[20] *See generally* National Bank Act, 12 U.S.C. §§ 21–216d; *see also* National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416; *see also Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996).
[21] *See* Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation, *Interagency Guidance on Third-Party Relationships: Risk Management* (2023).

clarify what documentation is necessary to establish the amount, purpose, calculation, or refundability of a fee, whether ordinary-course business records are sufficient, or how long records must be retained.[22] These concerns are heightened by the proposal's evidentiary presumption provision. The *Statement of Basis and Purpose* explains that this presumption could apply where a business is unable to produce records, supporting, for example, the basis for excluding a shipping fee from the advertised total price. Given the significance of this evidentiary presumption, additional clarity regarding record-retention obligations and the relationship between recordkeeping requirements and the applicable enforcement period are needed. As drafted, the rule does not specify a retention period. Without additional guidance, businesses may face uncertainty regarding how long records must be maintained to avoid the adverse consequences associated with this presumption.[23]

The Department should expressly exempt communications and transactions already governed by disclosure requirements and clarify that the proposal's recordkeeping requirements do not apply to fees imposed by third parties where the institution lacks discretion to establish, waive, reduce, or determine the amount or applicability of the fee and merely collects and remits the fee as a pass-through charge.

As noted above, an exception for financial institutions would be consistent with the fact that this law may be subject to federal preemption.

V. <u>Conclusion</u>

NYBA supports efforts to protect consumers from deceptive fee practices and to improve transparency in the marketplace. We do not oppose measures aimed at preventing businesses from advertising artificially low prices while imposing unavoidable fees later in a transaction. However, the proposed rule extends into an area already comprehensively regulated by federal and state banking laws and applies concepts that do not readily fit many financial products and services. Without an explicit exemption and additional clarity, the proposal risks creating duplicative compliance obligations, regulatory uncertainty, and potential conflicts with existing disclosure frameworks, while providing little additional consumer protection beyond the extensive requirements already applicable to financial institutions.

Accordingly, NYBA respectfully urges the Department not to adopt the proposed rule in its current form and to incorporate a clear exemption for financial institutions, their affiliates, and service providers.

At a minimum, clarification is needed that the proposal would only apply to transactions with consumers for personal, family, or household purposes, does not impose obligations that overlap with comprehensive state and federal financial disclosure requirements, and provides additional guidance regarding several provisions that may prove difficult to administer in the context of regulated financial products and services.

[22] *See* Proposed 6 RCNY § 5-16(f)(1).
[23] *See* Proposed 6 RCNY § 5-16(f)(2); *see also Statement of Basis and Purpose*, Rules Relating to Junk Fees, N.Y.C. Department of Consumer and Worker Protection (July 8, 2026).

NYBA appreciates the opportunity to submit these comments and stands ready to work with the Department to develop revisions that advance consumer transparency while recognizing the unique regulatory framework governing financial institutions.

Respectfully Submitted,
THE NEW YORK BANKERS ASSOCIATION

From: Joshua Bocian
To: rulecomments (DCWP)
Cc: JR Starrett; Joshua Bocian
Subject: [EXTERNAL] DCWP NOH Rules Relating to Junk Fees - Grubhub Comments
Date: Friday, August 7, 2026 2:09:05 PM
Attachments: DCWP Rules Relating to “Junk Fees”.pdf

We respectfully submit the attached testimony in response to the New York City Department of Consumer and Worker Protection’s (DCWP) proposed rules regarding the transparency of fees associated with the cost of items merchants sell on our platform and the cost of our services.

Please confirm receipt of this email. Thank you.

--
Joshua Bocian
Associate Director - Government Affairs
[redacted]

GRUBHUB

Grubhub Comment on DCWP Proposed Rules Relating to "Junk Fees"

August 7, 2026

Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

Grubhub is a leading food ordering and delivery marketplace that connects diners with local restaurants. We are deeply committed to providing a transparent, efficient, and reliable platform for our restaurant partners and customers in New York City, and to smart policies that protect consumers while supporting the operational realities of restaurants and delivery services. We respectfully submit this testimony in response to the New York City Department of Consumer and Worker Protection's (DCWP) proposed rules regarding the transparency of fees associated with the cost of items merchants sell on our platform and the cost of our services. We offer these comments and recommendations to the proposed rules to ensure a fair and coherent final policy that ensures consumers are aware of the fees associated with a purchase. Our goal is to work with the agency to ensure a final rule achieves transparency without inadvertently disrupting the City's restaurant and delivery economy.

Concerns Regarding "All-In" Pricing and Operational Impact on Food Delivery Services

We are seeking clarity on the proposed "all-in" pricing requirement, which mandates that any price offered, advertised, or displayed—whether it is a fixed price or tied to a variable—must include the total price with all mandatory fees. It is unclear how this requirement would be applied to third-party food delivery services or other businesses with variable fee structures, where total price cannot be practically determined in advance.

Third-party food delivery services operate as a marketplace, where consumers are able to select items from merchants. Merchants have full and total control of the cost of items offered on individual menu pages. New York merchants should continue to control the menu prices shown to consumers in their stores, on their own websites, and on the third-party platforms they use to help drive business to their stores—without regard to separate services, like delivery, that only some customers may be interested in purchasing in addition to their goods.

Once consumers select items for purchase, they are shown an itemized list of applicable fees, which vary depending on multiple factors, including the total value of items added to the basket and the time and distance to deliver the customer's order. This two-step process ensures that consumers are aware of all fees and costs associated with the order prior to completing the transaction. It also helps keep prices low for customers as some offers or discounts apply to orders that meet certain criteria. For example, Grubhub currently charges no delivery fees and no service fees on restaurant orders over $50, resulting in significant savings. But with all-in pricing, it would be difficult to clearly communicate to customers savings achieved above that $50 threshold and confusing when the baseline all-in price proves inaccurate.

In the app-based delivery industry, many fees—such as delivery service fees or distance-based charges—cannot be accurately determined until the consumer has added specific items to their cart and provided a delivery address. This dynamic creates significant compliance ambiguity under the proposed rules' internal inconsistency for third-party delivery services with variable pricing: Section (c) mandates that any offer or display of price include the total price, while Section (d) requires a breakdown of fees before a consumer consents to pay. This conflict leaves delivery platforms with no clear path to compliant implementation. We believe Section (d) reflects the more workable standard, and aligns with the approach taken by other states on fee transparency: full transparency before payment. Strict adherence to Section (c), by contrast, would produce misleading pricing, since certain fees may also be waived if the order meets certain criteria. We urge the Department to harmonize these sections by prioritizing the point-of-purchase transparency standard in Section (d).

A solution to consider to address this concern would be to amend the definition of "Total price" which currently offers an exemption for "taxes and fees imposed by a government, and postage or carriage charges that will be reasonably and actually incurred to ship a physical good to the consumer," to include "delivery and services by a third-party delivery service." Alternatively, some regulators—including many of those cited in the City's statement of basis and purpose—have taken an approach that allows disclosure of what fees apply and how they will be calculated at the point a customer chooses the merchant they wish to order from in order to balance a desire for transparency with the flexibility to tailor fees to the individual circumstances of a particular order.

Subscription and Loyalty Programs Pricing Exemptions

Many delivery platforms and restaurants offer subscription and loyalty programs that provide reduced or waived fees, including reduced or zero-dollar delivery fees, in exchange for a recurring membership charge.

The proposed rules may create uncertainty regarding how businesses should display pricing across these different customer segments. If businesses are required to display pricing based on the highest mandatory fee applicable to non-members, subscribers may be shown inflated prices that do not reflect the actual amount they will pay. Conversely, displaying member-specific pricing could create concerns about whether a non-member viewing the same offer is receiving adequate disclosure.

We respectfully request that DCWP explicitly affirm that tier-based, loyalty, and subscription pricing models remain permissible under the proposed rules.

Clarification on "Clear and Conspicuous" Disclosure Standards

We also request clear guidance on the "clear and conspicuous" disclosure standard. Digital platforms rely on user interface (UI) standards to maintain clarity without overwhelming the consumer with excessive text, all within the space limitations inherent in mobile apps. Currently, Grubhub utilizes industry-standard UI practices, such as tooltips, to explain the nature, purpose, and logic of specific fees. We are deeply concerned that the DCWP may not consider these common digital disclosure methods "conspicuous."

Requiring these detailed disclosures to be displayed outside of such tooltips would unnecessarily clutter the user interface and degrade the customer experience. Current industry-standard tooltip UI elements provide immediate clarity upon user interaction without overwhelming the visual space. We suggest the Department provide a safe harbor or explicit guidance confirming that tooltips and similar interactive elements satisfy the "clear and conspicuous" requirement. We are committed to transparency, but it must be balanced with the functional realities of a digital-first marketplace.

Concerns Regarding Recordkeeping Requirements

While Grubhub is committed to transparency, the recordkeeping requirements set forth in Section (f) present potential operational burdens. The requirement to maintain and produce granular records establishing the basis for every fee "upon request" could become overly burdensome for businesses processing millions of transactions. We recommend that the Department limit these requests to specific, documented complaints or inquiries to ensure the requirement remains targeted and feasible for large-scale digital platforms. Alternatively, it would be less onerous to require companies to maintain high-level information about how any fees are calculated and to demonstrate, upon request, that fees operate consistent with that documentation.

Need for a Cure Period and Reasonable Compliance Timeline

We also note the absence of a "cure period" in the current proposal. Given the significant technical and operational shifts required to implement "all-in" pricing or new disclosure standards, we explicitly request that the Department allow for a formal cure period of eighteen to twenty-four months. Providing businesses with an opportunity to rectify unintentional non-compliance before penalties are assessed would foster a more collaborative and effective regulatory environment.

At present, many software providers and restaurant operators do not have readily available technology solutions capable of dynamically calculating and displaying a maximum total price for every possible transaction scenario during the menu browsing stage. Developing and deploying these capabilities would require substantial engineering resources, testing, vendor coordination, and operational change management.

The DCWP's certification dismisses the need for such a period, fundamentally underestimating the complexity of integrating real-time pricing data into a compliant, static display. Furthermore, while the DCWP cites the industry-neutral nature of the proposed rules, it fails to distinguish between static retail environments and the multi-variable architecture of food delivery platforms. Unlike hotels or event ticketing, third-party delivery platforms calculate costs based on the fluctuating variables of time and distance. A reasonable transition period would enable restaurants, technology vendors, and delivery platforms to build compliant solutions without disrupting consumer experiences or business operations.

Grubhub shares the Department's goal of ensuring price transparency for New York City consumers. We ask that the DCWP revisit the proposed rules to address the technical infeasibility of mandatory "all-in" pricing, resolve the internal contradictions between sections (c) and (d), create a necessary exemption for fee calculations, validate digital-first disclosure

GRUBHUB

methods like tooltips, and provide a reasonable compliance timeline with a cure period. We appreciate the opportunity to provide these comments.

Respectfully submitted,

Joshua Bocian
Associate Director, Government Affairs
jbocian@grubhub.com

From: Nick Davoli
To: rulecomments (DCWP)
Subject: [EXTERNAL] Uber Technologies, Inc. Comment Re: Junk Fee Proposal 2026.08.07
Date: Friday, August 7, 2026 3:02:38 PM
Attachments: Uber Technologies Comment Re DCWP_Junk Fee Proposal_2026.08.07 .pdf

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Good afternoon,

Please find attached Uber's comments regarding the Department's Junk Fee proposal.

Don't hesitate to contact me if you have any questions.

Nick

Nick Davoli (he/him)
Senior Counsel - US Regulatory
[redacted] | [redacted]

BEFORE THE NEW YORK CITY DEPARTMENT OF CONSUMER AND WORKER PROTECTION

Request for comment: Proposed Rules Relating to Fees (6 RCNY § 5-16)	Public Hearing: August 7, 2026

COMMENTS OF
UBER TECHNOLOGIES, INC.

Nicholas Davoli
3 World Trade Center
175 Greenwich St., Fl. 47
New York, NY 10007
Email: ndavoli@uber.com
Attorney for Uber Technologies, Inc.

Uber Technologies, Inc. and its affiliates (Uber) respectfully submit these comments regarding the Department of Consumer and Worker Protection's (DCWP or the Department) proposed rule 6 RCNY § 5-16 prohibiting hidden "junk fees" and requiring platforms to display "total price." Uber shares the Department's commitment to consumer transparency and supports regulatory frameworks that ensure consumers understand the full cost of goods and services prior to payment. To achieve this goal without disrupting dynamic e-commerce marketplaces, DCWP's final rule must account for the operational realities of third-party food delivery platforms.

I. UBER'S MUTL-SIDED MARKETPLACE STRUCTURE AND CURRENT DISCLOSURES

Unlike traditional single-seller retail environments, Uber operates a multi-sided marketplace connecting three distinct parties: consumers, independent merchants, and delivery workers. The total cost of a delivery transaction reflects a combination of separate pricing inputs determined by three parties at different stages of the ordering process:

1. Price of Goods: Merchant autonomy is a foundational feature of Uber's platform. Merchants establish and control individual menu item prices within their digital storefronts..

2. Price of Delivery: Delivery charges reflect real-time logistics inputs necessary to compensate independent couriers based on delivery distance, marketplace demand, and ensuring compliance with DCWP's minimum earnings standards.

3. Price of Platform Services: Platform fees support marketplace infrastructure, payment processing, consumer service and order dispatch. Notably, these prices are capped in New York City pursuant

to Admin. Code § 20-563.3.

Clear pricing is core to the consumer experience on the Uber platform. Consumers on the platform receive transparent pricing information throughout the ordering process. Applicable delivery fees are displayed on each merchant storefront. Before completing a transaction, consumers are presented with an itemized subtotal at checkout that details the selected items, applicable platform and delivery fees, as well as applicable government taxes and fees before authorizing payment.

II. OPERATIONAL REALITIES PREVENT INCORPORATING DYNAMIC FEES INTO STATIC MENU PRICES

Regulatory regimes designed for single sellers that control all aspects of consumer pricing inputs cannot be applied to multi-sided marketplaces like Uber's. Incorporating variable platform fees directly into static menu item prices displayed on merchant storefronts is technically and operationally unfeasible due to unique marketplace factors:

- Delivery Distance and Marketplace Conditions: Delivery fees are not static; they adjust based on the geographical distance between a specific consumer and merchant, delivery worker availability, and marketplace demand.
- Consumer-Driven Order Variations: Final order costs depend on consumer inputs including delivery location, order thresholds, item customization (e.g., optional add-ons like guacamole that alter base item costs), and active promotions. Similarly, service fees vary based on the consumer's final basket size.
- Lack of Pre-Selection Visibility: As individual pricing inputs often depend on selections made as a consumer builds their order, the precise total cost cannot be calculated at the static menu view level before items are selected.

Mandating that platforms incorporate transaction specific fees into static menu prices prior to item selection would result in inaccurate pricing displays for consumers, undermine merchant pricing autonomy, and create widespread confusion.

III. THE COMPLEX SOFTWARE ENGINEERING REQUIRED TO UPDATE PRICING DISPLAYS NECESSITATES AN EXTENDED IMPLEMENTATION PERIOD

Notwithstanding the concerns raised above, developing and deploying any form of real-time pricing disclosures across a multi-sided delivery platform like Uber's requires extensive technical development that cannot reasonably be accomplished under traditional administrative implementation periods. DCWP must account for the engineering constraints when considering compliance mechanics and the effective date of the proposed rules.

- Achieving real-time fee integration cannot be accomplished via a simple administrative configuration change or toggle switch. It will require fundamental architecture enhancements to Uber's infrastructure to accurately calculate dynamic fee permutations as consumers select or adjust order items. As detailed above, those fees cannot be accurately incorporated into menu item prices prior to item selection.

- Any new pricing displays must be integrated consistently across Uber's distinct digital surfaces, including restaurant and grocery and retail home feeds, merchant storefronts, and menu pages. Each of these surfaces operate independently requiring intensive design, development, and quality control reviews prior to public launch.

- Because consumers will rely on these new displays when making purchasing decisions, extensive testing across multiple complex order permutations is essential.

Given the technical scope required to build, test, and deploy multi-surface capabilities, a standard 30-day implementation period is unfeasible and risks introducing implementation errors. Uber respectfully requests DCWP consider a 180-day implementation period following the final rule's publication. This extended period will allow each platform to complete the necessary engineering work and end-to-end testing, ensuring compliance and consumer satisfaction.

IV. DCWP SHOULD CONSIDER PRECEDENTS FROM OTHER JURISDICTIONS WHICH RECOGNIZE DYNAMIC PLATFORM PRICING

Legislatures across the country have enacted general "junk fee" and price transparency legislation which explicitly recognize the operational realities addressed above. These regimes create workable standards for price-variable platforms including food delivery marketplaces:

- Oregon (SB 430): Oregon's pricing transparency law explicitly excludes service fees calculated according to distance or a consumer's selections from its upfront total pricing requirements provided the platform prominently disclose the fee prior to the consumer authorizing payment.

- Virginia (VA Code § 59.1-608): Virginia permits the disclosure of variable fee structures when consumers view a merchant and the presentation of an itemized subtotal prior to checkout.

- Minnesota (Minn. Stat. § 325D.44): Minnesota accommodates services where the total costs relate to distance, time, or consumer preferences, allowing delivery platforms to disclose variable fee factors at selection and present itemized mandatory charges prior to checkout.

Uber urges DCWP to align § 5-16 with these established statutory regimes, ensuring robust consumer protections while preserving dynamic marketplace operations.

V. PROPOSED AMENDMENTS TO THE RULES

In addition to the considerations above, Uber proposes the following amendments to the rules to clarify compliance standards for dynamic marketplaces:

1. § 5-16(c): It is a deceptive and unconscionable trade practice for any person to offer, display, or advertise the price of a good or service without disclosing the total price in a clear and conspicuous manner. Any such offer, display, or advertisement must disclose the total price at

least as prominently as any other pricing information. For online marketplaces or third party food delivery services where mandatory fees vary based on consumer basket composition or geographical destination, clear disclosure of base item prices together with a description of variable fee types during the ordering process shall satisfy this subdivision. If charges are made on a periodic basis, any offer, display or advertisement must include both the total price for the relevant time period and the total amount of any non-recurring mandatory charges or fees, such as one-time enrollment or sign up fees, both of which must be disclosed at least as prominently as other pricing information.

2. § 5-16(d)(2): The final amount the consumer must pay for the transaction, which must be disclosed more prominently than, or as prominently as, the total price. Presenting an itemized breakdown at checkout displaying subtotals, itemized fees, taxes, and final payment amount satisfies this requirement.

3. § 5-16(f)(1): A person subject to this section must maintain records or systemic documentation sufficient to establish the general methodology or basis, ~~including the nature, purpose, amount or refundability~~ for any fee or charge required to be disclosed pursuant ~~that is included in an offer, display, or advertisement subject~~ to subdivision (c) of this section or included in the fee breakdown required under subdivision (d) of this section, and must make these records available to the Department upon request.

4. § 5-16(f)(2) A person's failure to maintain, retain, or produce a record that is required to be maintained under this section that is relevant to a material fact alleged by the Department in a summons, petition, or other notice of hearing issued pursuant to this section may be considered by the Department or finder of fact as evidence regarding the material fact.~~creates a presumption that such fact is true.~~

VI. CONCLUSION

Uber appreciates the opportunity to provide feedback on proposed 6 RCNY § 5-16. Incorporating these requested revisions will achieve DCWP's goal of price transparency while providing digital platforms with the technical flexibility necessary to effectively operate dynamic, multi-sided marketplaces.

From:	Kevin Dugan
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Comments on proposed junk fee rule
Date:	Friday, August 7, 2026 3:33:05 PM
Attachments:	image.png Written testimony - junk fees.docx

You don't often get email from [redacted] Learn why this is important

CAUTION! EXTERNAL SENDER. Never click on links or open attachments if sender is unknown, and never provide user ID or password. If **suspicious**, report this email by hitting the **Phish Alert Button**. If the button is unavailable or you are on a mobile device, forward as an attachment to phish@oti.nyc.gov.

Hi!

Please see attached for testimony from the NYS Restaurant Association on the proposed 'junk fee' rule.

Thanks!

Kevin Dugan
Vice President of Public Affairs
NYS Restaurant Association
[redacted]
http://www.nysra.org

NEW YORK STATE RESTAURANT ASSOCIATION

NEW YORK STATE RESTAURANT ASSOCIATION

On the Proposed 'Junk Fee' legislation

Good morning. My name is Kevin Dugan, and I am the Government Affairs Director for the New York State Restaurant Association (NYSRA). We are a trade association representing food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and we have advocated on behalf of our members for over 80 years. Our members represent a large and widely regulated constituency in New York City.

We are writing to you today in an effort to gain clarification on the proposed 'junk fee' rule proposed by the Department of Consumer Affairs and Worker Protection. As an industry, many of the fees outlined in the proposed rule do not impact us but we do have questions pertaining to posting all-in pricing. We are aware that rule has a carve out for taxes imposed by Governments and we are curious if this would also incorporate sales tax? We feel that it does but want to make sure we are not overlooking something that would require us to change all menu prices to incorporate sales tax. The other questions we have is will this rule have any impact at restaurants that sell items at "market price"? While not a fee, this could be interpreted as violating this law since the consumer may not see the final price until receiving the check.

Respectfully Submitted,

Kevin Dugan

Vice President of Public Affairs

New York State Restaurant Association

401 New Karner Road

Albany, New York 12205

From: Chuck Bell
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comment on NYC Junk Fee Rules
Date: Friday, August 7, 2026 3:50:10 PM
Attachments: 08-07-26 Consumer Reports Comment Re NYC Junk Fee Rules.pdf

You don't often get email from [redacted] Learn why this is important

Dear DCWP,

Hi, here is Consumer Reports' comment letter regarding the proposed junk fee rule. Thank you very much for developing this important rule.

Sincerely,

Chuck Bell

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Chuck Bell
Programs Director, Advocacy
Consumer Reports
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Pronouns: he, him, his
CR.org

August 7, 2026

Re: Regulation Hearing Comment

New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Rules Regarding "Junk Fees" – Reference Number DCWP-75

Sent to: RuleComments@dcwp.nyc.gov

Dear DCWP,

As an organization that works side-by-side with consumers to create a fairer, more competitive marketplace, Consumer Reports (CR)[1] strongly supports the proposed rules that prohibit charging consumers hidden "junk fees." These added fees inflate and distort costs, inhibit effective price comparisons, undermine household budgeting decisions, and often provide little or no added value to the consumer. By ensuring that consumers will be presented with the full price including all mandatory fees at the outset of the transaction, the proposed NY City junk fees rules will improve price transparency and empower consumers to compare prices charged by competing sellers.

"Junk fees" are mandatory additional fees that are added by sellers to the full price charged for a product or service. Through the deceptive practice of "drip pricing," additional fees for tickets, hotels and other products and services are only revealed late in the sales transaction, such as immediately prior to checkout or purchase. The unexpected fees may also carry deceptive descriptions that imply the fees are paying for essential or government-mandated services. These added fees inflate and distort costs, inhibit effective price comparisons, undermine household budgeting decisions, and often provide little or no added value to the consumer.

In 2019, Consumer Reports published "Protect Yourself from Hidden Fees," which examined hidden fees for a variety of services in major sectors of the US economy, including financial services, airlines, hotels, live event tickets and telecom and utilities.[2] For a typical American family, these fees can pose a financial strain, adding up to thousands of dollars a year in extra costs. We joined with other

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[1] Consumer Reports (CR) is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. Since 1936, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

[2] Penelope Wang, "Protect Yourself from Hidden Fees", Consumer Reports, (May 29, 2019) (hereafter CR Hidden Fees Article) available at: https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/

national organizations in calling for the FTC to adopt a strong national rule to eliminate junk fees by requiring the clear and conspicuous disclosure of the total price for goods and services, including all mandatory fees, when the price for an item is first presented to consumers. Over 41,000 CR members signed a petition to the Federal Trade Commission to accompany our 2023 letter urging approval of a comprehensive junk fee rule. The FTC approved a final junk fee rule in 2024 that more narrowly applies only to live event tickets, hotels and short-term rentals, but stated that the rule might be expanded to cover additional sectors in the future.[3]

Junk fees are not just a nuisance, they are also costly and hit low, moderate-income and working-class consumers especially hard. Research suggests that the extra costs of certain types of junk fees may disproportionately harm lower-income households and people of color.

- A CFPB study found that consumers in low-income and majority-Black neighborhoods paid disproportionately more in credit card late fees.

- A survey by the Financial Health Network found low- to moderate-income households incurred overdraft fees at nearly twice the rate of high-income households and that Black and Hispanic households were charged overdraft fees at substantially higher rates than white households.

- A 2017 report by the National Consumer Law Center found that Hispanic car buyers paid more in costly add-ons – such as service contracts, insurance, and window etching – than non-Hispanic car buyers.[4]

Junk fees also harm people who are retired and on fixed incomes, who may not receive regular increases in pensions or government benefits to keep up with rising costs. Further, a substantial number of Americans today—many of them juggling jobs and families—do not have the time, energy, or desire to research a potential $30 fee, according to Devin Fergus, professor of history, Black studies, and public affairs at the University of Missouri and author of "Land of the Fee."[5]

Both CR's survey research and comments we have collected from consumers confirm that consumers are very disappointed both by the increasing frequency and range of fees charged. They are also frustrated by the high cost of outsized and excessive fees that undermine the affordability, accessibility and usability of products and services.

In April 2023, Consumer Reports conducted a nationally representative survey of 2,121 U.S. adults to learn more about their experiences with hidden fees across a range of products and services in the last two years.[6] CR found that 49 percent had encountered hidden fees for telecommunications

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[3] FTC's Rule on Unfair or Deceptive Fees, 16 C.F.R. Part 464, prohibits bait-and-switch pricing and other tactics used to obscure and misrepresent total prices and fees for live-event tickets and short-term lodging. The rule was adopted 1/10/25 and went into effect 5/12/25. Available at: https://www.ecfr.gov/current/title-16/chapter-I/subchapter-D/part-464 and https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees

[4] Deese, B., Mahoney, N., and Wu, T., White House Competition Council, *The President's Initiative on Junk Fees and Related Pricing Practices*, October 26, 2022, available at: https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/

[5] Fergus, Devin, *Land of the Fe: Hidden Costs and the Decline of the American Middle Class*, Oxford University Press, 2018.

[6] *Electric-Only Vehicles, Car Maintenance, Hidden Fees, Pet Food and Plant-Based Milk, American Experiences*

services; 45 percent for live entertainment or sporting events; 37 percent for gas and electric utilities; 37 percent for hotel stays; 35 percent for air travel; 27 percent for credit cards; 26 percent for auto loans and purchases; and 23 percent for personal banking services. Fifty-one percent of respondents said that hidden fees caused them to exceed their budget for their cable, internet, or phone service, and two out of three Americans (68 percent) say they are paying more in hidden fees now than they did five years ago.

While consumers can theoretically take fees into account when making purchasing decisions, it is often highly difficult to fully research and anticipate the wide range of fees that might be charged in the course of using a particular product or service. As long as fees are disclosed somewhere in the shopping process, consumers can, presumably, calculate their true costs. But in reality, add-on fees can be difficult to spot, requiring consumers to click through multiple web pages or scour fine print to get the information—a gradual reveal strategy that is exactly the sort of drip pricing mentioned above.

At the national level, data from a few industries alone show that the add-on charges are siphoning billions of dollars from consumers' wallets every year.

- In the case of airlines, the two main travel charges—baggage fees and reservation fees—accounted for nearly $6 billion of revenue in 2021, according to the Bureau of Transportation Statistics.[7]

- For banks, overdraft fees are a growing source of revenue, with the largest banks pulling in an additional $15 billion in 2019 from these fees, according to the Consumer Financial Protection Bureau. In addition, major credit card companies charged over $14 billion in late fees in 2019.[8]

- The hotel industry raked in a record $2.9 billion in resort fees and other fees and surcharges in 2018, according to Bjorn Hanson, Ph.D., a hotel consultant and clinical adjunct professor at the Jonathan M. Tisch Center for Hospitality at New York University.[9]

- Perhaps the worst offender for charging hidden junk fees is the cable television industry. According to a 2019 report by Consumer Reports, cable company-imposed fees add what amounts to a 24% surcharge on top of the advertised price. On average, the cable industry generates close to $450 per year per customer from company-imposed fees. CR estimates that cable companies are making an estimated $28 billion a year from charging company-imposed fees.[10]

Survey: A Nationally Representative Multi-Mode Survey, prepared by the Consumer Reports Survey Research Department (April, 2023), p.15-20, available at: https://article.images.consumerreports.org/image/upload/v1682544745/prod/content/dam/surveys/April_2023_AES_Toplines.pdf.

[7] Bureau of Transportation Statistics, *2021 Annual and 4th Quarter Airline Financial Data*, (May 2, 2002), available at: https://www.bts.gov/newsroom/2021-annual-and-4th-quarter-us-airline-financial-data.

[8] Rohit Chopra, Consumer Financial Protection Bureau, *Prepared Remarks of CFPB Director Rohit Chopra on the Junk Fees RFI Press Call*, (January 26, 2022), available at: https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-the-junk-fees-rfi-press-call/.

[9] Penelope Wang, "Protect Yourself from Hidden Fees", Consumer Reports, (May 29, 2019), available at: https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/.

[10] Jonathan Schwantes, *What the Fee? How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service*, Consumer Reports, (October, 2019) (hereafter CR Cable Bill Report), p.3, available at: https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR_WhatTheFeeReport_6F_sm-1.pdf

- Though CR's 2019 cable bill report focused on excessive junk fees charged for pay-TV services, it also warned of the "disturbing new trend" of company-imposed fees being attached to internet service. Unfortunately, our prediction of junk fees riddling ISPs bills has been realized with several providers tacking on mandatory junk fees to broadband internet service. We identified numerous such fees as part of our study of 22,000 broadband bills voluntarily submitted to CR for research. [11]

- Broadband fees illustrate an especially deceptive and unfair industry tactic. ISPs often give misleading names to fees that imply they are government-imposed, when, in fact, they are company-imposed and distinguished from the core service price at the provider's discretion. In our 2019 study of broadband bills, more than a dozen ISPs were found to charge company-imposed junk fees, under names such as "network enhancement fee," "internet infrastructure fee," "deregulated administration fee," and "technology service fee."[12] They can surprise consumers when they appear on monthly bills, and can enable providers to raise prices without seeming to violate marketing or contractual price commitments.

- Sadly, this practice of mislabeling fees to imply they are government-imposed is not limited to broadband but is widely used across many goods and services. "Energy surcharges" are another important category of added fees for which businesses may lack justification and substantiation. Consumers are also concerned about "convenience fees" and "pay to pay" fees that may surcharge them for using a particular payment method, and/or charge them a fee just to pay a bill.

Consumers also pointed out to CR that the impact of junk fees is additive and cumulative. One consumer said that his costs for junk fees added 40% to the cost of vacation, greatly exceeding his household budget. While requiring "all in" pricing will not necessarily eliminate the fees, over time it should incentivize providers to moderate imposition of fees that push all-in prices higher that market norms, and give consumers a better fix on what they have a right to expect.

By clarifying the standards for unfair acts and practices in the sale of consumer products, the proposed New York City junk fee rules will help consumers to get full and accurate price information at the point of sale, so they can make informed purchase decisions, and compare their choices of competitive offerings. The proposed regulations would require businesses to clearly, conspicuously, and prominently disclose the total price of a product—including all fees, interest, charges, or other necessary expenses—when a product is advertised and presented to consumers. To facilitate transparency in the presentation of a total price, the regulations require that the nature and purpose of fees be clearly explained, and that sellers disclose whether such fees are mandatory or instead optional or waivable. We agree with the DCWP's definition of mandatory fees including fees that are not reasonably avoidable, and including those that a reasonable person would expect to be included in the purchase, so that merchants do not play games or create new types of financial "gotchas" that a reasonable person would not expect.

All of these provisions are fair, reasonable and in the consumer interest. Free markets depend on the flow of information, and when sellers restrict and delay the presentation of information about prices, consumers cannot discover prices easily and exercise their rights to make the best choices in a

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[11] Jonathan Schwantes, *Broadband Pricing: What Consumer Reports Learned from 22,000 Bills*, Consumer Reports (November 17, 2022) p.23-24, available at: https://advocacy.consumerreports.org/wp-content/uploads/2022/11/FINAL.report-broadband.november-17-2022-2.pdf.

[12] Ibid.

competitive marketplace. In addition, other sellers who disclose prices upfront that are inclusive of all mandatory fees will be harmed by what is in effect predatory competition. In this way, the proposed regulations will level the playing field for ethical and honest sellers, and prevent deceptive pricing.

We believe New York City consumers would benefit from "industry neutral" junk fee regulations that apply uniformly and consistently across all areas of the economy, subject to limitations that may be imposed by federal or state preemption or application of existing laws. The reason is that the consumer faces essentially the same problem with hidden junk fees -- regardless of the nature of the retail good or service. If the fee cannot reasonably be avoided, it is a mandatory fee and it should be presented as part of the full price of the item when prices are first presented. We encourage DCWP to implement the junk fee regulations with as few carveouts or exceptions as possible, and in those cases only to adopt exceptions where there are compelling, explainable reasons for doing so, and limiting the scope of the exception narrowly as absolutely needed to assure fair treatment of businesses and consumers to achieve positive market outcomes.

For orders that are constructed dynamically, such as for grocery and restaurant delivery apps, we understand the picture may be more complicated, but at the same time, the consumer needs to know how much they are paying. Consumers have competitive choices for food delivery, and they can also purchase the items themselves directly at the restaurant or grocery store. From a perspective of ensuring transparent pricing andfair competition, they need to understand the costs and fees associated with specific choices in orders of different sizes to make an apples to apples comparison for choosing a delivery service. We appreciate that the delivery providers have a challenging job presenting prices and fees, but we should not allow overly complex fee structures to make the market so opaque that no one can figure out how much the order will cost, and how it compares with a rival service. We provided some comments on this issue in our July 16, 2026 letter to DCWP relating to recordkeeping requirements for food delivery services.

The full upfront disclosure of total price including all mandatory fees will help ensure that consumers can routinely and reliably count on the prices that are posted and disclosed by sellers at the beginning of the transaction, so that they know how much they will be spending and stay within their budgets for the selected items. Requiring upfront price disclosure will especially benefit users of services that currently employ "drip pricing" techniques of presenting fees late in the transaction process, including many sellers on the internet, who only present fees late in the shopping process, often after the customer has entered payment information.

For any truly optional fees for discretionary or add-on services, fees should be clearly disclosed in plain and understandable language, in a standardized format that consumers can obtain and review before deciding to purchase that product or service. In general, optional fees should also bear a reasonable and proportionate relationship to the underlying costs of providing the particular service for which they are charged, and not be excessively priced as a backdoor way of raising prices and undermining competition. We support the DCWP's provision to require recordkeeping to substantiate service fees or processing fees of various kinds, so that the amounts charged are reasonable and related to actual costs incurred by the business.

Consumer Reports believes the DCWP's approach to the junk fee rules is sound and reasonable, and consistent with best practices that are already followed by many retailers and service providers in the marketplace

Consumer Reports thanks DCWP for your efforts to investigate ways to protect consumers against excessive, unexpected and hidden fees, and to promote greater transparency and accountability to help customers compare their product and service choices. Consumers are truly fed up with being hit with costly junk fees from companies in virtually every economic sector. New York City consumers will welcome strong and comprehensive action by DCWP to ensure fair and transparent pricing for products and services. On behalf of the consumers we represent, we greatly appreciate your efforts to protect consumers from abusive and expensive junk fees.

Sincerely,

Charles W F Bell

Chuck Bell, Programs Director
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From:	Andrew Miller
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Comment on Proposed Junk Fees Rule
Date:	Friday, August 7, 2026 4:20:38 PM
Attachments:	Miller Comment Letter (DCWP Fees Rule).pdf

You don't often get email from [redacted]. Learn why this is important

To Whom It May Concern: Please find attached here in PDF form the comment I am submitting on the proposed junk fees rule. As I note in the document, the comment reflects my own views and not those of my institution.

Best,
Andrew

Andrew Miller
Assistant Professor of Law
Brooklyn Law School

250 Joralemon Street, Brooklyn, NY 11201 • 718-780-7537 • andrew.miller@brooklaw.edu

August 7, 2026

To the New York City Department of Consumer and Worker Protection:

I write in support of the Department's proposed "junk fees" rule. In particular, I wish to bring to the Department's attention a study I conducted along with three co-authors, Professors Benji Lu of the University of San Diego School of Law, Daniel Markovits of Yale Law School, and Rory Van Loo of The Wharton School at the University of Pennsylvania. The study's findings may help inform the Department's decision about how best to proceed in this area. We found that when sellers waited until later in a transaction to disclose fees that were not included in the advertised price, consumers ended up paying significantly more for the same goods than they otherwise would.

In the study, a draft write-up of which is included as part of this document, my co-authors and I gave real money to more than 1,500 participants and measured how much sellers could extract from buyers using "drip pricing" techniques (*i.e.*,. the hiding of fees until later in the transaction). We estimate based on our findings that drip pricing could reliably cost consumers, in aggregate, up to 10% extra in the form of markup alone for the exact same goods. In light of these results, we determined that drip pricing was the profit-maximizing move for sellers—a finding that has serious implications for regulatory action.

I hope that the attached study proves useful to the Department as it works toward a final rule.

Finally, I note that the views expressed herein are my personal views and not those of my institution (or the institutions of my co-authors).

Sincerely,

Prof. Andrew Miller

Measuring and Mitigating Drip-Pricing Markup: Evidence from an Online Marketplace Experiment with a Digital Shopping Assistant

Benjamin Lu
University of San Diego School of Law

Daniel Markovits
Yale Law School

Andrew Miller
Brooklyn Law School

Rory Van Loo
The Wharton School
University of Pennsylvania

June 28, 2026*

Abstract

We study how much drip pricing—the practice of revealing a hidden mandatory fee only after the consumer has begun the buying process—increases prices paid for identical goods and whether an automated shopping assistant mitigates the effect. In an online marketplace experiment ($n = 1608$) with real purchases of gift cards funded by a $15 endowment, we randomly vary the initial and final presentation of the gift cards' prices across 33 levels and randomly assign some participants to an automated shopping assistant that flags an identical option available at a lower total price and links to it. Relative to transparent pricing, drip pricing increases the average price paid by up to a plateau of about 10% (maximum 13%) for the same gift cards. The assistant reduces the incidence of overpayment by 62.8% and lowers dollars overpaid by 63.9%, enough to flip the seller's profit-maximizing strategy from drip pricing to transparent pricing. Participants exposed to drip pricing rate the platform as less trustworthy, even though it is the third-party seller that determines the fees. The digital assistant partially exacerbates this perception. Our findings inform policy responses to drip pricing and the value proposition of AI shopping tools.

*The authors thank the Oscar M. Ruebhausen Fund and the Niarcos Foundation for financial support; Eric Sun, Zachary Williams, Mingyi Hua, and Andrew Lou for research assistance; David Grant for logistical support; and Alessandro Acquisti, Zhenling Jiang, Garrett Johnson, Christine Jolls, Alvin Klevorick, Susan Rose-Ackerman, and Daniel Sokol, as well as participants at the Conference on Mapping and Governing the Online World and the Workshop on the Normative Foundations of the Market, for helpful comments.

1 Introduction

Businesses commonly deploy sales tactics that exploit consumers' cognitive limitations and behavioral biases to increase their revenues. One widespread tactic is drip pricing, which the U.S. Federal Trade Commission defines as "[q]uoting a misleading, artificially low price and then adding in mandatory fees and other charges throughout the buying process." A drip-pricing firm attracts consumers with artificially low advertised prices; then, after a consumer has begun the purchasing process, the firm imposes additional, mandatory charges that put the total price above the prevailing market price for the product but below the level at which the consumer would actually begin their purchasing process afresh and switch to a competitor. In this way, drip pricing enables firms to induce consumers to pay more than the lowest price at which they could buy the good on the market—a difference we in this paper call "markup." Live-event ticket sellers, for example, often advertise initial prices that do not include unavoidable taxes or fulfillment or service fees, which are revealed to consumers only after they have selected their seats and begun to input the information required to complete their purchase. The example is easily multiplied. One systematic study estimated that 46% of online and mobile app sellers deploy drip prices (*Estimating the Prevalence and Impact of Online Drip Pricing*, 2023).

Drip pricing's prevalence has attracted varying degrees of regulatory scrutiny and response across jurisdictions. In the United Kingdom, for example, the Digital Markets, Competition and Consumers Act requires businesses that sell to consumers to show total prices upfront, beginning in April 2025. By contrast, drip pricing in the United States is regulated by a patchwork of laws. Despite various legislative efforts by Congress, such as the 2023 Junk Fee Prevention Act and the Hotel Advertising Transparency Act of 2019, there is currently no statutory ban on the practice at the federal level. But federal agencies have moved to ban the practice in specific industries: The U.S. Department of Transportation in 2011 promulgated its Full Fare Advertising Rule requiring airlines to advertise the total price of airfare, inclusive of all mandatory charges, upfront (14 C.F.R. § 399.84), and the U.S. Federal Trade Commission in 2025 promulgated its Rule on Unfair or Deceptive Fees requiring "businesses that offer a price for live-event tickets or short-term lodging to disclose the total price, inclusive of most mandatory charges" (16 C.F.R. Part 464). Most recently, the U.S. Federal Trade Commission in April 2026 issued an Advanced Notice of Proposed Rulemaking on Unfair or Deceptive Fees in Online Food Delivery Services, in response to which the attorneys general of 16 states submitted comments in support. And, in the absence of comprehensive federal action, some states and other jurisdictions have enacted or are in the process of enacting laws prohibiting or restricting drip pricing, including California; Colorado; Connecticut; Massachusetts; Minnesota; Oregon; Virginia; and, perhaps most recently, the District of Columbia.

Although drip pricing has been the subject of considerable regulatory scrutiny and academic study, many basic questions remain unanswered. First, much remains unknown about the extent to which drip pricing actually harms consumers or the market—information that can be key to justifying regulation of the practice under, for example, the U.S. Federal Trade Commission Act. Drip pricing clearly makes it more difficult and costly for consumers to comparison shop (Blake et al., 2021; Chetty et al., 2009; Ellison & Ellison, 2009; Gabaix & Laibson, 2006). But even just quantifying these search costs alone can be challenging, to say nothing of measuring drip pricing's broader consequences for consumer welfare. For example, the United

Kingdom's Department for Business and Trade noted in a 2023 report characterizing online drip pricing that it was "not able to find previous research that provided quantitative estimates on how consumer behavior or welfare is impacted by specific characteristics of dripped fees" (*Estimating the Prevalence and Impact of Online Drip Pricing*, 2023). Indeed, some studies have noted that price obfuscation can change both the quantity and quality of goods consumers purchase, making welfare effects difficult to infer from spending alone (Blake et al., 2021). These uncertainties leave consumer advocates and regulators, as the United Kingdom's Department for Business and Trade expressly admitted, to rely on speculative assumptions or otherwise grasp at straws.

A second uncertainty compounds the difficulties caused by the first. Even if drip pricing's harms can be demonstrated and quantified, policymakers and consumer advocates interested in formulating a response face both a complex political calculus and a paucity of data about what sorts of interventions are most effective. In the United States, for example, a general prohibition on drip pricing faces insuperable political obstacles, at least on a national scale and in the near- or middle-term.

This makes it important to consider alternative responses that fall short of a comprehensive, federally enforced ban. In addition to state and local bans where feasible, such alternatives include mandating informational disclosures to warn of drip pricing and empowering third-party artificial intelligence (AI) assistants to help consumers anticipate and avoid drip prices. Several companies, ranging from established businesses such as Capital One and PayPal to startups such as Sugar, are pursuing such responses, offering AI shopping assistants that they promise will compare billions of marketplace options and provide consumers with pop-up links to better deals. These intermediaries must quantify the benefits of their AI shopping assistants to make the case to consumers that they can, indeed, make them better off. Additionally, some e-commerce platforms—including Amazon, eBay, and Travelocity—are offering or developing their own AI shopping assistants. To be sure, many platforms engage in drip pricing themselves, and, even if they do not, they benefit when their sellers are able to charge higher prices through drip pricing and other pricing strategies because they often take a percentage cut of the transactions they facilitate. But insofar as consumers avoid shopping where they fear drip pricing will occur, some platforms may have an interest in helping consumers to defeat drip pricing. Of course, platforms can completely disable drip pricing, whether by themselves or by the third-party sellers they host, with relative ease if they wish. But there might be some circumstances in which a platform would prefer to take measures short of that. For example, if, rather than disabling drip pricing entirely, a platform provides a digital assistant, it can retain drip-pricing commissions from inattentive consumers who decline to use the assistant while still influencing the advice that attentive consumers receive. Platforms may also want to act preemptively to forbid or help consumers to defeat drip pricing if it is likely that either regulators or AI assistants will eventually ban drip pricing or make it unprofitable, since preemptive action could build trust and keep consumers within the platform's ecosystem.

Consumer advocates and policymakers, along with e-commerce platforms and developers of AI shopping assistants, therefore all face questions about (a) whether and how drip pricing influences consumer behavior, and (b) whether and how interventions short of an outright prohibition might mitigate any harms to consumers that drip pricing causes.

We seek to answer these questions through a controlled experiment in which consumers shopped for real goods with real money. In our experiment, subjects received $15 to spend in an online marketplace we constructed, on which various fictional third-party sellers offered gift cards for sale. Participants chose among identical gift cards sold by different sellers, some of whom drip priced while others did not. All drip-pricing sellers revealed the same fixed hidden fee toward the end of the purchasing process, but we randomized the initially displayed price, and hence the final price, that those drip-pricing sellers offered. We find that, at the revenue-maximizing price point, about three-quarters of consumers selected the drip-priced option, causing consumers on average to pay 13% more—for precisely the same gift cards—than the lowest price available on the marketplace. Moreover, while those who comparison shopped were substantially more likely to save money by avoiding the drip-priced option, they also spent on average approximately 1.8 minutes more to complete the shopping task than those who did not comparison shop, an increase of approximately 70% in time spent. Our experiment therefore documents substantial markup and demonstrates directly that drip pricing can cause substantial harm to consumers overall. Moreover, whereas prior research shows that drip pricing reduces customer satisfaction and evaluations (Morwitz et al., 1998; Robbert, 2015; Santana et al., 2020) or leads to a decline in brand attitudes (Lee & Han, 2002), we are not aware of prior work demonstrating an association with the consumer's perception of the host platform. (For evidence of this kind of reputation spillover from seller conduct generally, see Nosko and Tadelis (2015).) Our experiment documents such an association, showing that participants who proceeded to checkout with a drip-priced gift card viewed the platform as more deceptive than participants who did not.

We also assigned a random subset of our participants to receive help identifying and avoiding markup. We delivered this intervention in a manner befitting an online shopping environment: through a pop-up notifying the participant that the same product was available from another seller at a lower final price and providing the participant with a link to that alternative offering. In our controlled setting, we were able to do this mechanically. But a similar intervention in the real world is increasingly plausible with the help of AI capabilities of the sort that businesses are already offering consumers. Indeed, from the standpoint of a participant in our experiment, the interface of our tool is similar to the interface offered by existing AI-powered shopping assistants, such as PayPal's Honey and Capital One's Shopping Tool, which deploy pop-up windows in the consumer's browser with links to better deals. Our targeted and specific intervention proved much more effective at protecting consumers than interventions tested in prior studies, reducing the percentage of consumers who made suboptimal purchasing decisions by approximately 63%. Furthermore, the tool diverted a sufficient number of participants from buying drip-priced cards to shift the profit-maximizing strategy in our experiment from drip pricing to transparent pricing.

The remainder of the paper is organized as follows. Section 2 reviews the existing literature on drip pricing, with an eye toward identifying our study's contributions. Section 3 explains our experiment. Section 4 introduces our empirical approach to the experimental data, and Section 5 reports our results. Section 6 discusses these results, with particular focus on their importance for both policymakers and market actors, as well as their limitations. Section 7 concludes.

2 Related Work

Drip pricing is one of many techniques that firms widely deploy to shroud prices. The fact that many firms deploy drip pricing and numerous other techniques for shrouding prices invites explanations that invoke behavioral mechanisms (Gabaix & Laibson, 2006; Grossman, 1981; Lal & Matutes, 1994; Milgrom, 1981). Some consumers, for example, may be inattentive to nonsalient charges or fail to consider add-on prices when choosing among base goods (Chetty et al., 2009; Ellison, 2005; Gabaix & Laibson, 2006). They may also experience endowment effects or rely on other mental heuristics, although the evidence on the circumstances in which this phenomenon occurs is mixed (Brown et al., 2010; Chakravarti et al., 2002; Ellison & Ellison, 2009). These shrouding practices enable firms to induce consumers to spend more and purchase greater quantities than they otherwise would and increase the transaction costs of buying for consumers (Blake et al., 2021; Chetty et al., 2009; Gabaix & Laibson, 2006). Additionally, firms can preserve market power by making prices harder for consumers to understand and compare (Carlin, 2009).

Drip pricing's widespread adoption, combined with powerful intuitions that it harms consumers, has captured the attention of scholars eager to demonstrate and measure such harms. While these studies produce a kaleidoscope of inference onto markup, they do not provide a single, direct, clear line of sight. Field experiments have found that consumers overall spend more when sellers add taxes only at the cash register or introduce service fees late in the process of purchasing event tickets, compared to full up-front disclosure of prices (Chetty et al., 2009; Blake et al., 2021; but see Dertwinkel-Kalt et al., 2020). The effects on buying patterns that these studies document raise the possibility that drip pricing harms consumers. But because these studies show that drip pricing causes consumers to buy *more and different* goods, they support only indirect and speculative estimates of the harms that drip pricing imposes on consumers or indeed of whether drip pricing harms consumers at all (Blake et al., 2021).

Another set of field experiments varied prices in online *auctions* for identical items, finding that drip pricing increased sellers' revenues (Brown et al., 2010; Hossain & Morgan, 2006). Online auctions, however, represent an idiosyncratic and small portion of retail spending. Moreover, the choice sets faced by consumers in these experiments were shaped by search engine algorithms, which may have directed some consumers to higher-priced products (Dinerstein et al., 2018). The studies did not necessarily confront individual consumers with a choice between up-front-priced and drip-priced goods, and they therefore could not isolate the effects of drip pricing on markup.

Lab simulations have more closely isolated the effects of pricing strategies on consumer behavior. A vignette experiment studied the effects of partitioning prices by using voluntary add-on fees for incremental services (Santana et al., 2020). It found that the tactic led to lower customer satisfaction and caused a higher percentage of participants to make financial mistakes. Another study found evidence that consumers who confront true drip prices in the form of mandatory fees pay more overall (Huck & Wallace, 2010). That study inflated search costs, however, by requiring subjects to choose sellers before they could see the listed price rather than, as in our experiment and in actual online marketplaces, showing consumers multiple sellers' base prices simultaneously. More importantly, the study also imposed an artificial "travel cost" on consumers that was fixed by the investigators, rather than subjecting consumers to organic transaction costs as in the real world of comparison shopping online. Another experiment adopts more realistic search costs in selling fictional products and finds lower consumer surplus resulting from a duopoly drip pricing equilibrium (Rasch et al., 2020). Although these studies focus more directly on consumer harm from drip pricing, their conclusions remain hypothetical, as none of these experiments gave real money to participants to spend or offered them real products to purchase. Furthermore, no prior experiment has directly measured how much extra time consumers are willing to spend to compare prices in the face of drip pricing.

Our study replaces this kaleidoscope with a direct view of markup and therefore provides a more reliable and more precise measure of consumer harm from drip pricing than any prior work. Our experimental design enables us to measure markup—how much more drip pricing induces consumers to spend for the same things—when consumers spend real money on real goods. Moreover, prior studies could not assess the effects of granular changes in drip pricing, because they compared the transparent pricing option to only one or two drip pricing strategies. By contrast, we offered 33 drip pricing levels (randomized among our subjects) to generate reliable estimates of how varying the size of a drip affects the price paid by consumers. Such granular price variation reflects the real-world choice set facing sellers when they decide how to select the magnitude of drip pricing among a continuous set of prices, enabling us to estimate the revenue-maximizing strategy.

In terms of the reputational implications, a substantial literature finds that drip and related partitioned pricing increases perceived deception/unfairness and dampens consumer satisfaction and evaluations of sellers (*e.g.*, Morwitz et al., 1998; Robbert, 2015; Santana et al., 2020). By contrast, we have found no published study that experimentally links third-party sellers' dripped fees to the host platform's reputation. Related marketplace work shows that seller behavior can spill over to platform-level beliefs and usage (Nosko & Tadelis, 2015), but that evidence does not isolate drip-pricing nor third-party fee attributions. Our experiment fills this gap by showing that exposure to drip pricing orchestrated by third-party sellers leads consumers to evaluate the platform itself as less truthful.

Finally, and critically, our study also contributes to the behavioral literature on how to help consumers avoid markup. Only one prior study has tested an intervention to combat drip pricing (Santana et al., 2020). It found that informing participants that a non-drip-pricing seller offers the same bundle of goods at a lower total price makes them more likely to restart their search. But this result, obtained in the context of a vignette experiment about a hypothetical purchase, did not estimate the savings from a subsequent purchase. Our study thus extends the literature by creating an actual shopping experience and demonstrating that a targeted and specific intervention can help consumers pay significantly lower prices in the face of drip pricing.

This result is relevant beyond its narrow, specific context. The broader behavioral economics literature has in a few instances studied whether informational interventions might reduce consumer markup in contexts not limited to drip pricing. The most meaningful intervention for reducing markup in the literature resulted from a personalized letter informing Medicare recipients about which plan fit them best (Kling et al., 2012). Other interventions have altered consumer behavior in other ways, such as reducing reliance on payday loans through signs posted at the point of transaction (Bertrand & Morse, 2011) and deterring customers from eating at restaurants by posting low hygiene scores on Yelp (Dai & Luca, 2020). However, that literature has overall found that information-based interventions often fail, suggesting that banning the underlying practices may be the only way to avoid whatever harms they cause (Ben-Shahar & Schneider, 2011). Information disclosures produce disappointing results in part because consumers have a difficult time processing the disclosures and sometimes react in the opposite way than intended. Research has, however, begun to show the potential for AI assistants in contexts such as helping consumers to avoid overdraft fees (Ben-David et al., 2025). We believe our study is the first to show significant savings from markup—whether related to drip pricing or other tactics—due to an informational intervention in online shopping. Our result is especially promising insofar as it suggests that consumer responses to the intervention suffice, in some circumstances, to flip sellers' profit-maximizing pricing strategies from drip to up-front pricing.

Finally, an emerging literature considers how the coming era of AI-assisted shopping will affect consumer decisions (Wang et al., 2025). The large behavioral economics literature on markup, however, has yet to consider how the types of services offered by the current generation of digital shopping assistants might help consumers make more nearly optimal decisions. By offering some subjects the type of advice that smart digital tools will soon offer to guide consumers to a better deal, our study advances the literature on AI shopping assistants by demonstrating the viability of one of the most valuable services, saving shoppers money.

3 Experimental Setup

We conducted an experiment to estimate (1) drip pricing's impacts on consumer welfare and seller incentives; (2) the extent to which an informational intervention, in the form of a pop-up notice similar to what could be produced by a web browser extension, mitigates those impacts; and (3) consumer perceptions of and attitudes toward platforms that enable drip pricing. As described in Section 2, prior work suggests that drip pricing's effects vary across different settings. Thus, to improve the external validity of our results, we sought to replicate, as much as possible, the typical online shopping experience.

Each participant was given \$15 at the start of the experiment and instructed to purchase a gift card on our Gift Card Marketplace ("Marketplace"), an online platform connecting buyers and sellers of gift cards. Participants were told, and the Marketplace was designed to convey, that gift cards sold on the Marketplace were sold by different third-party sellers, not by the Marketplace itself, and that those sellers could set their own prices and "Seller's Service Fees." Participants were also told at the outset that any remaining amount of money that they did not spend on a gift card was theirs to keep as cash.

Figure 1 maps out the process of shopping on the Marketplace, and Figure 2 reproduces key pages from the Marketplace. Gift cards for three brands were available for sale on the Marketplace: Domino's, Starbucks, and Subway. The brands were selected because their gift cards sell at similar modest discounts off face value in actual trade, making the prices posted on our Marketplace credible. For each brand, there were two sellers. Both sellers offered gift cards redeemable for \$10 worth of goods at the corresponding brand, but one seller charged a service fee ("drip-priced") while the other did not. The seller that did not charge a service fee offered the gift card for \$8.50. The seller that charged a service fee initially offered the gift card at some price below \$8.50 (the "display price"), but then charged an additional \$1.70 "Seller's Service Fee" at checkout. The display price was randomized to participants in 33 5-cent increments between \$6.85 and \$8.45; the final cost of the drip-priced cards thus ranged from \$8.55 to \$10.15. Notably, display

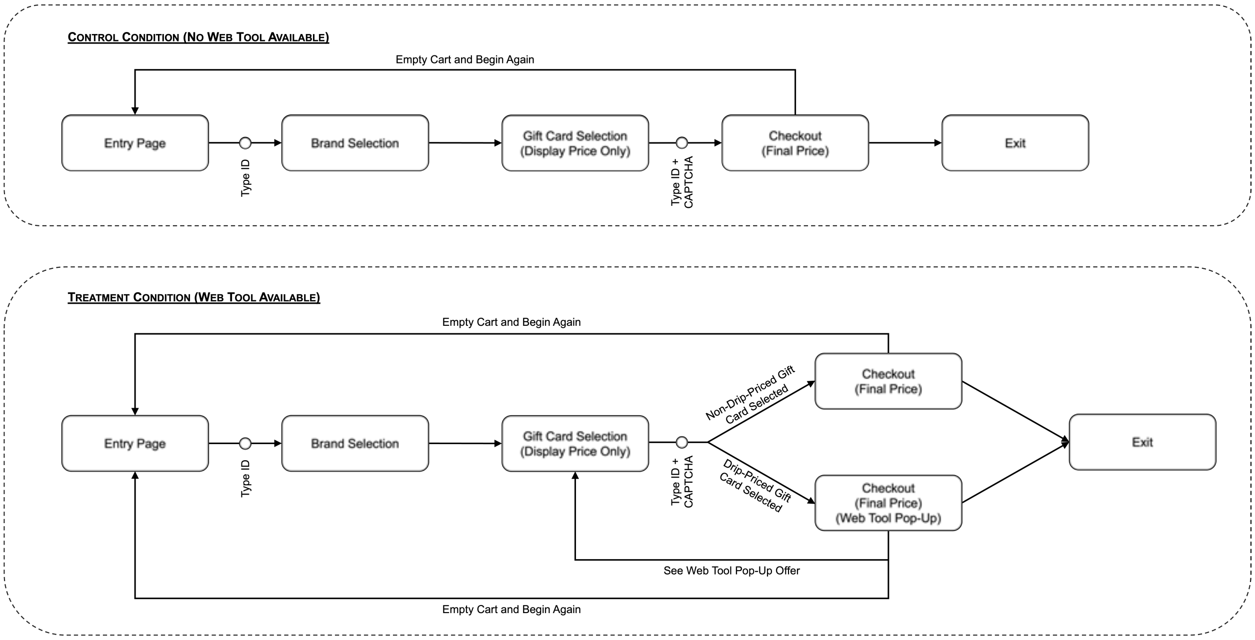
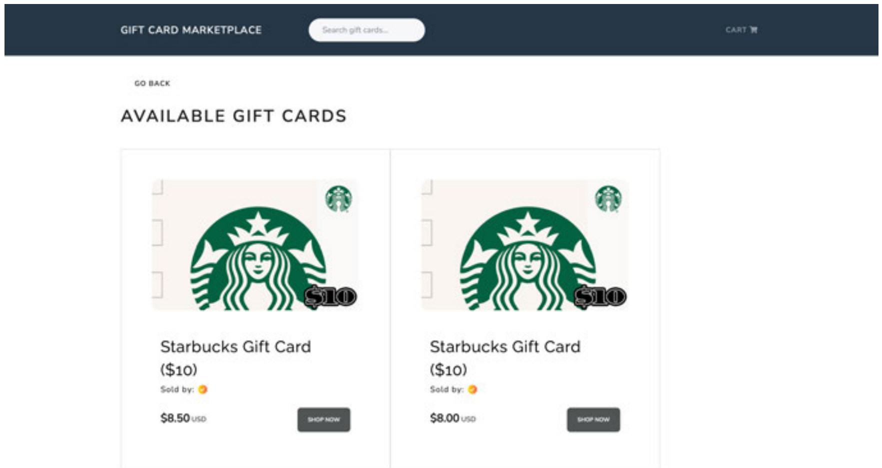


Figure 1: Flowchart of the shopping process by treatment condition.

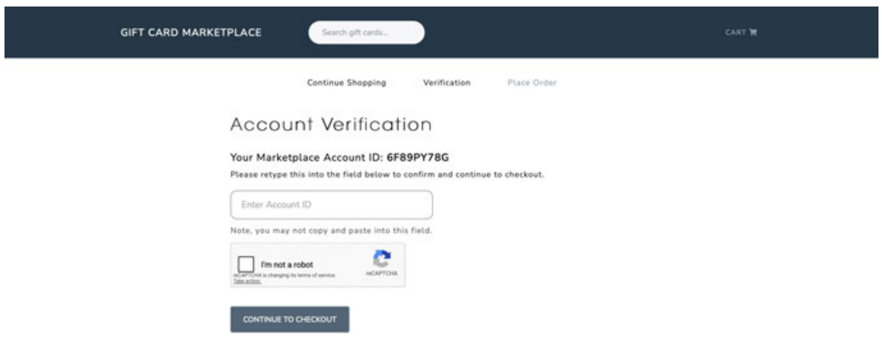
prices were randomized to participants, not to brands—that is, for each participant, the display price of the drip-priced gift card in each of the three brands was the same. Participants could discover the $1.70 service fee only by seeing the breakdown of the final price at checkout, after they had incurred the initial transaction costs of buying. At checkout, participants could choose either to finalize the purchase or to restart their search.

Participants were also randomly assigned either to receive a web tool ("treated participants") or not ("control participants"). If a treated participant moved to purchase a drip-priced gift card, the web tool would produce a pop-up at the checkout page indicating that the same branded gift card was available for a lower final price and providing a direct link to that gift card's product page. Participants were not told in advance about the web tool; they could discover its existence only through this pop-up mechanism.

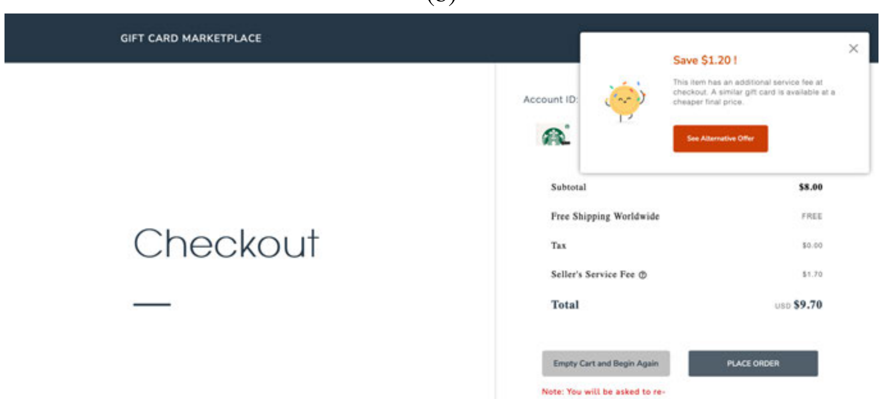
We simulated the typical search costs of online shopping by requiring participants to type an account ID (1) to enter the Marketplace initially and (2) to proceed to the checkout screen. In step (2), participants also had to complete a CAPTCHA commonly used to deter bots. Participants who emptied their shopping carts from the checkout screen without using the link provided by the web tool had to re-enter the Marketplace and repeat steps (1) and (2) to buy a different gift card. By contrast, participants who used the link provided by the web tool were taken directly to the cheaper card's product page, and thus did not need to repeat step (1)—but they did still need to repeat step (2), re-entering their account ID and completing the CAPTCHA to proceed to checkout with the new card identified by the web tool. Like all participants, they also still needed to navigate from page to page by clicking a button on the card's product page to add the card to their shopping carts, then clicking a button to proceed to checkout, and finally reviewing the transaction summary and clicking a button to place the order. Thus, the decision to go back and see other options was not costless in terms of time, regardless of whether participants used the tool, but it was less costly for treated



(a)



(b)



(c)

Figure 2: Key pages on the Gift Card Marketplace. (a) For each brand, there were two gift cards for sale, from two different sellers. Upon clicking any gift card on offer, participants could view the details of the gift card and add it to their shopping cart. (b) To proceed to the checkout screen, participants were required to re-enter their account ID and complete a CAPTCHA commonly used to deter bots. (c) At checkout, participants learned the final price of their gift card, including a possible "Seller's Service Fee" of $1.70; hovering over the question mark displayed a message explaining that the fee came from the seller, not the Gift Card Marketplace. Participants who clicked "Empty Cart and Begin Again" had their carts emptied and were taken back to the entry page. Participants who were assigned to the web tool and proceeded to checkout with a drip-priced gift card in their shopping cart received a pop-up indicating that the same gift card was available for a lower price. Participants who clicked "See Alternative Offer" in the pop-up had their carts emptied and were taken directly to the non-drip-priced gift card.

participants who used the web tool.

Our participants were members of the RAND Corporation's American Life Panel ("ALP"), a group of demographically representative American adults who participate on a recurring basis in social science experiments in exchange for small payments (as in this study). Because RAND has substantial demographic and other data on all the panel members stemming from their preexisting participation in the ALP, we are able to know the demographic attributes of our subset of 1,608 participants. Furthermore, RAND provided logistical and tech support to participants throughout the experiment, helping ensure that (for example) our results were not unduly skewed by uncompleted surveys or by technical issues that disproportionately affected particular subpopulations.

4 Empirical Strategy

We adopt the Neyman-Rubin potential outcomes framework to characterize our results (Neyman, 1923; Rubin, 1974). Let $k \in \{0,1\}$ be a binary indicator of whether the web tool is provided or not, and let $z \in \{1,...,33\}$ index the markup of the drip-priced gift card, which, recall, is limited to 5-cent increments over the \$8.50 final price of the non-drip-priced gift card. Under the potential outcomes framework, we assume that the i^{th} of our $n = 1608$ participants has fixed potential outcomes $Y_i(k,z)$ for $k \in \{0,1\}$ and $z \in \{1,\ldots,33\}$ denoting the amount of markup that the participant would pay if assigned to web tool condition k and markup index z. Specifically, $Y_i(k,z) = 0.05z$ if the participant would buy the drip-priced gift card under treatment combination (k,z), and zero otherwise. Due to the fundamental problem of causal inference (Holland, 1986), we observe only the potential outcome corresponding to the web tool condition K_i and final price Z_i to which the i^{th} participant was actually assigned, which we denote by $Y_i = Y_i(K_i, Z_i)$.

Our complete randomization of the web tool and the final price provides the basis for inference within this framework. Because $Y(0,z), Y(1,z) \perp\!\!\!\perp K, Z$ for $z = 1,\ldots,33$ by design, we can conduct valid statistical inference on both susceptibility to drip pricing at baseline—*i.e.*, functionals of the probability distribution functions of $Y(0,z), z = 1,\ldots,33$—and the efficacy of our web tool—*i.e.*, average treatment effects such as $n^{-1}\sum_{i=1}^{n} Y_i(1,z) - Y_i(0,z), z = 1,\ldots,33$.

Given the centrality of randomization to our analysis, we verify that randomization proceeded as expected before turning to our main results. Table 1 shows participant summary statistics by web tool access and display price. As expected, the covariates are approximately balanced, and there are no statistically significant differences across the web tool access and display price conditions. As a placebo check to ensure that the experiment was implemented properly, we estimate the effect of the web tool and the display price on brand preferences. As shown in Appendix A, we find no statistically significant effect.

5 Results

This section reports the results of our experiment. We focus first on consumer-seller dynamics in the absence of the web tool by measuring how much markup drip pricing extracts from consumers as a group (Section 5.1) and how sellers are accordingly incentivized to set prices (Section 5.2). We then examine how the web

	Web Tool	No Web Tool	p-value	Display Price $< \$7.65$	Display Price $\geq \$7.65$	p-value
Prop Female	0.59 (0.49)	0.58 (0.49)	0.695	0.57 (0.50)	0.60 (0.49)	0.279
Prop White	0.82 (0.38)	0.80 (0.40)		0.83 (0.38)	0.80 (0.40)	
Prop Black	0.08 (0.28)	0.10 (0.30)		0.08 (0.27)	0.10 (0.30)	
Prop AIAN	0.01 (0.10)	0.01 (0.12)	0.745	0.02 (0.12)	0.01 (0.09)	0.211
Prop API	0.03 (0.17)	0.03 (0.16)		0.03 (0.17)	0.03 (0.16)	
Prop Other Race	0.05 (0.23)	0.06 (0.23)		0.05 (0.22)	0.06 (0.24)	
Prop Hispanic	0.13 (0.34)	0.13 (0.34)	0.903	0.12 (0.32)	0.15 (0.35)	0.116
Average Age	59.76 (13.96)	58.47 (14.39)	0.068	59.04 (13.98)	59.17 (14.39)	0.853
Prop Retired	0.38 (0.48)	0.35 (0.48)	0.344	0.36 (0.48)	0.37 (0.48)	0.542
Prop No College Degree	0.31 (0.46)	0.34 (0.47)	0.175	0.32 (0.46)	0.33 (0.47)	0.445
Prop Income $\geq$ \$75k	0.54 (0.50)	0.50 (0.50)	0.106	0.54 (0.50)	0.50 (0.50)	0.124
Prop on Desktop	0.62 (0.49)	0.62 (0.49)	1.000	0.61 (0.49)	0.63 (0.48)	0.354
Prop on Touch Device	0.36 (0.48)	0.36 (0.48)	0.968	0.38 (0.49)	0.35 (0.48)	0.191
N	794	814		783	825	

Table 1: Summary statistics by web tool access and display price of drip-priced gift card. Standard deviations are in parentheses.

tool alters these dynamics by measuring the savings it enables for consumers (Section 5.3) and the effects this has on the optimal pricing strategy for sellers (Section 5.4). Finally, we evaluate how these results vary by demographic subgroups (Section 5.5) and report how drip pricing and the web tool impacted consumers' judgments of the honesty of the Marketplace on which they shopped (Section 5.6).

5.1 Result 1: At Baseline, Consumers Were Susceptible to Markup From Drip Pricing

When left unassisted, participants were susceptible to markup from drip pricing. The left panel of Figure 3 shows the proportion of control participants in each markup condition who purchased a drip-priced gift card. Overall, 66.3% (95% CI: 63.0%, 69.6%) of control participants purchased a drip-priced gift card. As the left panel of Figure 3 shows, that proportion declined as the amount of markup increased; a logistic regression model estimated the odds ratio at 0.974 (95% CI: 0.959, 0.989) per \$0.05 increase in markup. (See also Table 2, which controls for participant covariates.) Nonetheless, at nearly every level of markup, control participants were more likely than not to purchase a drip-priced gift card.

Underlying control participants' overall susceptibility to drip pricing is the fact that few compared gift card offerings. Across all control participants, only 10.9% comparison shopped—*i.e.*, emptied their shopping cart and began the purchasing process anew at least once. As expected given the results shown in the left panel of Figure 3, that percentage increased as the amount of markup increased—with a logistic regression model estimating the odds ratio at 1.024 (95% CI: 1.001, 1.049) per \$0.05 increase in markup—but the mitigative effect of this trend was limited overall due to the low rate of comparison shopping at baseline. Thus, consistent with past literature, much of drip pricing's efficacy in this experiment appears to be driven by participants' failure to comparison shop. Indeed, control participants who *did* take the extra steps

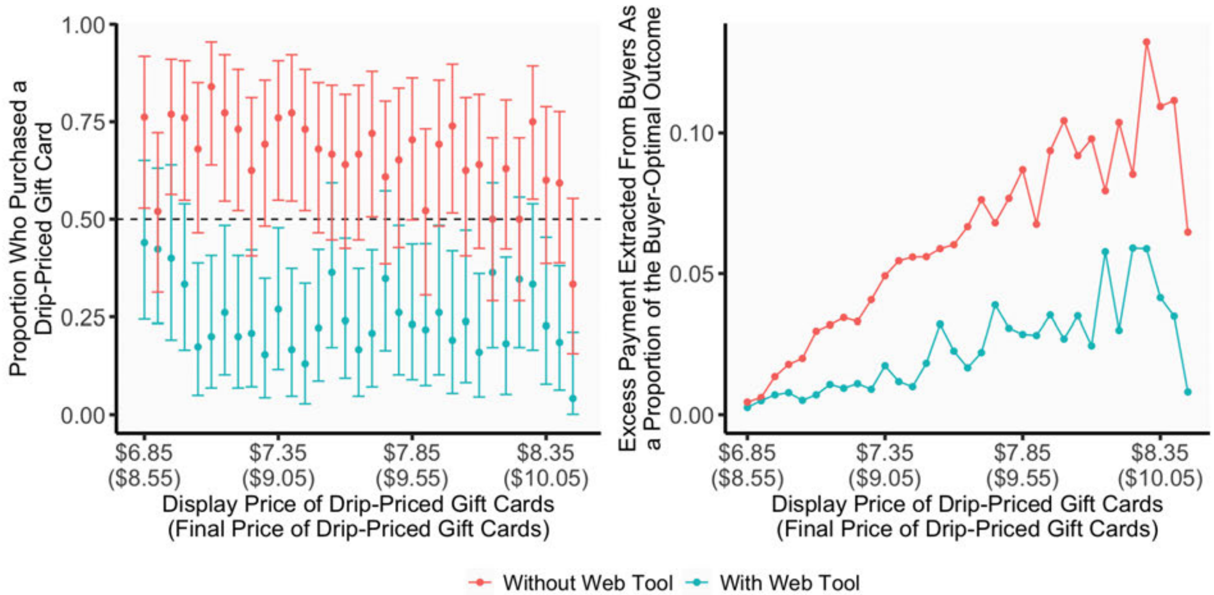


Figure 3: LEFT: Susceptibility to drip pricing, by display price and web tool access. Error bars denote 95% confidence intervals. RIGHT: Excess payment extracted from participants, by display price and web tool access.

to comparison shop were significantly less likely to fall for the drip-pricing scheme: Only 19.1% of such participants (95% CI: 11.5%, 28.8%) ultimately purchased a drip-priced gift card, compared to 72.1% of control participants who did not comparison shop (95% CI: 68.7%, 75.3%) ($p < 0.001$).

Participants' susceptibility enabled drip-pricing sellers to extract substantial markup. The right panel of Figure 3 shows the excess price that control participants in each markup condition paid in aggregate, as a proportion of what they would have paid in aggregate had none of them purchased a drip-priced gift card. Across all markup conditions, control participants paid, in aggregate, about 6.4% (95% CI: 5.9%, 6.8%) in markup. But because the decline in control participants' susceptibility to drip pricing as markup increased was outpaced by the increase in markup itself, the aggregate loss that control participants suffered generally increased with markup. At the upper end, we estimate that drip pricing in our setting could reliably cost consumers, in aggregate, about 10% extra in the form of markup alone—to say nothing of the additional costs that drip pricing can impose through other anticompetitive effects.

While this markup was borne by participants who fell for the drip price, even the relatively few control participants who comparison shopped to avoid the drip price appeared to have still paid a price—in time. Whereas control participants who did not comparison shop spent about 2.64 minutes to complete the shopping process (95% CI: 2.51 minutes, 2.77 minutes), those who did comparison shop spent about 4.49 minutes (95% CI: 4.04 minutes, 4.93 minutes). We caution against attributing this difference entirely to the added time required to comparison shop: The choice to comparison shop was not randomized, so those who comparison shopped may have systematically differed from those who did not. Nonetheless, given the frictions we induced by requiring participants to enter their account IDs and complete a CAPTCHA, it is plausible—even likely, we think—that at least some of the difference in time spent was due to the process of comparison shopping itself.[1]

5.2 Result 2: At Baseline, Drip Pricing Was the Dominant Pricing Strategy for Sellers

By enabling sellers to both capture more consumers and charge higher prices, drip pricing weakly dominated transparent pricing with respect to revenue in the absence of the web tool: At all 33 price points we tested, the drip-pricing seller's revenue was significantly greater than or statistically indistinguishable from the transparent-pricing seller's revenue at a 95% confidence level, as shown in the top-left panel of Figure 4. On average across the 33 price points, the drip-pricing seller's average revenue per consumer who entered the Marketplace was \$6.17 (95% CI: \$5.87, \$6.47), 115% more than the transparent-pricing seller's revenue per consumer of \$2.86 (95% CI: \$2.60, \$3.13). Our data thus suggest that, in a world without digital shopping assistants, sellers face few downsides and realize considerable gains from drip pricing.

The sole price point at which sellers earned more through transparent pricing than drip pricing was the highest price point we tested, at \$10.15, which amounted to a 19.4% markup per sale, and a final price above the gift card's \$10.00 face value. We did not test higher price points because any further \$0.05 increase would have made the two sellers' initial display prices equal.

To understand the seller's pricing strategy fully, it is necessary to consider not only the total revenues generated, but also the profitability of marginal price increases. A standard assumption in the literature is that the marginal price increases generated by obfuscation strategies produce pure profit (Ellison & Ellison, 2009). Consistent with that assumption, we suppose that, over the relevant range, fixed costs are invariant to the number of gift cards sold; that the profit per transparent sale reflects industry standards; and that the marginal cost of each gift card is the same.[2]

We calculated the average profit per consumer of both the drip-pricing seller and the transparent seller at each of the 33 price points under these assumptions. We then fit a quadratic regression model of each seller's profit per consumer against price point, weighting for the uncertainty of each profit estimate. The estimated profit per consumer, along with the estimated quadratic fit, is shown in the bottom-left panel of Figure 4. On average across the 33 price points, the drip-pricing seller's profit per consumer was \$1.21 (95% CI: \$1.15, \$1.27), 253% more than the transparent-pricing seller's profit per consumer of \$0.34 (95%

[1]We compute time spent by taking the difference between the time participants first entered the Marketplace and the time they completed their purchase. Because participants could leave to do other things in between, this measure of time spent is heavily right-skewed, with some participants completing their purchase weeks after first entering the Marketplace. To prevent the high variability in this subset of participants from washing out our analysis of time spent, and because we are principally interested in the time spent by participants who completed the shopping process in one sitting, we limit our analysis to the 87.6% of participants who spent no more than 10 minutes to complete their purchase. In doing so, we make two notes. First, as shown in Appendix C, the difference in time spent reported here is qualitatively robust to any choice of cutoff that reasonably approximates the amount of time the typical person would take to finish shopping on the Marketplace in a single sitting. Second, our choice to subset the data provides an additional reason to be careful not to attribute the difference in time spent entirely to the process of comparison shopping: Not only was the choice to comparison shop not randomized, but there may also be selection effects with respect to who left midway through the shopping process and returned later.

[2]Specifically, we assumed a 12% profit margin on the transparent-pricing seller's final price of \$8.50 to reflect the fees some real-world platforms charge for third parties selling gift cards, as third-party sellers' margins are unavailable. See, e.g., https://gameflip.com/become-a-seller and https://www.vice.com/en/article/trade-unwanted-gift-cards-for-cash-online. Our results are qualitatively robust to alternative profit margin assumptions within a plausible range.

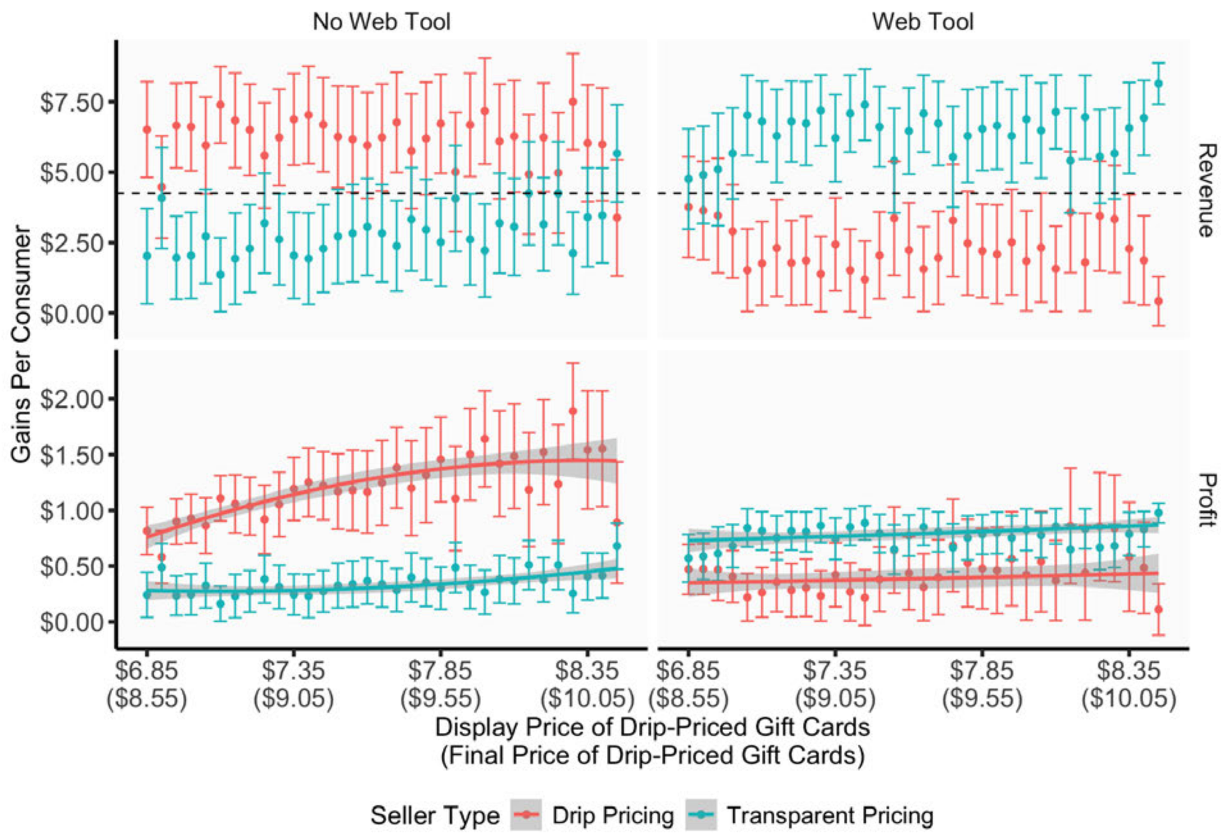


Figure 4: Each seller's revenue and profit per participant who entered the Marketplace, by display price and web tool access. Error bars denote 95% confidence intervals. Fitted curves are from quadratic regressions.

CI: \$0.31, \$0.38). At no price point was transparent pricing more profitable, and at 27 of the 33 price points drip pricing significantly outperformed transparent pricing. Under our quadratic model, we estimate with 95% confidence that the profit-maximizing strategy was to choose a drip producing a final price of \$9.65 or higher, a markup of at least 13.5%. A high level of drip pricing was thus the profit-maximizing pricing strategy.

5.3 Result 3: The Digital Intervention Significantly Reduced Markup Paid by Consumers

The web tool substantially reduced the rate at which participants paid markup, as shown in Figure 3. On average, assignment to the web tool reduced the probability of selecting a drip-priced gift card by 41.7 percentage points (95% CI: 37.2, 46.1). In relative terms, assignment to the web tool reduced the probability of selecting a drip-priced gift card by 62.8% (95% CI: 57.6%, 67.4%). Our finding that a simple informational intervention can influence a large portion of consumers who would have otherwise been manipulated is especially striking given the literature on how difficult it is to nudge consumers (Ben-Shahar & Schneider, 2014). At the same time, about 24.7% (95% CI: 21.7%, 27.8%) of participants assigned to receive the web tool still chose the drip-priced gift card, despite receiving relatively clear guidance toward a cheaper alternative.

The reduction in participants' susceptibility to drip pricing was largely invariant to the amount of markup at stake. For instance, when the markup amounted to \$0.50 or less, the tool on average reduced the percent of participants choosing the drip-priced gift card by 61.0% (95% CI: 51.5%, 68.6%), or 43.6 percentage points (95% CI: 35.6, 51.6); likewise, when the markup amounted to \$1.00 or more, the tool reduced the percentage by 61.9% (95% CI: 52.8%, 69.2%), or 37.7 percentage points (95% CI: 30.8, 44.5). As expected given its similar efficacy across all markups tested, the web tool reduced the total amount of markup paid by participants in aggregate across all markup conditions by 63.9% (95% CI: 57.9%, 69.8%), or 4.1 percentage points (95% CI: 3.5, 4.6), from 6.4% (see Section 5.1) to 2.3% (95% CI: 2.0%, 2.6%).[3]

At some of the most aggressive price points, this amounted to considerable consumer savings. For instance, the highest level of surplus extraction in the absence of the web tool occurred when the drip-pricing seller set the final price at 17.6% above the transparent-pricing seller's final price. As shown in Figure 3, 75.0% (95% CI: 55.1%, 89.3%) of control participants faced with the choice between those two sellers bought from the drip-pricing seller, causing control participants at that price point to pay, as a group, 13.2% (95% CI: 10.2%, 16.3%) more than they could have if they had all bought from the transparent-pricing seller. The web tool reduced the percentage of consumers who bought from the drip-pricing seller at that price point to 33% (95% CI: 16.5%, 54.0%), thereby reducing the excess amount that treated participants at that price point paid as a group by 7.4 percentage points (95% CI: 3.0, 11.7).

[3] Because the web tool's aggregate savings to participants were similar across all markup conditions when expressed in percentage terms, the aggregate savings to participants in high-markup conditions were greater in percentage-point terms. For example, as discussed in Section 5.1 and shown in the right panel of Figure 3, the upper range of markup conditions we tested reliably cost control participants, in aggregate, about 10% in markup. As across all other markup conditions, the web tool reduced the aggregate markup paid by participants in this range of markups by around 60%—which, in this range of markups, amounted to a reduction of approximately 6 percentage points.

5.4 Result 4: The Digital Intervention Made Transparent Pricing the Dominant Pricing Strategy for Sellers

By helping participants avoid markup, the web tool also upended the seller's pricing strategy, as shown in the right panels of Figures 4. Among treated participants, the transparent-pricing seller earned, on average across the 33 price points, \$6.40 in revenue per consumer (95% CI: \$6.15, \$6.65), 179% more than the drip-pricing seller's revenue per consumer of \$2.29 (95% CI: \$2.02, \$2.57). Indeed, in the face of the web tool, the drip-pricing seller did not earn significantly more revenue than the transparent-pricing seller in any of the 33 price points tested. In terms of profitability, the transparent-pricing seller's profit per consumer in the entire market was \$0.77 (95% CI: \$0.74, \$0.80), 71% more than the drip-pricing seller's profit per consumer of \$0.45 (95% CI: \$0.39, \$0.50). Thus, the digital assistant flipped the profit-maximizing strategy from a high level of drip pricing (13.5% markup) to transparent pricing (0% markup).

The main reason for this reversal is that the web tool drove away too many participants to make up for the additional profit per sale generated by the markup. Specifically, in our two-seller setting, transparent pricing is the profit-maximizing strategy if and only if the web tool is sufficiently prevalent and effective that

$$\Pr\left(\text{Consumer Purchases Drip-Priced Gift Card}\right) < \frac{\alpha}{\alpha+\beta},$$

where α is the transparent seller's profit per consumer and β is the drip-pricing seller's profit per consumer. If we assume the values of α and β we specified in Section 5.2 to model profitability, the web tool would make transparent pricing the profit-maximizing strategy if and only if it reduced the percentage of treated participants who purchased the drip-priced gift card to between 48.8% and 27.6%, depending on the markup imposed by the drip-pricing seller. As shown in the left panel of Figure 3, the web tool was able to achieve that reduction in most cases when made accessible to all treated participants.

Because the web tool was accessible to all treated participants, its ability to flip the profit-maximizing strategy turned principally on its efficacy. Unless enabled by default on the applicable web browser or platform, a similar intervention in practice would likely not be adopted by everyone, however, and so its ability to flip the profit-maximizing strategy would depend not only on its efficacy but also on its prevalence: The less prevalent it is, the more effective it would have to be to achieve the same result. Based on the observed efficacy of the web tool at each of the 33 price points we tested, we can compute how widely adopted the web tool would have to be to flip the profit-maximizing strategy to transparent pricing, assuming that there are no selection effects in who chooses to adopt the web tool. We find that, across all 33 price points, the median adoption rate required to do so was 72.9%.

5.5 Result 5: Drip Pricing's Costs Were Evenly Distributed Across Demographic Groups

The foregoing results on consumer behavior appear consistent across demographic groups. Consider Result 1, on participants' baseline susceptibility to drip pricing. Table 2 shows the coefficients from a logistic regression, among control participants, of whether a participant purchased a drip-priced gift card against participant characteristics. We find no statistically significant associations between control participants' probability of purchasing a drip-priced gift card and their characteristics, except for a barely statistically

Covariate	Coefficient	p-value
Is Female	-0.143 (0.158)	0.364
Age	0.048 (0.039)	0.222
Squared Age	0.000 (0.000)	0.210
Is Working	-0.121 (0.221)	0.583
Is Retired	-0.413 (0.267)	0.122
Highest Degree Is Undergraduate	0.317 (0.184)	0.085
Highest Degree Is Graduate	0.196 (0.212)	0.355
Is Hispanic or Latino	-0.123 (0.247)	0.618
Is Black	-0.512 (0.252)	0.042
Is AIAN	-1.046 (0.629)	0.096
Is API	-0.260 (0.486)	0.593
Is Other Race	-0.065 (0.353)	0.853
\$50k $\leq$ HHI $<$ \$100k	0.006 (0.199)	0.977
\$100k $\leq$ HHI $<$ \$200k	0.243 (0.224)	0.279
\$200k $\leq$ HHI	0.012 (0.298)	0.968
Markup (In 5-Cent Increments)	-0.025 (0.008)	0.002
(Intercept)	0.041 (1.122)	0.971

Table 2: Coefficients from the logistic regression of purchasing a drip-priced gift card on covariates among participants assigned not to receive the web tool.

significant negative association with being Black, which, while intriguing, may ultimately be a mere artifact of multiple hypothesis testing.[4]

Likewise, Result 3, on the efficacy of the web tool, appears to hold across demographic lines. To check for heterogeneity in this result, we decompose the individual treatment effect of web tool access using the method of Ding et al. (2019). Although individual treatment effects are, of course, unobservable (Holland, 1986), Ding et al. (2019) provide a method of decomposing variation in such effects into a linear "systematic" component and an "idiosyncratic" component. They develop an asymptotically normal estimator of the former, enabling us to estimate the linear relationship between individual treatment effects and observed covariates, and a method of bounding the latter, enabling us to report an R^2-like measure of the proportion of total variation in individual treatment effects that can be explained by observed covariates. Importantly, their methods rely solely on randomization, without requiring any parametric modeling assumptions.

Table 3 reports the estimated linear relationship between participant characteristics and the individual treatment effects of web tool access on gift card selection. We find no statistically significant relationship between participants' characteristics and the efficacy of web tool access, suggesting that most of the variation in the efficacy of web tool access across individuals was explained by unobserved factors. Our R^2-like

[4]We did find one material and significant demographic pattern with respect to time: Time spent shopping decreased with participants' household incomes, to a statistically significant and robust degree, even after controlling for their other demographic features and the electronic device on which they shopped. Control participants with household incomes of at least \$100,000 spent about 30 seconds less on the Marketplace, on average, than their lower-income counterparts—a fairly substantial difference, given that the average time spent among control participants was about 2.83 minutes. We are uncertain what to make of this, because even though our lower-income subjects spent significantly more time shopping than their higher-income counterparts, they were not any more likely to comparison shop, and so the principal mechanism that might explain the difference in time spent is foreclosed.

Covariate	Coefficient	p-value
Is Female	-0.049 (0.070)	0.477
Age	0.006 (0.018)	0.717
Squared Age	0.000 (0.000)	0.608
Is Working	0.092 (0.107)	0.390
Is Retired	-0.007 (0.124)	0.954
Highest Degree Is Undergraduate	-0.079 (0.082)	0.335
Highest Degree Is Graduate	-0.036 (0.098)	0.715
Is Hispanic or Latino	-0.138 (0.111)	0.214
Is Black	0.019 (0.113)	0.864
Is AIAN	-0.189 (0.301)	0.530
Is API	-0.157 (0.205)	0.443
Is Other Race	-0.075 (0.168)	0.654
\$50k $\leq$ HHI $<$ \$100k	-0.004 (0.087)	0.961
\$100k $\leq$ HHI $<$ \$200k	0.159 (0.100)	0.111
\$200k $\leq$ HHI	0.156 (0.140)	0.264
Markup (In 5-Cent Increments)	-0.002 (0.004)	0.569
(Intercept)	0.362 (0.505)	0.473
Omnibus p-value	–	0.356

Table 3: The estimated linear relationship between each covariate and the individual treatment effect of assignment to the web tool on whether a drip-priced gift card is purchased. The omnibus p-value tests the null hypothesis that the individual treatment effects have no linear dependence on any observed participant characteristic.

measure corroborates this: We estimate that the observed covariates explain at most 12% of the variation in individual treatment effect variation.

Consistent with the overall lack of variation by observed participant characteristics, our results appear to generalize readily to the broader adult U.S. population. Specifically, we re-estimate our headline results on participants' susceptibility to drip pricing and the efficacy of web tool access, weighting study participants using weights provided by RAND that match the ALP to the adult U.S. population with respect to the bivariate distributions of gender by age, gender by race and ethnicity, gender by highest education, and family income by adult household size. We estimate that, in the absence of any intervention, about 62.1% of U.S. adults would select the drip-priced gift card on our platform (95% CI: 53.3%, 70.9%), and that access to the web tool would reduce that percentage by about 37.1 percentage points, to 25.0% (95% CI: 19.7%, 30.4%). These numbers are similar to those reported in Sections 5.1 and 5.3.

5.6 Result 6: Survey Results

After completing their purchases, participants filled out a short survey that asked about their perceptions of the deceptiveness of the Marketplace on which they had just shopped. To measure these perceptions, we adapted scales that Chaouachi and Rached (2012) developed and validated in the context of advertising. Like them, we decomposed the perception of deception into two separate concepts: "perceived veracity," which describes the extent to which participants believed in the veracity of the content of the website, and "ethic," which describes the extent to which participants believed that any dishonesty on the website harmed their interests or those of competitors. For each of these two factors, we asked participants to rank their agreement with a given statement on a seven-point Likert scale, with a 1 indicating that the participant "strongly disagree[d]" with the prompt and a 7 indicating that the participant "strongly agree[d]." Importantly, each statement, listed below, made negative claims about the website's veracity or ethical conduct. Higher scores, therefore, indicated a stronger feeling that the website had been deceptive. For this reason, we refer to the scores as perceived "lack of veracity" and "unethical conduct." Note also that each statement pertained to the "website"—here, the Marketplace—not to any individual seller on the website.

Category 1: Perceived Lack of Veracity

1. The website is not entirely truthful about the price of the gift cards.
2. This website shows customers what they want to see and not the real price.
3. The actual price is different from what is displayed on the website.
4. The site misleads the customer about the actual price of the gift card.

Category 2: Perceived Unethical Conduct

1. This website harms consumers' interests.
2. This website is contrary to the principles of fair competition.
3. This website is dishonest.
4. This website is trying to dupe the consumer.

For all participants, the average response to the first category ("lack of veracity") was 5.22, while the average response to the second ("unethical conduct") was 4.41. As a starting point, it is notable how poorly the average respondent scored the website on the "lack of veracity" measure, with 5.22 falling between an individual who "somewhat agreed" and "agreed" that the website was being untruthful. (While the overall "unethical conduct" score was lower, it still leaned more toward the "unethical" side of neutral.)

We were particularly interested in how participants' perceptions of the Marketplace related to their experiences on it. Among those who did not receive the benefit of the web tool, participants who were exposed to drip pricing (by ever putting a drip-priced item into their carts, regardless of their ultimate purchase decisions) evaluated the marketplace differently from those who were never exposed. Those who had put at least one drip-priced item into their cart during the experiment reported an average of 5.26 on perceived lack of veracity vs. 4.70 for the group that had never done so ($p < 0.001$), and an average of 4.37 on perceived unethical conduct vs. 4.17 for the group that had never done so ($p = 0.091$). The experience of moving to purchase a drip-priced gift card, even if later corrected, was thus significantly associated with a greater inclination to judge the website as untruthful, though it was not associated with any significantly lower estimation of the website's ethics. Additionally, assignment to the web tool made subjects rate the website less favorably along both dimensions. The treatment and control groups scored 5.33 and 5.11 on perceived lack of veracity ($p = 0.002$), and 4.51 and 4.32 on perceived unethical conduct, respectively ($p = 0.012$). Thus, encountering drip-pricing sellers on the Marketplace was associated with less favorable perceptions of veracity toward the broader Marketplace through which those sellers sold. At the same time, the web tool did not launder, and on the contrary even sullied, the Marketplace's reputation.

6 Discussion

Our results are relevant to consumer advocates, policymakers, platforms, and developers of AI agents alike. The savings provided by our digital intervention suggest that AI agents have an attractive value proposition in offering tools to help consumers combat drip pricing—and possibly to mitigate numerous other practices that exploit consumers' behavioral biases in related ways to raise prices and waste time. The tool's success at encouraging comparable levels of comparison shopping regardless of the amount of savings was surprising. Since the tool communicated the amount of savings, which varied from $0.05 to $1.65, we expected the use of the tool to increase as the savings increased. That this did not occur could be driven in part by the fact that participants were more likely to comparison shop and avoid the markup on their own initiative when more savings were at stake. It could also be driven in part by comparison friction: Consumers may underuse comparative information unless it is made salient and easy to act on (Kling et al., 2012). In any event, the efficacy of the tool even for small savings suggests that similar tools in the real world might prove impactful at scale: If AI shopping agents prove capable of cost-effectively identifying even small savings of a few pennies, they may nonetheless have the potential to influence a large number of online purchases and thereby save consumers a significant amount in aggregate.

For policymakers, our findings provide inputs to assess whether and how to respond to drip pricing. Our findings contribute further evidence that drip pricing costs may be substantial. We do not model enforcement costs or general-equilibrium responses. Should the political will nonetheless fail to materialize for an outright ban or should enforcement prove unworkable, however, another policy option would be to facilitate third-party AI agents, such as through interoperability mandates.

For platforms, our findings complicate the strategic choice set. The platform must decide whether to allow sellers to engage in drip pricing. Prior research has found that in a dynamic repeat-game laboratory setting, all sellers eventually offer high drip pricing (Rasch et al., 2020). If a platform allows that equilibrium to persist, digital assistants may create an opening for a rival platform to gain a competitive advantage by offering transparent pricing. In the alternative, the platform may lose the ability to decide to eliminate drip pricing if external digital assistants push the seller equilibrium to transparent pricing. Policymakers may also act to eliminate drip pricing based on the growing evidence of harm. This raises the question, which our data inform but cannot answer, of whether platforms should preemptively ban drip pricing to try to build trust with and retain their consumers while they still can, rather than waiting for AI agents or policymakers to act.

At the same time, our study faced several limitations that future work might improve upon. One set of limitations pertains to the behavioral circumstances under which participants engaged with the Marketplace. Because our experimental design required each participant to make a purchase, it most closely mimics the situation of a consumer who has decided to buy an item and is choosing which version to buy from which seller. But it does not mimic other common situations—such as that of a consumer with money to spend in an undirected shopping excursion—as closely. Additionally, while our use of real money and an actual shopping interface enabled us to more closely approximate actual consumer behavior, we also gave participants their shopping funds for free upfront—a windfall that they may have been more willing to spend than they would money that they perceive they earned or were entitled to receive (Clark, 2002; Epley et al., 2006). In Appendix B, we re-run our principal analyses after adjusting for this "house money effect" and find that the results are qualitatively similar to, but, as expected, less pronounced than, those reported above.

Another set of limitations pertains to the shopping environment we created. We did not allow for strategic responses to consumer and seller behavior, and we set up only two sellers per product. Follow-up research can determine whether a digital assistant can still flip the equilibrium from drip pricing to transparent pricing in a more dynamic and complex field setting. Since complexity makes comparison shopping more difficult and time-consuming, it is possible that higher levels of markup are possible in field settings. Additionally, we tested only a limited set of pricing structures. The highest level of markup came when the final price with markup was \$10.15, greater than the \$10 face value of the gift cards. Since we kept the drip fee constant, to increase the final price we shrank the gap between initial display prices. At the highest final price point we tested, the initial display prices varied by only \$0.05, or less than 1%. Thus, the drop in drip-pricing revenues at the tail end of our price points may be explained at least partly by the near equivalency in initial prices shown. We therefore cannot rule out the possibility that higher levels of markup could be achieved by a lower initial price and a larger drip.

A final set of limitations of our study relates to the digital intervention we used. Most notably, while our digital assistant directed participants to the cheaper offering more immediately than prior interventions studied in the behavioral economics literature, it was still somewhat basic in light of what technological advancements might one day enable. To benefit from our digital tool, a participant needed to choose between initial seller prices and proceed to the final checkout page, then click on the tool's link provided to visit the non-drip-priced offering, add that offering to the shopping cart, and return to the checkout page. AI agents might eventually be able to allow the consumer to execute the sale or at least go immediately to the checkout step with the non-drip-priced offering in a single click. They might eventually even bypass the need to decide among initial seller prices altogether. The limited assistance our web tool offered participants in comparison may help explain why 24.7% (95% CI: 21.7%, 27.8%) of participants with the web tool still chose a drip-priced card. In the alternative, it is possible that some participants did not trust the web tool or valued their time more than the money they could save by taking the web tool's suggestion. Or some participants might not have understood the background fact that not all sellers would necessarily charge the same service fee. Future studies might test whether more sophisticated digital assistants can further improve consumer choice. It would also be helpful to offer participants the choice of using an AI agent rather than imposing it on the consumer. Although platforms might provide digital assistants to deal with third-party seller strategies in the manner we did in our experiment, third-party digital agents will need to convince consumers to adopt them.

The uncertainty of adoption raises questions about how the level of adoption might impact equilibrium prices and what forms of assistance from an AI shopping assistant, such as alerting consumers to better deals, quantifying potential savings, or executing the transaction on the consumer's behalf, would most spur adoption by consumers. Such drivers of adoption, and factors influencing trust in digital shopping assistants more generally, merit further study. Relatedly, although our web tool appeared through our Marketplace, we did not explicitly specify whether the digital assistant was provided by the website or a third party, and we did not ask participants about their assumptions on this score. Future research should test whether a digital assistant clearly provided by the platform can improve perceptions of the platform in the face of third-party sellers' drip pricing and related obfuscation. Finally, it would also be interesting to examine how other ways of presenting the alternative offer—for example, by highlighting simply that a better deal exists rather than providing the specific amount of savings—might influence the efficacy of the intervention.

Several of these limitations overall raise the possibility that future studies may determine that unfettered drip pricing is even more harmful in field settings and that more sophisticated AI agents have even greater potential to upend market equilibria.

7 Conclusion

This paper shows first that online sellers can cause substantial harm through drip pricing. Under some of the most aggressive drip-pricing strategies we tested, average consumer markup plateaued around 10%, with a peak as high as 13%. Moreover, although it is the seller who decides on the drip-pricing strategy, consumers exposed to drip pricing rated the online marketplace hosting that seller as less trustworthy. We also show that a digital intervention can substantially mitigate the harms of markup to consumers. Overall, the web tool we tested reduced the incidence of overpayment by 62.8% and dollars overpaid by 63.9%. Moreover, by redirecting a high volume of consumers, the web tool moved the profit-maximizing strategy in our experiment from drip pricing to transparent pricing. Together, these results provide inputs for managers and policymakers weighing interventions in markets where shrouded fees are prevalent.

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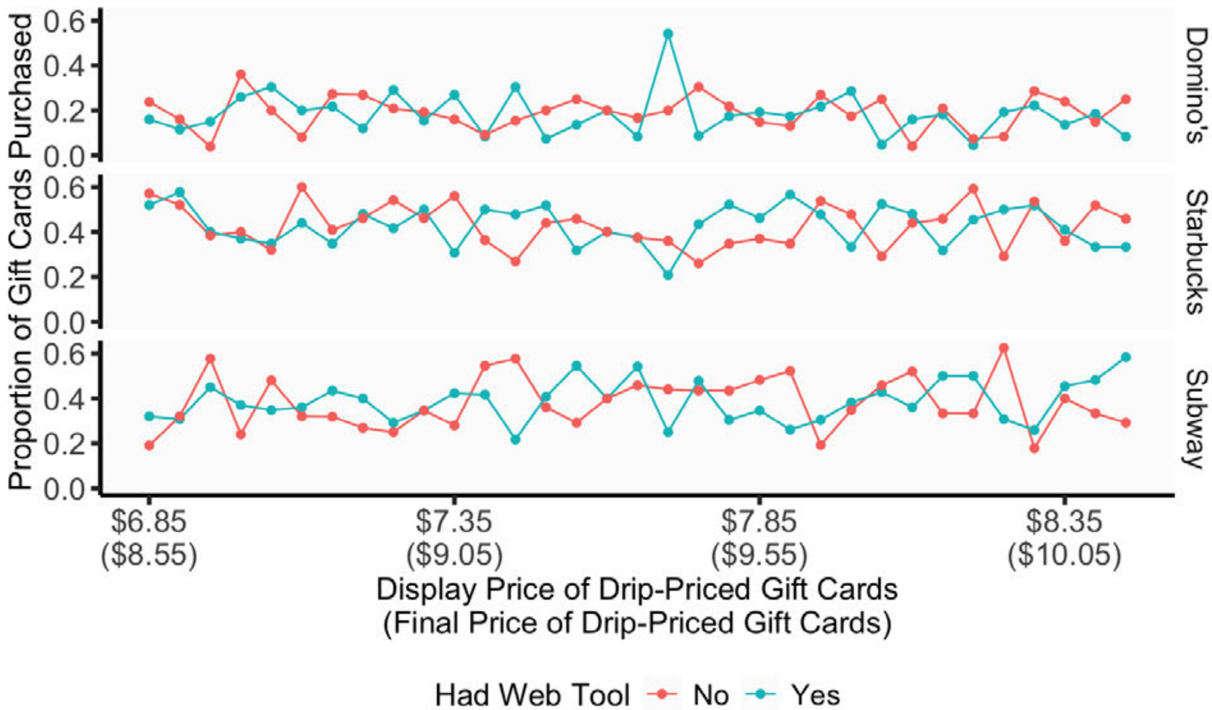

Figure 5: The percentage of consumers in each web tool and display price condition who purchased a gift card from each brand offered on the Marketplace.

A Placebo Test

As mentioned in Section 4, to ensure that randomization occurred as expected, we conduct a placebo test in which we estimate the effect of the web tool and the display price on study participants' brand preferences. Figure 5 plots, for each brand offered in the Marketplace, the percentage of consumers in each web tool and display price condition who ultimately purchased a gift card from that brand. Visually, we observe no clear difference in brand selection by web tool or display price condition. We also conducted a randomization test of whether the web tool or the display price affected participants' brand preferences using the chi-squared test statistic over 1,000 permutations. We find that neither the web tool ($p = 0.955$) nor the display price ($p = 0.235$) had a statistically significant effect.

B Robustness to the House Money Effect

As described in Section 3, participants in our experiment were given money as a windfall and instructed to spend some of it on a gift card. Although we incentivized participants to spend less on the gift card by informing them that any amount they did not spend was theirs to keep as cash, prior behavioral research has found that people nonetheless tend to spend this kind of unexpected windfall money more liberally than they do ordinary earnings (Clark, 2002; Epley et al., 2006). To assess the robustness of our results to this "house money effect," we re-run some of our primary analyses on modified versions of our data in which we suppose that a certain percentage of participants who actually purchased a drip-priced gift card—and thus spent more than they needed to—would have avoided doing so had they been spending their ordinary earnings instead of windfall money. To identify a plausible percentage of participants who fall within this category, we draw from the meta-analysis of Dan (2025), who estimates that, in studies where subjects were asked to make binary decisions such as this one, subjects using windfall money were 1.46 times more likely to choose the greater expense or riskier choice than subjects using ordinary earnings (95% CI: 1.27, 1.69). After accounting for outliers, the author estimates the risk ratio at 1.33 (95% CI: 1.24, 1.44).

We re-estimate our headline results on consumer susceptibility to drip pricing and seller incentives under the above range of plausible house money effect sizes. In doing so, we make two significant assumptions. First, we assume that the house money effect would operate equally at all price points—that is, at each price point, the percentage of control participants whose purchase of a drip-priced gift card can be attributed to the house money effect is the same. Second, we assume that participants who benefitted from the web tool, or who would have benefitted from the web tool if it was made available to them, are no more susceptible to the house money effect than participants who did benefit or would not have benefitted from the web tool.

Tables 4 and 5 report the results. As the hypothesized house money effect size increases, the trends we report in the main text become somewhat less pronounced but ultimately persist even at the upper end of the hypothesized house money effect size.

Risk Ratio	% Dripped		% Wealth Extracted	
	Without Web Tool	With Web Tool	Without Web Tool	With Web Tool
1.24	55.3 (51.8, 58.7)	20.4 (17.7, 23.4)	5.3 (4.9, 5.7)	1.9 (1.6, 2.2)
1.27	54.1 (50.6, 57.5)	20.4 (17.7, 23.4)	5.2 (4.8, 5.6)	1.9 (1.6, 2.2)
1.33	52.5 (49.0, 55.9)	20.0 (17.3, 23.0)	5.1 (4.6, 5.5)	1.9 (1.5, 2.2)
1.44	48.4 (44.9, 51.9)	19.1 (16.5, 22.1)	4.7 (4.2, 5.1)	1.8 (1.5, 2.1)
1.46	47.5 (44.1, 51.0)	19.1 (16.5, 22.1)	4.6 (4.2, 5.0)	1.8 (1.5, 2.1)
1.69	41.6 (38.2, 45.1)	16.2 (13.7, 19.0)	4.0 (3.6, 4.4)	1.5 (1.2, 1.8)

Table 4: The percentage of participants in each treatment condition who still would have purchased the drip-priced gift card, and the excess payments extracted from participants as a result, under a range of house money effect sizes.

C Analysis of Time Spent by Cutoff

As mentioned in Section 5.1, control participants who comparison shopped were less likely to purchase a drip-priced gift card than control participants who did not comparison shop, but this came at the cost of extra time spent shopping. To reach this conclusion, we took the difference between the time at which participants entered the Marketplace and the time at which participants purchased their gift card. This measure of time was so large for some participants that they almost certainly did not complete the shopping process in one sitting. To prevent these participants from drowning out the analysis, and because we are primarily interested

Risk Ratio	Drip-Pricer's Profit Per Consumer ($)		Non-Drip-Pricer's Profit Per Consumer ($)	
	Without Web Tool	With Web Tool	Without Web Tool	With Web Tool
1.24	1.01 (0.95, 1.08)	0.37 (0.32, 0.42)	0.46 (0.42, 0.49)	0.81 (0.78, 0.84)
1.27	0.99 (0.92, 1.05)	0.37 (0.32, 0.42)	0.47 (0.43, 0.50)	0.81 (0.78, 0.84)
1.33	0.96 (0.90, 1.03)	0.36 (0.31, 0.42)	0.49 (0.45, 0.52)	0.82 (0.79, 0.84)
1.44	0.89 (0.82, 0.95)	0.35 (0.30, 0.40)	0.53 (0.49, 0.56)	0.82 (0.80, 0.85)
1.46	0.87 (0.81, 0.94)	0.35 (0.30, 0.40)	0.54 (0.50, 0.57)	0.82 (0.80, 0.85)
1.69	0.76 (0.70, 0.83)	0.30 (0.25, 0.34)	0.60 (0.56, 0.63)	0.85 (0.83, 0.88)

Table 5: The drip-pricing and non-drip-pricing sellers' profit per consumer in each treatment condition under a range of house money effect sizes.

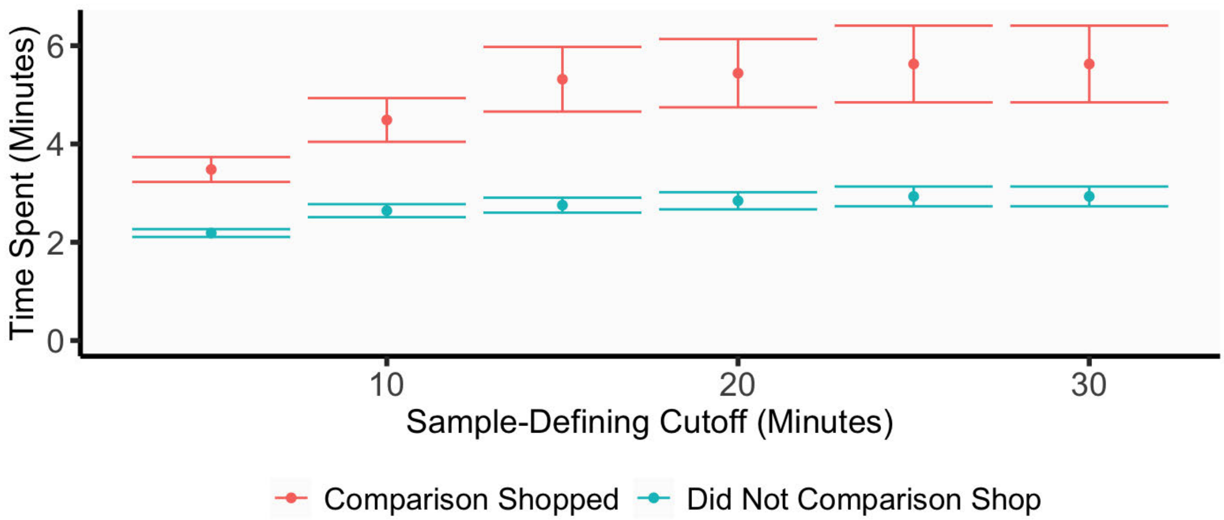

Figure 6: Average time spent by control participants who comparison shopped compared to control participants who did not comparison shop, by various cutoffs that could be used to define the sample of participants who completed the shopping process in one sitting. Errors bars indicate 95% confidence intervals.

in the time spent by participants who completed the shopping process in one sitting, we in Section 5.1 only analyze time spent among participants who finished shopping within 10 minutes. Here, we show that that result is robust to a reasonable range of alternative cutoffs that could be used to approximate the sample of participants who completed the shopping process in one sitting. Figure 6 repeats the comparison reported in Section 5.1 for such a range of cutoffs. Across all cutoffs tested, control participants who comparison shopped spent significantly more time shopping than control participants who did not.

From:	Carolyn E. Coffey
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] DCWP Proposed Junk-Fee Rule
Date:	Friday, August 7, 2026 4:51:01 PM
Attachments:	MFJ DCWP Junk Fees Comments 2026.pdf

Please see attached comments from Mobilization for Justice about DCWP's proposed junk-fee rule, thank you.

Carolyn E. Coffey
Pronouns: she/her/hers
Director of Litigation for Economic Justice
Mobilization for Justice
100 William St., 6th Fl.
New York, NY 10038
[redacted]
www.mobilizationforjustice.org
Twitter: @MFJLegal

MOBILIZATION FOR JUSTICE
Advocacy & Legal Services Since 1963

100 William Street, 6th Floor
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Tel 212-417-3700
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www.mobilizationforjustice.org

Via email to: Rulecomments@dcwp.nyc.gov

August 7, 2026

Re: Proposed rule by the New York City Department of Consumer and Worker Protection to prohibit charging consumers hidden "junk fees"

To Whom It May Concern:

Mobilization for Justice (MFJ) appreciates the opportunity to comment on the proposed rule by the New York City Department of Consumer and Worker Protection (DCWP) to prohibit charging consumers hidden "junk fees." The proposed industry-neutral rule will make adding extra fees to the advertised or displayed price of a good or service in New York City or directed at New York City consumers a deceptive and unconscionable trade practice. In other words, the total price that a business posts must include all charges and fees.

MFJ's mission is to achieve justice for all. MFJ prioritizes the needs of people who are low-income, disenfranchised, or have disabilities as they struggle to overcome the effects of social injustice and systemic racism. We provide the highest-quality free, direct civil legal assistance, conduct community education and build partnerships, engage in policy advocacy, and bring impact litigation. We assist more than 14,000 New Yorkers each year, benefitting over 24,000. We support and echo the more comprehensive comments about this proposed rule submitted by other consumer advocacy organizations, including Protect Borrowers.

MFJ regularly provides legal advice and assistance to New Yorkers with low incomes who are tricked into paying extra and hidden fees in various transactions within the marketplace, including, importantly, rent. Communities of color are often disproportionately targeted for predatory financial products and services and harmed by junk fees. Many, if not most, of our clients survive paycheck to paycheck and can ill afford to be duped into paying surprise fees.

Price transparency helps consumers navigate the marketplace and creates a level playing field for honest businesses; "all-in" pricing can alleviate some of the strain imposed when making decisions about costly purchases and help New Yorkers make informed choices; and holding bad actors accountable deters bad practices and ensures that vulnerable New Yorkers who are most targeted for deceptive practices are protected and can keep more money in their pockets.

New York State's existing weak consumer protection law does little to protect consumers in the marketplace. MFJ applauds New York City and DCWP for stepping up and filling that void and for being a leader in reining in the practice of imposing junk fees on consumers. MFJ urges swift adoption of a final rule.

Sincerely,
Carolyn E. Coffey
Director of Litigation for Economic Justice
212-417-3701 | ccoffey@mfjlegal.org

From: Emily Peterson-Cassin
To: rulecomments (DCWP)
Subject: [EXTERNAL] Junk Fee Rule Comment from Consumer Federation of America
Date: Friday, August 7, 2026 6:18:06 PM
Attachments: NYC Junk Fee Comment 87.pdf

Hello! Attached, please find CFA's comment to the junk fee rule. Thank you, and please let me know if you have any further questions.

Emily Peterson-Cassin
Director, Competition and Market Fairness
Consumer Federation of America
[redacted]

Consumer Federation of America

1620 I Street NW
Suite 200
Washington, DC
20006

202-387-6121
info@consumerfed.org
ConsumerFed.org

August 7, 2026

Comment of Consumer Federation of America to New York City’s proposed ban on junk fees
Submitted via rules.cityofnewyork.us

On behalf of Consumer Federation of America (CFA)’s member organizations both in the city and around the country, thank you for promulgating this rule. , We commend the city for taking action to curb harmful fees that nickel and dime consumers to the tune of billions of dollars a year, especially as the same efforts on the federal level have been limited in scope.

Hidden mandatory “junk” fees prevent consumers from knowing the true cost of a product or service until late in the purchasing process, usually at checkout. Tacking on fees at the end allows businesses to deceptively advertise an artificially low price, impeding a consumer’s ability to compare prices, and distorting the market. Businesses know that customers will pay more when small fees are added on throughout the process, because consumers want to complete their purchase quickly rather than go back to the drawing board and comparison shop again. It is a plainly abusive process that inflates appropriate market prices and creates needless barriers for people trying to make purchases throughout a given day,

This problem has become pervasive across the economy, which the proposed rule recognizes by creating a bright-line standard that applies across industries. At the same time, the rule is carefully drafted to allow stricter rules tailored to specific industries should consumer protection require them.

Given the scope of the problem, it is great to see that consumer protection entities across the country have been taking steps to bring costs for consumers down. New York's effort, the first by a municipality, paves the way for other jurisdictions to tailor junk fee rules to their own populations and needs. The Federal Trade Commission's rule on Unfair or Deceptive Fees explicitly contemplates moves like this, and CFA hopes other cities will follow New York's lead in a broadly applicable rule that can be applied straightforwardly..

CFA anticipates that this rule will facilitate competition, honest business practices, and consumer choice. Thank you again for promulgating this rule and the opportunity to comment.

Emily Peterson-Cassin
Director, Competition and Market Fairness
Consumer Federation of America

From:	Ivan Garcia
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] DD Junk Fees Rulemaking
Date:	Friday, August 7, 2026 7:29:36 PM
Attachments:	DD_DCWP Junk Fees Comment.docx

Good evening,

Please find attached DoorDash's comments regarding the Junk Fees Rulemaking.

Thank you, and please let me know if you have any questions.

--
Ivan Garcia
Senior Manager, Public Engagement
[redacted]

DoorDash.com

August 7, 2026

Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

Re: Comments on Proposed Rule Relating to Fee Disclosures (Ref. No. 2026 RG 027 / DCWP-75)

Dear Commissioner Levine:

DoorDash welcomes the opportunity to comment on the Department's proposed rule requiring disclosure of the "total price" of a good or service whenever a price is advertised. We share the Department's goal of ensuring price transparency for consumers. We are, however, concerned that the proposed rule, as written, may not achieve that goal, and in fact may create more confusion for consumers. As explained below, we recommend that the Department revise the proposed rule to address two issues with its "all-in" pricing requirement: how fees whose amount is not yet known should be disclosed, and whether a platform's fees must be folded into a merchant's own item price. We also have concerns with the proposed rule's recordkeeping requirements, which are unnecessary and unbounded in time, and its penalty provisions, which do not specify what counts as a single violation and risk producing penalties disproportionate to any actual consumer harm.

1. DoorDash's commitment to transparency

DoorDash is committed to transparency in our pricing and fees. This is in our own interest: we operate in a highly competitive industry where customers have many other options and can easily switch to a competitor if they are unhappy with our service. Consumers can also go through the ordering process very quickly on our platform and can easily abandon an order if they encounter a fee they do not feel is reasonable. This is in contrast to other industries that have a lengthy purchasing funnel that results in significant "sunk costs" by the time a consumer reaches the checkout page.

Customers in New York City need not, however, spend even the small amount of time to go through the full ordering process to understand what fees they will pay on an order, because we are upfront about our fees at every step of the ordering process. We make it easy for customers to compare fees across different merchants as they browse the app. Meanwhile, an explanation of all fees that may apply to a customer's order is easily accessible within every merchant's store page on DoorDash and clearly marked "pricing and fees."

Finally, we show the total amount of all fees again at the checkout page, before a customer consents to the purchase. Here again, we explain all fees that apply to the order to ensure our customers understand what they will pay before submitting the order for purchase. We also provide a link to a receipt for every order (which remains accessible in the app) that lists all of the fees associated with an order.

2. **The Department should add an exception for variable fees, and clarify that fees need not be folded into a merchant's item price.**

The proposed rule's "total price" requirement creates two issues that would make it unworkable both for industries like third-party delivery and the merchants that rely on this service, and would also create unnecessary confusion for customers.

First, a requirement that a company display a "total price" that includes both the price of goods *and* all "mandatory fees and charges" conflates two things that should be kept separate: the price a merchant sets for its own product, and the fees a platform like ours charges for a distinct service. Folding fees set by a delivery platform into a merchant's own item price would misrepresent how a customer's order actually scales as they add items to their cart. For example a $12 dish might be shown at $16 (including fees); that would suggest that ordering four of those dishes would cost $64, when in reality the fee would not multiply that way and the total would likely be less. This would make a merchant's food look far more expensive than it actually is, discouraging orders and reducing order volume for the many small- and medium-sized businesses that use platforms like DoorDash to help them grow.

Second, the proposed requirement that any price displayed be accompanied by a disclosure that includes all mandatory fees and charges creates a separate problem for fees whose amount is not yet known when an item price is displayed. For fees that depend on a consumer's future selections — like the size and contents of a cart — there is often no single dollar figure that remains true for every order a menu item could end up being part of. The proposed rule appears to address this by requiring disclosure of the "maximum" possible fee. But that approach would not result in greater transparency for consumers; it would just result in more confusion. Requiring disclosure of a maximum price does not give a consumer meaningful information about what they will actually pay or how they can meaningfully save money based on their choices. By definition, a "maximum" price would just give customers the worst-case price, not the most likely price. Showing that number on every item will overstate the actual bill for the vast majority of orders.

A comparison of event ticket platforms to delivery platforms illustrates the problem with this one size-fits-all approach. An all-in pricing requirement works fine for ticket platforms, because at the point where a customer sees a price, all of the variables — which event, which date, which seat — have already been decided. There is nothing left to determine once that price is shown. That's not the case for delivery. Customers on platforms like ours are often building a cart with several different items, often with different costs associated, and with lots of options to adjust their order (including, for example, by opting for pickup when available) to save money. That does not lend itself to an "all-in" price disclosure requirement, and trying to impose one would simply confuse customers.

Importantly, the proposed rule's approaches to both of these issues — the "maximum price" issue and the variable fee issue — would also harm restaurants and other merchants on platforms like ours. A misleadingly inflated per-item price would make a merchant's items look much more expensive on the platform than they actually are, which would discourage orders and reduce order volume, thereby reducing revenue for merchants — and likely pushing customers to order less from small and local merchants in particular.

Other states have resolved both of these two issues in a way that works for platforms like ours, merchants, and consumers. With regard to the first issue, Virginia's junk fee law provides that a supplier offering both a good and a service may display the price of the good separately from the price of the service, rather than merging the two into a single total. Va. Code § 59.1-608(A). On the second issue, Virginia's law includes a specific exception for "price-variable suppliers"—suppliers that "offer[] services the total price of which is determined by consumer selections or preferences or dependent on distance or time." Va. Code Code § 59.1-607. Price-variable suppliers can satisfy Virginia's general all-in pricing mandate by disclosing three things when a customer selects items for purchase: (i) the factors determining the final price, (ii) any mandatory fees or surcharges associated with the transaction, and (iii) that the total cost of services may vary." § 59.1-608. Virginia's statute applies that same standard specifically to food delivery platforms. § 59.1-587(D).

Connecticut adopted a similar approach. Its new total-price disclosure law, which took effect this year, does not apply to a fee or charge that is "dependent on a person's selections or cannot feasibly be calculated in full when the price is first advertised, displayed, or offered," (including costs "that var[y] according to a person's location or the quantity or number of goods purchased")—so long as (i) the existence of the fee is disclosed when the good or service is advertised, and (ii) the amount of the fee is disclosed before the customer completes their purchase. Conn. Pub. Act No. 25-44, § 1(C).

We recommend that the Department adopt comparable rules here: 1) confirm that suppliers that provide both a good and a service need not combine both into one "total price"; and 2) adopt an exception for fees whose amount cannot be calculated until an order is built, requiring disclosure of the existence of such fees up front, and the actual amount shown at checkout, once it is known. These changes would still give consumers the information they need without displaying a number that is not actually the price they will pay. This would help to avoid confusion for consumers, and would also ensure restaurants and other merchants aren't penalized by delivery platforms' efforts to comply with this rule.

3. The recordkeeping requirement is unnecessary and conflicts with the privacy of consumers.

The proposed rule includes a recordkeeping requirement that is unnecessary, unclear (it doesn't specify a format) and unduly burdensome (it is unlimited in time); it also creates needless conflict with consumer privacy best practices.

The Department can already enforce the proposed rule based on what a business actually shows consumers. If a fee is missing from a disclosure, or its nature, purpose, or amount is misrepresented, that is independently a violation, provable from the disclosure itself. Requiring a business to separately maintain and be prepared to produce records for every fee charged adds an investigative tool the Department does not need to prove the violations this rule is actually meant to prevent, and imposes an ongoing compliance burden—on every business covered by the rule, for every fee they charge—that is disproportionate to that marginal benefit.

The recordkeeping requirement also raises consumer privacy concerns. Establishing the basis for a fee that depends on a specific order could require producing records tied to an individual consumer's order history, delivery address, or location data. Because the rule sets no retention limit, it would require businesses to retain this kind of personal data indefinitely. That is directly in tension with data minimization best practices, under which businesses retain personal data only as long as necessary and delete it once it is no longer needed.[1] Moreover, the proposed rule places no limit on what the Department may do with that information once produced, how long it may be retained, or who within the Department may access it.

The Department's own recent rulemaking on the same subject also shows that a recordkeeping requirement isn't necessary. The Department's hotel fee disclosure rule adopted earlier this year includes no recordkeeping requirement (and no associated presumptions). Nor do the fee-disclosure laws of California, Massachusetts, or Minnesota, each of which the Department has looked to as a model for this rulemaking. We ask the Department to drop subdivision (f) entirely. If the Department nonetheless retains a recordkeeping requirement, it should set a defined retention period and format, which subdivision (f) currently lacks. We ask that the Department adopt a three-year, electronic-format standard, like it did in its recent hotel licensing rule. 6 RCNY § 2-482.

4. The Department should clarify what constitutes a violation, allow an opportunity to cure, and add a phase-in period.

Because the proposed rule does not define what constitutes a violation, it risks producing penalties that are disproportionate to the actual harm. This could lead to crippling liability for small and local businesses that may be acting in good faith or have a minor violation.

To fix this, we recommend that the Department define a violation as a single course of conduct: a display format or disclosure practice applied consistently across a business should count as one violation, regardless of how many consumers it reaches, rather than treating each instance of that same practice as a separate violation. This would avoid creating significant uncertainty for businesses and would protect small and local businesses, without undermining the Department's ability to enforce the rule and deter bad conduct.

Separately, because the proposed requirements may require complicated changes to platforms like ours, we recommend that the Department help smooth the transition by adding a phase-in period between adoption and enforcement. Allowing an opportunity to cure first-time violations would also protect good-faith actors from harsh penalties.

* * *

DoorDash shares the Department's goal of ensuring transparent pricing for consumers. That goal is best served by rules that give consumers accurate information, rather than confusing them with prescriptive disclosure requirements. Addressing the two issues discussed above with the proposed "all-in" pricing requirements —what to do with variable fees and how to avoid conflating a third-party platform's fees with a merchant's price for goods —would better serve that goal. In addition, narrowing the recordkeeping requirement and defining a violation as a single course of conduct would further ensure that the rule targets genuinely deceptive practices, rather than imposing disproportionate burdens and liability on businesses that are already disclosing their fees.

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[1] *See, e.g*, Fed. Trade Comm'n, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers*, at 27 (2012), available here ("[C]ompanies should implement reasonable restrictions on the retention of data and should dispose of it once the data has outlived the legitimate purpose for which it was collected.").

We appreciate the Department's engagement on this rulemaking and would welcome the opportunity to discuss these issues further.

Sincerely,

Ivan Garcia
Head of New York City Public Policy
DoorDash

From: Tracie Robinson (ELCA)
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comments on Proposed Junk Fees Rulemaking
Date: Friday, August 7, 2026 7:32:22 PM
Attachments: image001.png
EG Comments on New York City DCWP Junk Fees Rulemaking Aug 2026.pdf

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Good evening,

Please find attached comments on behalf of Expedia Group regarding the proposed rulemaking on junk fees.

Thank you for your consideration,

Tracie Robinson
Regional Government and Corporate Affairs Manager
IAC Building (3rd Floor)
555 W 18th St.
New York, NY, 10011
[redacted]

expedia group

SUBMITTED VIA ELECTRONIC MAIL

August 7, 2026

Samuel A.A. Levine, Commissioner
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Subject: “Rules Regarding Junk Fees,” 6 RCNY § 5-16 (Reference Nos. 2026 RG 027 / DCWP-75)

Dear Commissioner Levine:

Expedia Group submits these comments on the New York City Department of Consumer and Worker Protection’s proposed rule adding Section 5-16 to Title 6 of the Rules of the City of New York.

Expedia Group, Inc. ("Expedia Group") is a global travel technology company and marketplace that helps millions of travelers discover, book, and experience travel around the world. Through its portfolio of trusted consumer brands, including Expedia, Hotels.com, and Vrbo, and its business-to-business technology and distribution solutions, Expedia Group connects travelers with hotels, vacation rentals, airlines, car rental companies, tourist attractions, and other travel providers. As a travel services intermediary displaying pricing for a global network of suppliers, Expedia Group would be directly affected by the proposed rule.

Expedia Group shares the Department’s goal of protecting consumers from hidden fees and supports transparent, upfront, and all-in pricing. We also recognize the importance of providing consistency to consumers no matter where they are located or traveling to in the U.S. For these reasons, we advocated in support of the Federal Trade Commission’s Rule on Unfair or Deceptive Fees, 16 C.F.R. Part 464, which took effect on May 12, 2025, and established a nationwide standard for lodging and live event ticket price displays. We have been in compliance with this rule since its effective date.

Unfortunately, the proposed Section 5-16 would expand the geographic scope of the City's existing rule on junk fees to goods and services across the globe—far beyond the City's jurisdiction. It would also establish an adverse legal presumption based not on any

1111 Expedia Group Way W | Seattle, WA | 98119 | USA | T +1 425 679 7200 | F +1 425 679 7240 | expediagroup.com

evidence of wrongdoing but on the failure of a business to maintain records, no matter why such failure. This raises significant due process concerns and disadvantages intermediaries that rely on pricing information provided by sellers. Accordingly, we share the concerns raised by the Travel Tech Association and respectfully urge the Department to amend the rule as follows.

I. Extend the federal standard to displays of pricing for all goods and services.

Whereas the federal rule covers only lodging and live events, the Department's proposed rule would apply to all goods and services. This is good policy because it would ensure consistency across all lines of business, minimizing confusion for consumers. Given that covered businesses—including Expedia Group—are already in compliance with the federal rule, the simplest way for the Department to ensure transparent, consumer-friendly price displays without disrupting existing displays that consumers and businesses alike have already come to rely on would be to apply the federal standard to all goods and services. This would also allow businesses like Expedia Group, which offer different categories of services, to apply a consistent standard across all of their platforms and price displays.

Expedia Group respectfully recommends that the Department add the following provision to Section 5-16:

> An offer, display, or advertisement for any good or service that meets the standard set forth in Part 464 of Chapter I of Title 16 of the Code of Federal Regulations for short-term lodging and live-event tickets shall be deemed in compliance with this section.

II. Narrow the geographic scope of Section 5-16(b) to goods and services located in New York City or with a genuine City nexus.

Section 5-16(b) would apply the price display rule to “any person who offers, displays or advertises goods or services in New York City, or to a New York City consumer.” “New York City consumer” is not defined but would presumably extend the rule to any business anywhere in the world that advertises to a New York City resident.

This scope is infeasible, unprecedented, and unreasonable. Travel is inherently interjurisdictional. Expedia Group, like many businesses, has suppliers and customers around the world. A "New York City consumer" (or a non-New Yorker with a virtual personal network) may search on any of our platforms for a hotel, short-term rental, flight, rental car, or tour anywhere in the world. Under the proposed language, a hotel in Bangkok, a flight from Dubai to Durban, a rental car in Perth, or a cruise to the Statue of Liberty would all be subject to the New York City rule. Only one of these scenarios makes sense. Thailand, United Arab Emirates, South Africa, and Perth should be able to establish their own price display standards for products and service that have a true nexus to their respective jurisdictions. Furthermore, businesses have no failsafe way of determining who is a "New York City consumer" before displaying a price. Accordingly, we recommend that the Department strike the words "or to a New York City consumer" as follows:

> This section applies to any person who offers, displays or advertises goods or services in New York City, ~~or to a New York City consumer,~~ except to the extent that regulation of such offer, display or advertisement is preempted by federal or state laws or regulations.

III. The recordkeeping requirement and adverse presumption in Section 5-16(f) raise due process concerns and fail to account for third-party intermediaries that rely on pricing information from suppliers.

Section 5-16(f)(1) would require any covered entity to maintain records "sufficient to establish the basis, including the nature, purpose, amount or refundability" of any fee or charge in a covered advertisement or fee breakdown. Section 5-16(f)(2) then provides that a failure to maintain, retain, or produce a record relevant to a material fact alleged by the Department "creates a presumption that such fact is true." This means that a business could be subject to significant penalties based merely on a recordkeeping failure rather than any material wrongdoing, raising due process concerns. It also fails to account for the loss of records due to circumstances beyond a business's control. Further, as written, the rule would require record retention in perpetuity, because an allegation of violation could arise at any time.

The recordkeeping and adverse legal presumption provisions also fail to take into account the unique position of online marketplaces, which are dependent on their sellers to provide accurate pricing information. When an online travel agent like Expedia Group displays a nightly rate for a hotel room, including a mandatory fee established by the hotel, it is transmitting to the consumer pricing information set by the hotelier. Expedia Group does not set the fee and may not have visibility into its "nature, purpose, amount or refundability." Thus, Expedia Group and other online travel platforms would be especially impacted by the proposed rule.

For these reasons, Expedia Group recommends that the Department remove the adverse presumption from Section 5-16(f)(2) or:

- Define with specificity what records must be kept and for how long;
- Include reasonable notice and cure provisions before penalties attach; and
- Expressly account for intermediaries by limiting a platform's recordkeeping obligation to pricing information the platform itself sets or controls, rather than fees established by third-party suppliers.

IV. Conclusion

Expedia Group supports transparent, all-in pricing, and already provides it under the federal lodging rule. We urge the Department to:

- Apply the federal junk fees standard to all goods and services;
- Narrow the geographic scope of Section 5-16(b) to transactions with a genuine New York City connection; and
- Remove the adverse presumption in Section 5-16(f)(2) and clarify the associated recordkeeping obligation.

These changes would establish a consistent, transparent price display framework for goods and services that have a true nexus with New York City, empowering consumers to make informed choices and businesses to compete fairly and free of unworkable compliance obligations.

We appreciate the opportunity to provide feedback and offer ourselves as a resource to the Department as it determines how to proceed. Thank you for your consideration.

Sincerely,

Tracie Robinson
Regional Manager, Government and Corporate Affairs
Expedia Group

From:	Sarah Davies
To:	rulecomments (DCWP)
Cc:	Michael Layman; Jeff Hanscom; Matthew Kagel
Subject:	[EXTERNAL] GR | NY | IFA Comment to NY DCWP Proposed Junk Fee Rule
Date:	Friday, August 7, 2026 9:28:11 PM
Attachments:	image001.png IFA Comment to NYC DCWP Junk Fee Rulemaking (Filed 8.7.26).pdf

Good evening,

Please find attached International Franchise Association's (IFA) comment in response to the Department's proposed rule regarding unfair and deceptive fees ("junk fees").

Thank you in advance for considering the perspective of IFA on behalf of its members.

Kind regards,
Sarah

iFA INTERNATIONAL FRANCHISE ASSOCIATION

Sarah Davies
General Counsel, VP of Legal & Government Relations
Executive Director, IFA Law Center
[redacted] | www.franchise.org

August 7, 2026

New York City Department of Consumer and Worker Protection
Office of Legal Affairs / Rulemaking
42 Broadway
New York, New York 10004
Rulecomments@dcwp.nyc.gov

Re: Comments of the International Franchise Association on the Proposed Rules Relating to Junk Fees (Proposed 6 RCNY § 5-16, General Fee Disclosures); Reference Nos. 2026 RG 027 / DCWP-75

Dear Commissioner Levine:

Introduction and Executive Summary

The International Franchise Association ("IFA") appreciates the opportunity to comment on the proposed rules relating to "junk fees" published for public comment by the New York City Department of Consumer and Worker Protection ("DCWP" or the "Department") in July 2026, which would add a new section 5-16 to Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York (the "Proposed Rule").

IFA is the world's oldest and largest organization representing franchising. Our members include franchise companies in more than 300 different business categories, individual franchisees, and companies that support franchise businesses in marketing, law, technology, human resources, business development, and operations. Franchising is an engine of economic growth: IFA's *2026 Franchising Economic Outlook* projects that franchised businesses are expected to account for approximately 845,000 establishments, nearly 8.9 million direct jobs, and approximately $921.4 billion in economic output in the United States this year — nearly three percent of U.S. gross domestic product.[1] But it is essential to understand what those aggregate numbers actually represent. Franchising is not big business; franchising is small business. Approximately half of all

[1] FRANdata, 2026 FRANCHISING ECONOMIC OUTLOOK (prepared for the Int'l Franchise Ass'n, Feb. 2026), https://www.franchise.org/franchising-economic-outlook/; see also IFA, IFA Predicts Steady Growth for Franchising in 2026 Economic Outlook (Feb. 19, 2026), https://www.franchise.org/2026/02/ifa-predicts-steady-growth-for-franchising-in-2026-economic-outlook/.

U.S. franchised businesses are operated by franchisees who own a single unit.[2] Franchise brands are small as well: nearly half of all franchised brands operate twenty-five units or fewer.[3]

In New York City, those franchised businesses are the quick service restaurant on the corner, the neighborhood gym, the hair salon, the tutoring center, the pet care provider, the physical therapy clinic, the print and ship shop, the residential cleaning service, and the hotel. They are owned and operated by New Yorkers who hire local workers, serve local consumers, pay local taxes, and reinvest in their neighborhoods. As is often the case, small businesses are disproportionately affected by broad regulations compared to larger firms that have the legal and executive resources to absorb difficult administrative and operational changes. The first casualties of sweeping rules that do not account for the disparate impact of compliance costs on small businesses are frequently the small businesses themselves — and those casualties have real consequences for the City, including lost job opportunities, less competition and higher prices, and fewer local businesses investing back into the community.

IFA and its members support transparent pricing. Our franchisee and franchisor members develop and maintain customer relationships and rely on repeat business that centers on customer satisfaction and consumer trust. Transparent pricing lies at the heart of both. IFA and its members believe that companies should not misrepresent the total price of a product or service, and should not charge consumers for products or services they did not purchase. We share the Department's objective of ensuring that New Yorkers are not surprised at checkout.

The Proposed Rule, however, does not do what its title suggests. It does not prohibit "junk fees." It instead imposes a one-size-fits-all, City-wide pricing display mandate on every business in every industry — one that reaches beyond the City's borders, declares an enormous range of ordinary and lawful pricing practices to be *per se* "deceptive and unconscionable," and does so on an evidentiary record drawn from a handful of industries and national advocacy literature. The Department has not demonstrated that the conduct the Proposed Rule sweeps in — displaying a price and then disclosing a mandatory fee before the consumer pays — is in fact deceptive or unconscionable within the meaning of Administrative Code §§ 20-700 and 20-701. It has not analyzed the compliance costs the Proposed Rule will impose on the City's small businesses. It has not calibrated the rule to the industries in which the conduct it describes has actually been identified. And it proposes to adopt by rule a comprehensive pricing regime that the New York State Legislature is itself actively debating and has so far declined to enact. Because the Proposed Rule as drafted is likely to confuse consumers, curtail discounting and other pro-consumer

[2] See 2023 Mega 99 Rankings, MULTI-UNIT FRANCHISEE MAGAZINE Issue 1 (2023), https://www.franchising.com/articles/2023_mega_99_rankings.html.

[3] Oxford Economics, THE VALUE OF FRANCHISING (prepared for the Int'l Franchise Ass'n, Jan. 2026), https://www.franchise.org/2026/01/the-value-of-franchising-local-ownership-stronger-jobs-and-community-impact/ ("Nearly half of all franchised brands operate 25 units or fewer, underscoring that franchising is not dominated by large corporations but powered by local entrepreneurs.").

practices, and increase the prices New Yorkers pay — all without measurable offsetting benefit — IFA respectfully urges the Department not to adopt it in its current form.

If the Department nevertheless determines to proceed, it should substantially narrow and clarify the Proposed Rule before adoption. Part VI below sets out the specific, concrete amendments we propose. In summary, IFA asks the Department to:

1. **Limit the rule to consumer transactions.** The Proposed Rule reaches "any person" who advertises "goods or services," with no limitation to consumer-facing sales. Business-to-business transactions should be expressly excluded.

2. **Eliminate the extraterritorial reach.** Applying the rule to any advertisement seen "by a New York City consumer" — regardless of where it is placed — would subject national broadcast, digital, and in-app advertising to City-specific requirements that cannot be geofenced.

3. **Fix the definition of "mandatory fees and charges."** The clause capturing "any separate fees for aspects of the good or service that a reasonable person would expect to be included" is not one a business can apply in advance and cannot fairly support strict liability with escalating penalties.

4. **Fix the definition of "total price."** Defining total price as the "maximum total" of all charges makes accurate compliance impossible for variable and dynamic fees and, where it can be satisfied at all, requires businesses to overstate the price most consumers will actually pay.

5. **Address food ordering and delivery expressly, and tailor the obligation to the platform.** All-in pricing is structurally impossible on a restaurant's own ordering platform at the menu-browsing stage, because the consumer has not yet chosen pick-up or delivery. Any all-in delivery pricing obligation should apply to third-party delivery platforms, where delivery is the only fulfillment option, and food and beverage service should be addressed on the model adopted by California, Colorado, Minnesota, and Virginia.

6. **Confirm that optional gratuities and optional add-ons are excluded.** The rule should say so expressly, so that businesses are not deterred from presenting voluntary tipping options that benefit workers.

7. **Clarify who bears liability when pricing and advertising are controlled by different parties.** Liability should attach to the person who sets and controls the advertised price.

8. **Delete the adverse evidentiary presumption and define a record retention period.** As drafted, subdivision (f) imposes an undefined, open-ended preservation obligation

enforced by a presumption that the Department's allegations are true if all such records are not retained.

9. **Provide a safe harbor for compliance with governing federal and State requirements** — including 16 C.F.R. Part 464 and the pricing statutes and rules the City already enforces — so that businesses are not subject to conflicting obligations.

10. **Provide a cure period for first violations and a delayed effective date of at least twelve months.**

11. **Harmonize with the pending State framework.** The New York State Senate has twice passed a general all-in pricing bill that the Assembly has not taken up. The Department should defer to that process or, at minimum, commit to conforming the City rule to any State standard subsequently enacted.

I. The Proposed Rule Is Not a Prohibition on Junk Fees; It Is an Economy-Wide Pricing Display Mandate

The Statement of Basis and Purpose describes the Proposed Rule as one that "makes it a deceptive and unconscionable trade practice to tack extra 'junk fees' on to the advertised price of a good or service," and characterizes junk fees as "hidden or obscured fees that a business excludes from the advertised price." But, the Proposed Rule does not prohibit any fee. A business may continue to charge every fee it charges today, in the same amount, for the same reason. What the Proposed Rule regulates is the *manner in which prices are displayed* — by every business, in every industry, in every advertisement, offer, and display, whether the price is fixed or "tied to a variable like an hourly rate or service based on a unit of measurement."

That distinction matters, because it determines what the Department must show to adopt the rule and what the rule's costs and benefits actually are. A rule that prohibited charging consumers for goods and services they did not purchase, or that prohibited misrepresenting the nature or purpose of a fee, would be narrowly targeted at the conduct the Department describes. Indeed, subdivision (e) of the Proposed Rule — which makes it a deceptive and unconscionable trade practice to misrepresent the nature, purpose, amount, or refundability of any fee — does exactly that, and IFA does not object to it. Subdivisions (c) and (d), by contrast, are a comprehensive redesign of how price is communicated across the entire City economy, and they carry costs and consequences that the Department has not evaluated.

IFA raised precisely this concern when the Federal Trade Commission proposed an economy-wide version of the same requirement in 2023.[4] The Commission ultimately agreed.

[4] Comments of the International Franchise Association, Unfair or Deceptive Fees Notice of Proposed Rulemaking, Project No. R207011 (Feb. 7, 2024) [hereinafter "IFA Fees Rule Comment"].

After receiving comments describing the very problems identified here, the FTC abandoned the economy-wide approach and issued a final Rule on Unfair or Deceptive Fees, 16 C.F.R. Part 464, that applies only to two discrete categories: live-event tickets and short-term lodging.[5] As IFA observed at the time, the Commission "scale[d] back [its] original one-size-fits-all approach that failed to consider adverse economic impact" and instead issued a "narrowly tailored final rule."[6] The Department's own Statement of Basis and Purpose cites the FTC's 2023 proposal repeatedly, but the Proposed Rule tracks the approach the Commission *rejected* rather than the one it adopted after two years of record development, an informal hearing, and thousands of comments. The Department should learn from that experience rather than repeat it.

II. The Department Has Not Established the Predicate for Declaring Partitioned Pricing Per Se Deceptive and Unconscionable Across Every Industry

A. The Proposed Rule declares conduct unlawful under two demanding statutory standards without addressing either.

Administrative Code § 20-700 prohibits "any deceptive or unconscionable trade practice." Section 20-701 defines a deceptive trade practice as a "false, falsely disparaging, or misleading" statement having "the capacity, tendency or effect of deceiving or misleading consumers," and defines an unconscionable trade practice as one that "unfairly takes advantage of the lack of knowledge, ability, experience or capacity of a consumer," or that results in a "gross disparity between the value received by a consumer and the price paid."

The Proposed Rule declares that every offer, display, or advertisement that does not lead with an all-in total price is both deceptive and unconscionable — in every industry, for every good and service, regardless of context, and without regard to whether any consumer was in fact misled or paid more than the value received. That is a remarkable proposition. A neighborhood gym that advertises "$29 per month" and discloses a $49 enrollment fee clearly and conspicuously on the same page has not made a false or misleading statement, and has not taken unfair advantage of anyone's "lack of knowledge, ability, experience or capacity." Yet under proposed § 5-16(c), that gym would be committing an unconscionable trade practice unless the enrollment fee is displayed "at least as prominently as other pricing information." The Statement of Basis and Purpose does not explain how the practices it sweeps in satisfy either statutory definition; it simply asserts that they do.

[5] Trade Regulation Rule on Unfair or Deceptive Fees: Final Rule, 90 Fed. Reg. 2,066 (Jan. 10, 2025); 16 C.F.R. § 464.1 (defining "Covered good or service" as (1) live-event tickets and (2) short-term lodging).

[6] IFA Statement on FTC Junk Fee Rule (Dec. 17, 2024).

B. The record supporting the Proposed Rule is drawn from only four industries.

The Statement of Basis and Purpose identifies the industries in which the Department believes junk fees have "become increasingly common": third-party delivery applications, rental housing, hotels and short-term lodging, and live-event tickets. The supporting citations are a 2023 advocacy report from the American Economic Liberties Project, the FTC's 2023 proposal, a 2025 National Consumer Law Center report on rental housing, a 2020 marketing-science article on drip pricing, a 2023 CNBC article reporting a White House estimate, and a 2019 *Consumer Reports* article. Not one of these sources addresses nail salons, gyms, massage studios, tutoring centers, pet care providers, home services businesses, physical therapy clinics, or the many other industries in which IFA's members operate — all of which the Proposed Rule would nonetheless govern.

The Department candidly explains why it chose this approach: "[b]ecause junk fees persist across many new and evolving industries, the Department's proposed rule is industry-neutral." But administrative convenience — regulating everyone so as not to have to identify anyone — is not a substitute for a factual predicate. The concern is not hypothetical. In the FTC rulemaking, IFA and others pointed out that the Commission had not identified a single cease-and-desist order, in any franchised industry, in which disclosing a fee later in the purchasing process was found to be unfair or deceptive; the Commission's isolated examples involved a funeral home and a seller of prepaid calling cards.[7] The Department's record here is thinner still. The City's own enforcement experience, which the Department is uniquely positioned to describe, is not discussed at all.

The absence of evidence is not surprising. Franchise systems across these industries have their own business models and marketing strategies, respond differently to economic circumstances, and face different consumer demands. While promotional and "limited time offer" pricing may be developed at the franchise system level, individual franchised businesses independently establish pricing based on economic factors relevant to the markets in which they operate. Some may make extensive use of service or other additional fees; many use none at all. A rule premised on the assumption that the pricing practices of third-party delivery applications and live-event ticket resellers are representative of the entire City economy is not supported by anything in the record.

C. Existing law already reaches the conduct the Department describes, and States are enforcing it without any all-in pricing rule.

The Department already possesses the authority it needs. Administrative Code § 20-700 makes it unlawful to "engage in any deceptive or unconscionable trade practice," and subdivision (e) of the Proposed Rule would confirm that misrepresenting the nature, purpose, amount, or

[7] IFA Fees Rule Comment at 3-5, citing Unfair or Deceptive Fees NPRM, 88 Fed. Reg. 77,420, 77,435-36 (Nov. 9, 2023).

refundability of a fee violates that prohibition. Nothing more is required to reach a business that conceals a mandatory fee or lies about what a fee is for.

That is not a theoretical proposition. State attorneys general have brought and resolved a series of hidden-fee and drip-pricing enforcement actions under ordinary consumer protection and false advertising statutes, with no all-in pricing legislation of any kind:

- ***District of Columbia v. StubHub, Inc.*** (D.C. Super. Ct., filed July 31, 2024) — action under the D.C. Consumer Protection Procedures Act alleging that the platform advertised low headline ticket prices and revealed mandatory fees only at checkout.[8]
- ***Nebraska ex rel. Peterson v. Hilton Domestic Operating Co.*** (Lancaster Cnty. Dist. Ct. 2019) — resort fee action settled in January 2024, alongside parallel Nebraska settlements with Marriott, Omni, and Choice Hotels.[9]
- ***Pennsylvania v. Marriott*** (settled Nov. 2021) and ***Pennsylvania v. Choice Hotels*** (settled Sept. 2023) — resort fee and drip pricing actions under Pennsylvania's Unfair Trade Practices and Consumer Protection Law.[10]
- Texas actions under the Texas Deceptive Trade Practices Act against Hilton (filed May 2023), Hyatt (settled for $1.25 million, Dec. 2025), and Booking.com (settled for $9.5 million, Aug. 2025), together with an assurance of voluntary compliance from Marriott (May 2023).[11]

Two conclusions follow. First, a jurisdiction that wishes to stop genuinely deceptive fee practices does not need a per se display mandate; it needs to enforce the law it already has, as these States have done and as the Department is fully empowered to do under § 20-700. Second — and more telling — *every one* of these actions arises in lodging, online travel booking, or event ticketing. Despite years of active enforcement across many States, IFA is aware of no drip-pricing

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[8] Press Release, D.C. Office of the Attorney General, Attorney General Schwalb Sues StubHub for Deceptive Pricing (July 31, 2024), https://oag.dc.gov/release/attorney-general-schwalb-sues-stubhub-deceptive.

[9] Press Release, Neb. Att'y Gen., Attorney General Mike Hilgers Announces Series of Settlements Aimed at Preventing Hidden Hotel Fees (Jan. 30, 2024), https://ago.nebraska.gov/news/attorney-general-mike-hilgers-announces-series-settlements-aimed-preventing-hidden-hotel-fees.

[10] Press Release, Central Penn Bus. J., Settlement: Choice Hotels to disclose all fees charged to consumers (Sept. 21, 2023), https://www.cpbj.com/settlement-choice-hotels-to-disclose-all-fees-charged-to-consumers/.

[11] See Press Release, Tex. Att'y Gen., Attorney General Ken Paxton Secures Historic $9.5 Million Settlement with Booking.com for Engaging in Deceptive Junk Fee Practices (Aug. 2025), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-secures-historic-95-million-settlement-booking-engaging-deceptive-junk; Press Release, Tex. Att'y Gen., Attorney General Ken Paxton Secures $1.25 Million Settlement with Hyatt Hotels (Dec. 2025), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-secures-125-million-settlement-hyatt-hotels-forcing-company-stop-hiding.

action brought under general consumer protection law against a restaurant, fitness studio, salon, tutoring center, pet care provider, home services business, or any of the other industries in which franchised businesses predominantly operate. The Department proposes to regulate all of them anyway.

D. The Proposed Rule is not "narrowly drawn," as Charter § 1043(d) requires.

Section 1043(d) of the City Charter requires certification that a proposed rule is, "to the extent practicable and appropriate, narrowly drawn to achieve its stated purpose." The stated purpose here is to stop businesses from surprising consumers with a total price higher than expected at the point of checkout. It is plainly practicable to draw a rule narrowly to achieve that purpose: the FTC did so in 16 C.F.R. Part 464, and California, Colorado, Minnesota, and Virginia each did so by identifying categories — including food and beverage service — where a general all-in mandate does not fit and providing tailored disclosure requirements instead.[12] A rule that instead reaches every price term communicated by every business in the City, and to consumers outside it, is not narrowly drawn — and the certification does not explain why a narrower rule was impracticable or inappropriate.

III. The Proposed Rule Raises Substantial Questions of Rulemaking Authority and Would Rest on a Thin Record

IFA raises the following because these are the standards against which the Department's own reviewing bodies, and ultimately a reviewing court, would measure the Proposed Rule. Each is a reason to narrow the rule before adoption rather than after.

A. The notice does not identify the rulemaking authority the Charter requires.

Charter § 1043(b)(1) requires that a notice of proposed rulemaking state "the statutory authority, including the particular sections and subdivisions upon which the action is based." The notice here cites Charter §§ 1043 and 2203(d) and Administrative Code §§ 20-701 and 20-702. But Charter § 2203(d) is not a rulemaking grant; it provides that "[t]he commissioner shall enforce all laws relating to the advertising and offering for sale and the sale of all commodities, goods, wares and services." The Department's general rulemaking power appears at Charter § 2203(f) — "to promulgate, amend and modify rules and regulations necessary to carry out the powers and duties of the department" — which the notice does not cite. The Department should correct the authority statement, and in doing so should explain how a rule governing the *format* in which every

[12] See Cal. Civ. Code § 1770(a)(29) (excluding restaurants and food-delivery services, with tailored fee-disclosure requirements); Colo. Rev. Stat. § 6-1-737 (excluding restaurants and delivery companies operating via digital platforms, with tailored requirements); Minn. Stat. § 325D.44 (automatic gratuities for restaurants and hotels need not be included in the full price; delivery platforms must display an itemized subtotal page before checkout); Va. Code §§ 59.1-587 to 59.1-610 (tailored point-of-menu-selection and subtotal-page requirements for food delivery platforms).

business in the City communicates price is "necessary to carry out the powers and duties of the department."

B. The Proposed Rule makes policy choices that New York law reserves to the legislature.

IFA acknowledges that Administrative Code § 20-701 permits the Commissioner to declare a practice unconscionable by rule. But that authority is bounded by the statutory definition it implements. A practice is unconscionable under § 20-701 if it "unfairly takes advantage of the lack of knowledge, ability, experience or capacity of a consumer" or produces a "gross disparity between the value received by a consumer and the price paid." The power to declare which practices meet that standard is not a power to redefine the standard itself, still less to declare that an entire economy's ordinary pricing formats are unconscionable *per se*.

Under *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987), a New York agency crosses into legislative territory when several circumstances coalesce: it makes "value judgments entail[ing] difficult and complex choices between broad policy goals" rather than balancing costs and benefits under preexisting guidelines; it "wrote on a clean slate, creating its own comprehensive set of rules without benefit of legislative guidance"; it acts in an area where the legislature "has unsuccessfully tried to reach agreement"; and it does not draw on special expertise or technical competence in developing the rule.[13]

The Court of Appeals applied that framework to a New York City agency rule in *Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Department of Health & Mental Hygiene*, 23 N.Y.3d 681 (2014), holding that the Board of Health "exceeded the scope of its regulatory authority" in adopting the sugary drinks portion cap. "By choosing among competing policy goals, without any legislative delegation or guidance, the Board engaged in law-making and thus infringed upon the legislative jurisdiction of the City Council of New York."[14] The Court pointed to the Board's having weighed "the economic consequences associated with restricting profits," "tax implications for small business owners, and personal autonomy"; to the "exemptions and other indicators of political compromise" in the rule, which the Appellate Division read "as evidence that the Board was engaged in policymaking"; and to the fact that "both the City and State legislatures have attempted, albeit unsuccessfully, to target sugar sweetened beverages," which the Court called "a strong indication that the legislature remains unsure of how best to approach the issue."

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[13] *Boreali v. Axelrod*, 71 N.Y.2d 1, 11-14 (1987); see also *Matter of NYC C.L.A.S.H., Inc. v. N.Y. State Off. of Parks, Recreation & Historic Pres.*, 27 N.Y.3d 174, 179-80 (2016) (restating the factors). The factors "are not mandatory, need not be weighed evenly, and are essentially guidelines." Id. at 180.

[14] *Matter of N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. N.Y.C. Dep't of Health & Mental Hygiene*, 23 N.Y.3d 681, 687, 696-98 (2014).

Each of those observations has an analogue here. The Proposed Rule necessarily weighs price transparency against compliance cost, against the availability of discounting, and against the viability of promotional pricing for small businesses — choices among competing goals, not applications of preexisting guidelines. It writes on a clean slate: the Department points to no City Council enactment on general fee display that the rule was designed to supplement, and its own carve-outs for taxes and shipping are policy compromises of exactly the kind the Court found revealing. And the New York State Legislature has been actively considering this precise subject without reaching agreement: the Senate passed a general all-in pricing bill on June 12, 2025 and again on May 12, 2026, and on each occasion the Assembly declined to take it up.[15] Accordingly, the Department should not lightly assume that a rule of this breadth rests comfortably within its delegated authority.

C. The record as it stands would not comfortably support the rule against a challenge that it is arbitrary and capricious.

A City rule of this kind will be sustained only if it has a rational basis and is not arbitrary and capricious. CPLR § 7803(3). While the Department may be entitled to deference, the rulemaking record consists of secondary sources concerning only four industries, no City enforcement data, no analysis of the industries the rule would newly reach, and no cost estimate of any kind. On that record, the Department's conclusion that partitioned pricing is unconscionable in every industry in New York City is an assertion rather than a finding.

D. The Charter's process expectations regarding compliance costs and cure periods have not been meaningfully satisfied.

The Charter requires the Mayor's Office of Operations state, before publication, "how the drafting process of the rule, to the extent practicable and appropriate, included analysis sufficient to minimize the compliance costs for the discrete regulated community or communities," and — where a rule creates a violation without a cure period — "why … such cure period or other opportunity for ameliorative action was not included." Charter § 1043(d)(1).[16]

The certification annexed to this rule recites that the Proposed Rule "[m]inimizes compliance costs for the discrete regulated community or communities" and "[d]oes not provide a cure period because a cure period is not practicable under the circumstances." Neither statement is accompanied by any supporting analysis, and the notice contains no discussion of compliance

[15] S363-B, 2025-2026 Reg. Sess. (N.Y.), https://www.nysenate.gov/legislation/bills/2025/S363 (passed Senate June 12, 2025 and May 12, 2026; referred to Assembly Committee on Consumer Affairs and Protection); see also A9604-A, 2025-2026 Reg. Sess. (N.Y.) (same-as bill, never reported from committee); A1821, 2025-2026 Reg. Sess. (N.Y.) (separate all-in pricing bill, never reported from committee). As of the date of these comments New York State has enacted no general all-in pricing statute.

[16] N.Y.C. Charter § 1043(d)(1)(b), (c), added by Local Law 46 of 2010.

costs, economic impact, or effects on small businesses. Where the "discrete regulated community" is every business in New York City, that is a conclusion the record cannot bear. The contrast with State practice is instructive: had this rule been adopted by a State agency, § 202-b of the State Administrative Procedure Act would have required a regulatory flexibility analysis addressing compliance requirements for small businesses, the use of performance rather than design standards, and whether small businesses should be exempted in whole or in part.[17] Charter § 1042(a)(4) likewise contemplates that an agency will identify, in its regulatory agenda, "all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule." The overlapping regimes catalogued in Part VI.K below are precisely the sort the Charter has in mind, and the notice does not engage with them.

IV. The Department Has Not Analyzed the Compliance Costs, Which Are Substantial and Fall Hardest on Small Businesses

While the rulemaking record is silent as to compliance costs, IFA members have real-world experience with these costs, developed over two years of the FTC rulemaking. Those costs are not trivial. In that proceeding the Commission estimated that a non-compliant small business would incur roughly $2,010 annually to re-optimize prices, adjust marketing campaigns, and adapt the purchase process; that restaurants would need five to ten hours of legal advice at $88.88 per hour; and that menu board updates would cost approximately $715.[18] IFA's members reported materially different figures:

- **Legal analysis.** Quick service restaurant members estimated incurring *hundreds* of hours of legal advice at the brand level, at an average billable rate of approximately $500 per hour, in addition to hours incurred at the individual restaurant level — which varies by jurisdiction, precisely because of the proliferation of differing local requirements.[19]
- **Menu boards.** Actual current costs for menu boards commonly exceed $4,000 per location — more than five times the Commission's estimate.
- **Mobile applications and digital ordering.** Updating a brand mobile application to conform to the requirements of a single State fees rule ranges from $250,000 to $400,000.[20] Most consumer engagement in these industries now occurs through a mobile app or website. Because those platforms are built at the brand level to provide

[17] N.Y. A.P.A. § 202-b.

[18] Fees Rule NPRM, 88 Fed. Reg. at 77,473-74, 77,479.

[19] IFA Fees Rule Comment at 12-13; Transcript of Informal Hearing on Proposed Trade Regulation Rule on Unfair or Deceptive Fees (Apr. 24, 2024): Testimony of Sarah Davies, General Counsel, International Franchise Association, at 12-13.

[20] IFA Fees Rule Comment at 13; Davies Testimony at 13.

continuity across every location in a system, while individual owners retain the ability to set their own menu offerings and pricing, a City-specific display requirement requires re-engineering at the system level to accommodate a single municipality.

- **Marketing collateral.** If individual owners retain the authority to decide whether to include an ancillary fee in a displayed price, marketing collateral must be produced at the per-location rather than the systemwide level, increasing costs for the small business owner producing it and for the brand ensuring consistency across locations.

These costs compound rather than substitute for the costs of complying with other jurisdictions' requirements. The Department's own Statement of Basis and Purpose observes that California, Massachusetts, and Minnesota have adopted broadly applicable measures — and Colorado, Maine, Rhode Island, Tennessee, and Virginia have as well, alongside the FTC Rule and New York State's own ticketing statute. Each differs in scope, in what may be excluded from the displayed price, in how variable fees are handled, and in its treatment of food and beverage service. Massachusetts, for example, requires the full price to be displayed before a consumer is asked for any personal information; Illinois relieves retail mercantile and food service establishments of the obligation to display total price at the product display so long as notice of the full price reaches the consumer by reasonable means before purchase. And this landscape is still expanding: a 2025 survey prepared for IFA's Legal Symposium identified all-in pricing bills pending in Arizona, Connecticut, Florida, Hawaii, Illinois, Maine, Rhode Island, and Virginia, in addition to New York.[21] A national or regional brand operating in New York City must reconcile the Proposed Rule with all of them. Adding a City-specific standard on top of a State and federal framework, and on top of the Department's existing rules, does not advance transparency; it fragments it.

Finally, the Proposed Rule pairs these costs with strict liability, no cure period, and penalties escalating to $3,500 per violation. For a single-unit franchisee operating on thin margins, an enforcement action premised on a good-faith disagreement about whether a "reasonable person would expect" a particular component to be included in an advertised price is a serious financial event. The Department should not impose that exposure without first understanding what compliance costs and what compliance requires.

V. The Proposed Rule Will Harm the Consumers It Is Intended to Protect

The Proposed Rule's costs are not limited to businesses. The same design features that make it burdensome to comply with make it likely to leave New York City consumers worse off.

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[21] Edward B. Chansky, ALL-IN PRICING LAWS AND REGULATIONS (A/K/A "JUNK FEE" LAWS), Int'l Franchise Ass'n Legal Symposium 2025 (Greenberg Traurig, Apr. 25, 2025).

A. Disclosure overload.

Subdivision (d) requires that, before a consumer consents to pay, the business disclose "[t]he nature, purpose, and amount of any fee or charge" excluded from the advertised total price, "and the identity of the good or service for which the fee or charge is or will be imposed," together with the final amount. Layered on top of subdivision (c)'s prominence requirements, and on top of the disclosures already required by Administrative Code §§ 20-708 and 20-881 and 6 RCNY §§ 5-12 and 5-15, the result is not clarity but volume. Regulators have long recognized the risk of burying important information among other disclosures — and the FTC has itself penalized companies for doing so. A rule that requires businesses to surface every itemized component of every charge at every stage risks producing exactly that outcome.

B. Loss of discounts, promotions, and fee waivers.

Many of the pricing practices consumers value most are structurally inconsistent with a rigid all-in display mandate. A restaurant may waive the delivery fee for orders over $25, regardless of which menu items are selected. If the all-in price must be displayed for each menu item inclusive of delivery fees, consumers are deprived of the opportunity to see — and to take advantage of — the fee they can avoid. The same is true of bundle pricing, minimum-order promotions, and limited-time offers. Franchised businesses may independently establish such discounts, and the Proposed Rule renders many of them impracticable to advertise.

The Commission acknowledged in its own analysis that consumers "may mistakenly make inefficient purchases while adjusting to the new regime of all-in total pricing," and may "under-consume" products or services.[22] IFA and other commenters went further, explaining that reading an all-in requirement to apply at each offer would push firms toward standardized pricing that raises the prices consumers pay even where consumers are differently situated, and that consumers would experience information overload rather than clarity.[23] None of these consumer costs is addressed in the Department's Statement of Basis and Purpose.

C. Multiple prices for the same item across channels.

Consider a consumer in New York City who wants a medium pepperoni pizza from a national franchised pizza brand. Individual franchised restaurants within the same system may offer ordering through the brand's own app or website for pick-up or delivery, and through multiple third-party delivery platforms. Each third-party platform independently sets its delivery fees, service charges, and driver tip prompts — including pricing that varies with geographic delivery zones — and neither the brand nor the individual restaurant controls those charges. Under the Proposed Rule's all-in display requirement, that consumer could be presented with as many as six

[22] Fees Rule NPRM, 88 Fed. Reg. at 77,447.

[23] IFA Fees Rule Comment at 13.

different displayed prices for the same pizza from the same restaurant, depending on the channel used. Consumers navigating that landscape do not experience transparency; they experience confusion, and the restaurant loses the consumer trust on which its business depends.

VI. Specific Defects and Requested Amendments

If the Department determines to proceed notwithstanding the foregoing, the following amendments are necessary to make the Proposed Rule administrable and to avoid the consumer and small business harms described above.

A. The rule should be limited to consumer transactions.

Proposed § 5-16(b) applies to "any person who offers, displays or advertises goods or services in New York City, or to a New York City consumer." The disjunctive phrasing means the first clause is not limited to consumer sales at all. Countless sellers, including many franchised businesses, offer goods and services to both consumers and businesses. Franchised hotels advertise event space for weddings and for business conventions. Wholesale distributors advertise bulk food items to franchised restaurants. Mechanics advertise repair services for consumers' vehicles and for commercial fleets. Suppliers advertise equipment and build-out services to franchised businesses. As drafted, the Proposed Rule could be applied to each of these businesses for failing to display an all-in price even though no consumer is ever involved, let alone misled.

The statutory authority the Department invokes does not extend that far: § 20-700 prohibits deceptive and unconscionable trade practices "in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any *consumer* goods or services." Business-to-business transactions typically involve sophisticated parties who negotiate discrete components of a transaction and frequently prefer unbundled, itemized pricing for that reason. The Department should expressly confine the rule to offers and advertisements directed to consumers.

B. The rule's extraterritorial reach should be eliminated.

The second clause of proposed § 5-16(b) — reaching any person who advertises "to a New York City consumer" — applies the City's rule to advertising placed anywhere in the world, so long as a New York City consumer sees it. National network television, national radio, national print, national digital display, national social media, and nationwide mobile applications all reach New York City consumers, and none of them can be reliably geofenced to exclude the City. A brand that runs a national limited-time-offer campaign would be required either to conform its nationwide advertising to New York City's specific display requirements — which differ from California's, Colorado's, Massachusetts's, Minnesota's, and Virginia's — or to abandon national advertising in favor of jurisdiction-by-jurisdiction campaigns.

National and regional advertising is a demonstrable benefit to consumers and to the small business owners who fund it. Franchisees contribute to systemwide marketing funds, and the ability of an individual restaurant or gym to receive the benefit of nationwide campaigns is a core reason many franchisees invest in a franchise rather than establish an independent business. Those funds are frequently used to research and develop limited-time offers, which are a proven tool for driving consumer traffic. A City rule that makes national advertising untenable imposes a cost on New York City's small business owners that has nothing to do with hidden fees. The rule should apply to offers, displays, and advertisements *directed to* New York City — a standard the Department already applies elsewhere and that businesses can actually implement.

C. The definition of "mandatory fees and charges" is not administrable.

Proposed § 5-16(a) defines "mandatory fees and charges" to include "any separate fees for aspects of the good or service that a reasonable person would expect to be included in the purchase of the goods or services being advertised." The Department explains that this clause is designed to prevent businesses from "partitioning aspects of goods or services as optional to avoid listing a higher total price, when in fact, such aspects are necessary to use such good or service and a consumer would expect them to be included."

The standard established by the Proposed Rule is one no business can apply in advance. Whether a "reasonable person would expect" a particular component to be included is a question on which reasonable people routinely differ, and the answer varies by industry, by service, by consumer, and over time. Is a gym's towel service an "aspect" a reasonable person expects to be included? Equipment orientation? A salon's blow-dry after a cut? A pest control company's follow-up inspection? A moving company's packing materials? Each of these is a real question that a franchised small business owner would have to answer correctly, at its own risk, with no ability to obtain guidance in advance, under a rule that imposes strict liability, provides no cure period, and escalates to $3,500 per violation.

The Department should replace the "reasonable person would expect" clause with an objective standard tied to what the business controls: a fee is mandatory if the consumer cannot complete the advertised purchase without paying it. That is already the test in clause (1) of the same definition — fees "that are not reasonably avoidable by the consumer" — and it captures the conduct the Department is concerned about — a fee "hidden on the purchase page or difficult to remove from a purchase" is, by definition, not reasonably avoidable.

D. The definition of "total price" does not work for variable and dynamic fees.

Proposed § 5-16(a) defines "total price" as "the maximum total of all charges and fees that a consumer must pay." Many legitimate fees are not fixed. Delivery charges vary with distance, time of day, driver availability, and weather. Service charges on home services vary with the scope of work determined on site. Fuel surcharges vary with market prices. Fees on unit-of-measurement pricing vary with usage.

For these fees, a "maximum" is either unknowable at the time of the advertisement or, if a business identifies a conservative ceiling to protect itself, systematically overstates the price the overwhelming majority of consumers will actually pay. A rule that requires a business to advertise a number higher than nearly every consumer will be charged does not improve price transparency; it degrades it, and it disadvantages the business against competitors whose fees happen to be fixed. The Department should permit variable fees to be excluded from the displayed total price where the amount cannot be determined at the time of the offer, provided the existence, nature, and basis of the fee are clearly and conspicuously disclosed at that time and the amount is disclosed as soon as it becomes determinable and before the consumer consents to pay.

E. Food ordering and delivery require a tailored approach, and any all-in delivery obligation should apply to third-party delivery platforms.

Third-party delivery applications are the first industry the Department identifies as a source of junk fees, and IFA does not defend hidden fees on those platforms. But the Proposed Rule as drafted does not reach only those platforms; it reaches restaurants, grocers, and other food retailers that operate their own ordering platforms — and for those businesses, all-in pricing at the menu-browsing stage is not merely burdensome but structurally impossible.

When a consumer browses a restaurant's own app or website, the consumer typically has not yet decided whether to pick up the order or have it delivered. Pick-up orders carry no delivery fee whatsoever. Delivery orders are subject to fees that may vary dynamically based on distance, time of day, and driver availability, and that are often set by third parties under white-label arrangements. There is therefore no single accurate all-in price that can be displayed at the menu-browsing stage, because the applicable fees — and indeed whether any delivery-related fee applies at all — depend entirely on a fulfillment-method choice the consumer has not yet made.

Requiring a restaurant's proprietary platform to display all-in pricing at that stage forces an impossible choice: either display a delivery-inclusive price at the most conservative and highest estimate to *all* consumers browsing the menu — including the many who will ultimately choose pick-up, to whom no delivery fee applies, thereby misstating the price for those customers — or maintain separate parallel price displays for pick-up and delivery across potentially hundreds of menu items, creating operational burdens and consumer confusion that undermine rather than advance the Department's transparency objectives.

Third-party delivery platforms are not subject to these structural constraints. Platforms such as DoorDash, Uber Eats, and Grubhub offer purchases exclusively for delivery; every consumer who opens such a platform has, by definition, already selected delivery as the fulfillment method before viewing a single menu item. Delivery fees and service surcharges are therefore applicable to every transaction on those platforms, and it is entirely feasible — and appropriate — to require those platforms to incorporate all mandatory fees into the prices they display from the outset. This is not a theoretical distinction. In the FTC's recent Advance Notice of Proposed

Rulemaking on online food delivery fees, six of the seven government enforcement actions the Commission discussed were filed against third-party delivery services.[24]

A number of States have already drawn exactly this line. California and Colorado exclude restaurants and food-delivery services from their general all-in requirements and impose tailored fee-disclosure obligations instead. Minnesota and Virginia require delivery platforms to disclose additional fees at the point where the consumer views and selects menu items and to display an itemized subtotal page before checkout, while providing that automatic gratuities at restaurants need not be included in the full price. As the FTC observed, "some States expressly distinguish between pricing and fee disclosure requirements for third-party food delivery platforms versus pricing disclosure requirements for food- and beverage-service facilities like restaurants, bars, and hotels."[25] The Department should adopt the same distinction: apply any all-in delivery pricing obligation to third-party delivery platforms, where delivery is the only fulfillment option and the platform controls the fees, and provide a tailored clear-and-conspicuous disclosure requirement for restaurants and other food and beverage merchants whose platforms accommodate both pick-up and delivery.

F. The shipping exclusion should be extended to delivery, or the asymmetry explained.

Proposed § 5-16(a) excludes from "total price" any "postage or carriage charges that will be reasonably and actually incurred to ship a physical good to the consumer." The Department has not explained why a charge to transport a physical good to a consumer by parcel carrier is excluded while a charge to transport a physical good — a hot meal, a bag of groceries, a piece of furniture, a prescription — to the same consumer by local courier is not. Both are carriage charges for the delivery of a physical good; both vary with distance and circumstances; both are avoidable by the consumer who chooses to pick the item up. If the exclusion is intended to cover local delivery, the Department should say so. If it is not, the Department should explain the basis for treating functionally identical charges differently.

G. Optional gratuities and optional add-ons should be expressly excluded.

The Proposed Rule does not address voluntary gratuities. Because "mandatory fees and charges" are by definition not avoidable, a voluntary tip should fall outside the definition — but the Department should say so expressly, as Minnesota and Virginia have. In the FTC proceeding, the Commission's preamble suggested that a delivery application could violate the rule "[i]f [it] includes an invitation to tip a driver without disclosing the portion of the tip allocated to offset the

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[24] Rule on Unfair or Deceptive Fees in Online Food Delivery Services: Advance Notice of Proposed Rulemaking, 91 Fed. Reg. 20,381, 20,383, 20,385 (Apr. 16, 2026); see Comments of the International Franchise Association on the Advance Notice of Proposed Rulemaking Regarding Unfair or Deceptive Fees in Online Food Delivery Services, Project No. P267101 (May 18, 2026) [hereinafter "IFA Food Delivery ANPRM Comment"].

[25] ANPRM Notice, 91 Fed. Reg. at 20,384 & n.34.

delivery driver's base wage or benefits."[26] A requirement of that kind would deter businesses from presenting optional tipping prompts at all — to the direct detriment of the workers the Department is charged by the City Charter with protecting,[27] and in a City where tip credit rules differ from those in other jurisdictions. The rule should expressly provide that voluntary gratuities, and genuinely optional add-on goods and services the consumer affirmatively selects, are not mandatory fees and charges.

H. Periodic and estimate-based pricing require accommodation.

Proposed § 5-16(c) requires that offers involving periodic charges display both the total price for the relevant period and "the total amount of any non-recurring mandatory charges or fees, such as one-time enrollment or sign up fees, both of which must be disclosed at least as prominently as other pricing information." Many franchised businesses — fitness and wellness studios, pest control, lawn care, home services, tutoring, and pet care among them — price on a recurring basis, on a per-visit basis, or on the basis of an on-site estimate. For estimate-based services, no total price exists until the provider evaluates the job. The rule should make clear that a good-faith estimate satisfies the requirement where a total price cannot be determined before the service is scoped, and that where a promotional introductory rate is advertised, disclosing the introductory rate, the standard rate, and the duration of the introductory period satisfies the rule.

I. The rule should identify who is liable where pricing and advertising are controlled by different parties.

The Proposed Rule imposes liability on "any person" who "offers, displays, or advertises" a price. In many common arrangements, the person who places an advertisement is not the person who sets the price, and the person who sets the price does not control every fee that will ultimately be charged. A brand may place an advertisement featuring a price that individually owned locations independently set. A delivery partner may set delivery mechanics and fees in an arrangement that appears to the consumer to be brand-operated. A payment processor may set surcharges. A marketplace may impose service charges on a merchant's listing.

The rule must allocate responsibility rationally: liability for a price display should attach to the person who sets and controls the price and fees at issue, and a person should not be liable for failing to disclose a fee imposed by a third party over which it has no control and of which it has no advance knowledge. Without that clarification, the Proposed Rule will generate enforcement risk for parties who could not have complied, and — as the FTC's food delivery

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[26] Fees Rule NPRM, 88 Fed. Reg. at 77,440.

[27] N.Y.C. Charter § 2203(e) (establishing the office of labor standards within the Department and directing the commissioner to "enforce municipal labor laws and other labor laws the commissioner is empowered to enforce" and to "plan, make recommendations, conduct research and develop programs for worker education, worker safety and worker protection").

ANPRM comment record reflects — will impose liability on parties that do not control all the fees at issue.

J. The records provision should be bounded, and the adverse presumption deleted.

Proposed § 5-16(f)(1) requires any person subject to the rule to "maintain records sufficient to establish the basis, including the nature, purpose, amount or refundability for any fee or charge" included in any covered offer, display, advertisement, or fee breakdown, and to produce them to the Department on request. The provision specifies no retention period, no limitation on the scope or format of records, and no time frame for production. For a business that changes prices seasonally and advertises across many channels, an open-ended obligation of this kind is a substantial and undefined burden. The Department should specify a retention period — three years is the norm in comparable City and State recordkeeping requirements — and should limit the obligation to records the business creates in the ordinary course.

Proposed § 5-16(f)(2) goes further, providing that a failure to maintain, retain, or produce a required record "relevant to a material fact alleged by the Department" in a summons or notice of hearing "creates a presumption that such fact is true." Coupled with an undefined retention obligation, this converts a recordkeeping lapse into proof of the underlying violation. A small business that cannot locate a four-year-old menu board vendor invoice would face a presumption that its delivery fee was not based on actual delivery costs. IFA respectfully urges the Department to delete subdivision (f)(2). If the Department retains it, the presumption should apply only where the Department first establishes that the record was required to be maintained during a defined retention period, that the business was on notice of the obligation, and that the failure to produce was not the result of ordinary course document retention practices.

K. The rule should provide a safe harbor for compliance with governing federal and State requirements.

The Department expressly "invites comments whether these laws — or any other federal or state laws — would conflict with the requirements of the proposed rule." IFA appreciates the invitation and responds directly.

Proposed § 5-16(b) excludes from the rule's reach only those offers, displays, and advertisements as to which regulation is affirmatively "preempted by federal or state laws or regulations," and proposed § 5-16(g) provides that the rule "do[es] not replace or supersede any existing price disclosure requirements set forth in other sections of this title or Title 20." Read together, these provisions establish that a business must comply with the Proposed Rule *in addition to* every other applicable requirement, and may deviate only where another law affirmatively preempts. That is the most burdensome possible framing and it produces genuine conflicts:

- **16 C.F.R. Part 464** governs live-event tickets and short-term lodging. Its definition of "Total Price" excludes government charges and shipping; the Proposed Rule's definition differs, and the Proposed Rule adds a distinct pre-consent itemization requirement in subdivision (d) and a records requirement in subdivision (f) with no federal analogue. A franchised hotel in New York City complying with Part 464 does not thereby comply with § 5-16.

- **N.Y. General Business Law § 518** and the Department's existing guidance govern how credit card surcharges must be posted. **Administrative Code § 20-708** governs total selling price for retail sales; **§ 20-881** governs live event ticket cost disclosure; **6 RCNY § 5-12** governs comparative advertising; and **6 RCNY § 5-15** governs hotel advertising. Section 5-16(g) preserves all of them without reconciling any of them.

The Department should adopt an express safe harbor: an offer, display, or advertisement that complies with 16 C.F.R. Part 464, with an applicable New York State pricing statute, or with a more specific pricing disclosure rule in Title 6 or Title 20 applicable to the same good or service, satisfies § 5-16 with respect to that good or service. Other jurisdictions have adopted precisely this approach: Maine excludes from its statute parties in compliance with 16 C.F.R. Part 464, and Virginia excludes live-event ticket sellers in compliance with that Rule. A safe harbor costs the Department nothing in enforcement authority against genuinely deceptive conduct — which remains actionable under § 20-700 and subdivision (e) — and spares City businesses from having to reconcile overlapping regimes at their own risk.

L. The rule needs a cure period and a realistic effective date.

The Mayor's Office of Operations certified that a cure period "is not practicable under the circumstances," without explanation. IFA respectfully disagrees. The City routinely affords first-time cure opportunities for disclosure and posting violations by small businesses, and the rationale applies with unusual force here: the Proposed Rule is new, its central definitions turn on judgment calls, and the conduct it reaches is in most cases not conduct anyone previously understood to be unlawful. A cure period for a first violation of subdivisions (c), (d), and (f) — with no cure available for the affirmative misrepresentations prohibited by subdivision (e), which are already unlawful — would give businesses an opportunity to correct in good faith while preserving the Department's ability to act against bad actors.

Similarly, the Proposed Rule contains no delayed effective date. Given that compliance requires menu board replacement, mobile application and website re-engineering, point-of-sale reconfiguration, marketing collateral redesign, staff training, and legal review across potentially thousands of price points, an effective date of at least twelve months after adoption is necessary, together with a further education-first enforcement period during which the Department issues warnings rather than penalties.

Sequencing deserves particular attention. On July 10, 2026 — the same month this rule was published for comment — the Department adopted a first-in-the-nation municipal "click-to-cancel" rule, 6 RCNY § 5-110.1, with which covered businesses must comply by October 1, 2026.[28] That rule reaches many of the same franchised businesses as the Proposed Rule — fitness studios, wellness and personal care providers, pet care, tutoring, and home services among them — and carries the same escalating penalty schedule. Those businesses are re-engineering enrollment and cancellation flows this fall. Asking them to re-engineer every price display simultaneously, with no cure period and no compliance runway, is not a schedule any single-unit operator can realistically meet. At a minimum, the Department should align the compliance date for this rule so that it does not overlap the click-to-cancel implementation period.

M. The Department should harmonize with the pending State framework rather than get ahead of it.

As described in Part III.B, the New York State Senate has now twice passed a general all-in pricing bill — the New York Junk Fee Prevention Act — which the Assembly has twice declined to take up. That bill, as passed, carries a set of sector-specific exclusions that the Proposed Rule does not, reflecting the compromises the legislative process produced. Whatever one thinks of those exclusions, they are evidence that the elected body considers this subject to require calibration rather than a uniform mandate.

The practical consequence for a New York City franchisee is straightforward. If the Department adopts the Proposed Rule now and the Legislature enacts a different standard next session, City businesses will have rebuilt their price displays twice in two years to satisfy two inconsistent regimes in the same State. IFA respectfully urges the Department to defer to the State process. If the Department is unwilling to wait, it should at minimum include in the rule a provision committing that an offer, display, or advertisement complying with any subsequently enacted New York State all-in pricing statute satisfies § 5-16.

Conclusion

IFA and its members share the Department's goal of ensuring that New Yorkers know what they will pay before they pay it. But the Proposed Rule as drafted is not calibrated to that goal. It declares an enormous range of ordinary, lawful, and often pro-consumer pricing practices to be both deceptive and unconscionable, across every industry in the City and beyond its borders, on a record drawn from four industries in which every reported enforcement action has arisen in lodging, travel booking, or ticketing. It does so without any analysis of what compliance will cost the City's small businesses, in an area the State Legislature is actively debating, and it pairs vague standards with strict liability, an adverse evidentiary presumption, no cure period, and escalating penalties. The likely result is not greater transparency but higher prices, fewer discounts, more

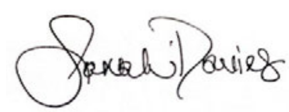
[28] DCWP, Notice of Adoption, 6 RCNY § 5-110.1, https://www.nyc.gov/content/dam/nycgov/nyc-main/pdf/2026/Click-to-Cancel-Rule.pdf; Press Release, Off. of the Mayor, Mayor Mamdani Announces Landmark "Click-to-Cancel" Consumer Protection Rule (July 10, 2026), https://www.nyc.gov/mayors-office/news/2026/07/mayor-mamdani-announces-landmark--click-to-cancel--consumer-prot.

consumer confusion, and real hardship for the franchised small businesses that employ New Yorkers in every borough.

IFA respectfully urges the Department not to adopt the Proposed Rule in its current form. If the Department proceeds, we urge it to adopt the amendments described in Part VI, and to engage further with the affected business communities — including through additional stakeholder sessions or a supplemental comment period — before adoption. IFA and its members stand ready to assist the Department in developing a rule that protects New York City consumers from genuinely hidden and bogus fees without imposing unworkable requirements on the small businesses that serve them.

Thank you for the opportunity to submit these comments and for considering our perspective.

Respectfully submitted,



Sarah Davies
General Counsel
International Franchise Association

From: Jake Lestock
To: rulecomments (DCWP)
Subject: [EXTERNAL] CTIA Comments on NYC DCWP Proposed Rules on Price Transparency
Date: Friday, August 7, 2026 10:49:14 AM
Attachments: image001.png
CTIA Letter to NYC DCWP on Price Transparency Rules.pdf

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Good morning,

Please find attached CTIA's comments on the proposed rules before the New York City Department of Consumer and Worker Protection. CTIA and its members understand the importance of transparency for consumers in advertising and pricing practices. We share the goal of protecting consumers from practices that may undermine a consumer's ability to make informed commercial decisions.

If the Department proceeds with adopting the Proposed Rules, it should find that the wireless industry is already deemed compliant pursuant to the federal regulatory regime that already achieves the same objectives for wireless consumers. Accordingly, DCWP should provide guidance materials in connection with any final rules to deem compliant advertising, pricing, and billing information that is consistent with the rules set forth by the FCC for those services, such as broadband labeling, or in the alternative, adopt final rules that expressly determine that the regulation is preempted with respect to the wireless industry.

Please feel free to reach out if you have any questions or follow up. We look forward to working with you to ensure that consumers receive clear and accurate pricing information without creating consumer confusion from conflicting requirements. Thank you for your consideration.

Best,
Jake Lestock

ctia
Jake Lestock
Director, State Legislative Affairs
1400 16th Street, NW
Washington, DC 20036

[redacted]

It is CTIA's policy to comply fully with antitrust laws. To ensure compliance, CTIA's employees and the representatives of CTIA member companies should follow the [Antitrust Checklist for CTIA Meetings] when participating in CTIA-sponsored activities.

August 7, 2026

VIA EMAIL

New York City
Department of Consumer and Worker Protection
42 Broadway #5
New York, NY 10004
Rulecomments@dcwp.nyc.gov

Re: Proposal to Add Rules That Prohibit Charging Consumers Hidden "Junk Fees"

CTIA[1] respectfully submits these comments in response to the New York City Department of Consumer and Worker Protection's ("DCWP's" or "Department's") proposal to add rules that prohibit charging consumers hidden "junk fees."[2] CTIA and its members understand the importance of transparency for consumers in advertising and pricing practices. We share the goal of protecting consumers from practices that may undermine a consumer's ability to make informed commercial decisions. The wireless industry adheres to this commitment both through industry-driven principles that have served as a foundation for the wireless ecosystem's consumer-friendly business practices for more than 20 years and through a comprehensive federal regulatory framework that encompasses the whole of service providers' wireless offerings.[3]

As an initial matter, CTIA and the wireless industry are proud to be an outlier to New Yorkers' "face rapidly rising costs"[4] by offering consumers more value for lower prices because of intense competition and meaningful investments.[5] The wireless industry remains one of the most competitive

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[1] CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless providers, device manufacturers, and suppliers, as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. CTIA represents a broad diversity of stakeholders, and the specific positions outlined in these comments may not reflect the views of all individual members. The association also coordinates the industry's voluntary best practices and hosts educational events that promote the wireless industry. CTIA was founded in 1984 and is based in Washington, D.C.

[2] *Notice of Public Hearing and Opportunity to Comment on Proposed Rules*, New York City Department of Consumer and Worker Protection (June 16, 2026), https://www.nyc.gov/assets/dca/downloads/pdf/about/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf ("*Notice*").

[3] By service providers' wireless offerings, CTIA refers to the offering of wireless telephony, broadband internet access service, text messaging, or a combination of any of those services.

[4] *Notice* at 3.

[5] *See 2025 Annual Survey Highlights*, CTIA, at 5 (2025), https://api.ctia.org/wp-content/uploads/2025/09/2025-Annual-Survey-Highlights.pdf ("Over the last four years, Americans have seen significant increases in prices for goods and services like food, utilities, and new vehicles. Meanwhile, the cost of wireless service has decreased,

markets in New York City and America. This fierce competition, coupled with consumer choice, provides a significant check on the types of anti-consumer behaviors the Department seeks to regulate. Indeed, broadband speeds have increased, prices have decreased, competition has intensified, and years of record-breaking infrastructure builds brought millions of people across the digital divide. When wireless providers compete, consumers win. Intense competition in the wireless market is more effective in driving consumer-friendly innovations than quickly outdated regulations, especially on a state-by-state or, in this case, city-by-city basis.

The *Notice* expressly seeks comment on whether the proposed rule would conflict with other federal or state laws.[6] For the wireless industry, the answer is yes. To address this conflict, CTIA requests that the Department provide guidance materials in connection with any final rules to deem compliant wireless providers' advertising, pricing, and billing information that is consistent with the rules set forth by the Federal Communications Commission ("FCC"), such as broadband labeling. Consistent with this, CTIA also requests guidance that application of the Proposed Rules to wireless providers is preempted.[7]

Importantly, the fact that the CTIA members' advertising and pricing, when compliant with federal rules, would also be deemed compliant or exempt by preemption from the Proposed Rules would still be consistent with the DCWP's underlying policy goals. The robust federal regulatory regime to which the wireless industry is already subject, coupled with substantial consumer-friendly industry commitments, already effectuate the Department's intended objectives.

I. The Wireless Industry Keeps Consumers Informed with Clear and Accurate Information.

In the competitive wireless marketplace, transparency for consumers in advertising and pricing practices is integral to building and maintaining the trusted customer relationships that are necessary for the wireless ecosystem to flourish.[8] The wireless industry is committed to ensuring that consumers have accurate and transparent information regarding product and service offerings via associated advertising and point of sales. The foundation of the wireless industry's business practices is industry-driven principles that put consumers first.

Specifically, CTIA and its members voluntarily established a set of principles, the *Consumer Code for Wireless Service*, to help consumers make informed decisions when selecting wireless services.[9] This code has been regularly updated since it was first created nearly 20 years ago to ensure it reflects the

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and the cost of smartphones has decreased by more than 50%. Providing value to consumers is a key part of the wireless industry's success.").

[6] *Notice* at 4. The *Notice* further explains that "[t]he Department has already reviewed several laws that other jurisdictions have exempted from similar 'junk fee' regulations or that the Federal Trade Commission identified as potentially overlapping with their proposed 'junk fee' rule," including the consumer broadband label requirements in 47 C.F.R. § 8.1(a) and the requirements of Truth in Billing and Advertising in 47 C.F.R. § 76.310. *Id*. n. 15.

[7] Proposed Rules of the City of New York Tit. 6, Ch. 5, Subch. A, § 5-16(b).

[8] *Competition*, CTIA, https://www.ctia.org/positions/competition (last visited Jul. 29, 2026) ("Wireless companies fight every day for every consumer's business" leading to benefits for consumers).

[9] *Consumer Code for Wireless Service*, CTIA (2020), https://api.ctia.org/wp-content/uploads/2020/03/CTIA-Consumer-Code-2020.pdf ("*Consumer Code for Wireless Service*").

wireless industry's innovations and consumers' needs and expectations.[10] More than half of the principles contained in the *Consumer Code for Wireless Service* speak to the important issue of price transparency, with disclosure of rates and terms of service being the first commitment. Further, Principle 5 establishes a commitment to "clearly and conspicuously" disclose material charges relating to advertised prices and services. Wireless providers typically have regular engagement with their customers, including through monthly notices regarding plan terms and itemized costs, as well as through alerts that may be sent in accordance with commitments made as part of the *Consumer Code for Wireless Service*. As a result, wireless customers receive a bill that distinguishes monthly charges that are collected and retained by the provider from taxes, fees, and charges that are remitted to the government (federal, state, and local).[11]

CTIA continues to regularly evaluate the *Consumer Code for Wireless Service* and revises it as needed to best serve its members' customers. By doing so, CTIA and its members have demonstrated their long-standing and ongoing commitment to ensuring consumers have clear and accurate information about their wireless service offerings.

II. Imposing the Proposed Regulation on the Wireless Industry Will Lead to Greater Consumer Confusion, Less Competition, and Potentially Higher Consumer Costs.

Without the clarifications discussed below, the Proposed Rules would fail to account for layers of local and state regulatory fees and regular interactions between wireless providers and customers, which would introduce consumer confusion, potentially increased consumer costs, and significant compliance burdens on wireless providers without any commensurate benefits to consumers.

Wireless Providers Comply with a Multitude of Contrasting Fees and Taxes. Wireless services are subject to a wide variety of payments to various government authorities. For example, wireless providers regularly must remit to federal, state, and local governments monies related to 911, universal service, telephone relay services, and state sales tax. These fees support local emergency services; the development of universal communications networks; telephone equipment for the deaf and hard of hearing community; and assistance for low-income subscribers, schools, libraries, rural healthcare facilities, among other services. New York City has its own City License Tax that can be passed through to customers and is different from fees in other New York jurisdictions. These fees are related directly to the communications service offered. Importantly, these fees vary widely by jurisdiction and can change on a quarterly basis.

It is unclear if the exceptions in the definition of "total price" in the Proposed Rules related to "taxes and fees imposed by a government" would include the wide range of monies wireless providers collect at the behest and with the blessing of government regulators.

If those surcharges are not included in the "total price," the total price will not reflect the amount consumers pay each month, which defeats the purpose of the Proposed Rule and will likely

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[10] For example, in 2011, Principle 11 was added, which calls for providers to send postpaid customers free usage alerts to help them avoid unexpected overage charges, and in 2013, Principle 12 was added, which includes voluntary standards to assist consumers by enhancing transparency and disclosure of wireless providers' mobile device unlocking policies. *See Consumer Code for Wireless Service*.

[11] *Id*. at 3, Principle 6.

confuse consumers who are under the impression that the price displayed is the price they'll pay.

Conversely, if those surcharges are included in the "total price", providers would need to raise prices each time a government entity raises the corresponding fees on providers. Consider, for instance, the Universal Service Fund. In Q3 2024, the contribution factor was 34.4%. Three months later, it was 35.8% and three months after that, it was 36.3%. The cost of having to constantly update advertising or collateral could result in higher costs for consumers. Providers could also choose to simply include a "buffer" in the total price to allow for increases in government charges, which would result in higher prices for consumers. Or, providers could decide not to advertise prices at all, meaning that consumers would not have access to pricing information until they provide their home address, either in store, online, or over the phone. In all of those outcomes, consumers lose: they pay more, have reduced insight into the cost of service, or both.

Additionally, if such pass-throughs are included in the Total Price, the pricing shown in New York City would be inaccurate for consumers living outside of the jurisdiction, as certain government surcharges vary across jurisdictions, even at the local level. As advertisements in the New York City metropolitan area are readily viewed in communities across upstate New York, Connecticut, New Jersey, or beyond, even though such prices may not reflect the cost of services in those jurisdictions.

Applying the Proposed Rules to Wireless Providers Could Lead to Consumer Confusion and Decreased Transparency. To ensure compliance, service providers may choose to stop advertising prices across jurisdictions or at all, which means consumers would have less information about pricing. Consumers would have to go site-to-site or store-to-store to get pricing information and likely would not be able to access even high-level pricing information without providing personal information (such as the location of their residence) first. Making a consumer work harder to obtain pricing information would be contrary to the goals of the proceeding.

In addition, separate compliance with both the federal regime and the Proposed Rules would require wireless providers to present separate disclosures for pricing information in different formats, creating compliance uncertainty and requiring that consumers see two different prices for the same service. While the FCC-mandated Broadband Label, as further discussed below, provided in compliance with federal rules would show the monthly service price with a list of all additional fees, the New York City price information would show a price that includes fees, and then a list setting forth all of those included fees. To a consumer, the presentation is going to look like two different monthly prices with a list of fees below. Particularly in New York City, where advertisements are regularly shown to customers that may live or work in surrounding communities such as upstate New York, Connecticut, New Jersey, or beyond, requiring a single "total price" for wireless services in all advertisements irrespective of local geographic nuances would indeed introduce unnecessary consumer confusion. As a practical matter, consumers understand that a total price will change as they customize their orders: adding a device, a new line, insurance, a streaming service, etc.

III. The Wireless Industry's Federal Regulator Has Its Own Regulatory Regime to Protect Consumers from Surprise or Unfair Fees and Billing Practices.

In addition to the voluntary industry commitments described above, wireless providers are regulated by the FCC, which oversees a comprehensive federal regulatory regime to protect wireless consumers from surprise or unfair fees and billing practices.[12] CTIA's members have for years been subject to and complied with FCC efforts to ensure consumers have clear information about service charges and to help protect consumers from fraud and unauthorized third-party fees.

First, implementing a Congressional directive, the FCC adopted requirements for broadband labeling.[13] Under these broadband consumer label rules, wireless providers must provide easy-to-understand labels modeled on the nutrition labels that appear on food products. The labels clearly lay out key information about prices (including monthly and one-time fees, and the availability of discounts and bundles), the amount of data included in the base price, typical upload and download speeds, and a provider's network management and privacy practices. Based on an express directive from Congress, the FCC prescribed a specific labeling format for broadband offerings, with flexibility for broadband providers, including wireless providers, to display information either directly on the label or via easily accessible links.[14]

In adopting the rules in 2022, the FCC specifically considered and declined to adopt an all-in pricing requirement like the Proposed Rule. In the Order, the FCC observed that government taxes vary according to a consumer's geographic location, pricing may vary according to the consumer's choices for equipment, and installation fees by the consumer's location and dwelling (*e.g.*, an apartment v. single-family home).[15] As a result, the FCC determined that "requiring display of a single, 'all-in' price on a label may be . . . potentially misleading for consumers."[16] This decision is particularly notable because it came from an expert agency that had spent well over a year considering the same challenge that New York City is grappling with under the Proposed Rule: what is the best way to ensure that consumers know and understand the price of services before they sign up? In considering the question, the FCC decided that, for the broadband industry, a total price was not in consumers' best interests and crafted a different regime that the agency felt would best serve consumers.

The FCC recently updated the rules to give providers the option to display passthrough fees

[12] *See Notice* at 4 n. 15 (identifying the consumer broadband label requirements in 47 C.F.R. § 8.1(a) and the requirements of Truth in Billing and Advertising in 47 C.F.R. § 76.310).

[13] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60504(a), 135 Stat. 429, 1244 (2021) (directing the FCC to regulate the advertising of broadband on a national level) ("Infrastructure Investment and Jobs Act"); *Empowering Broadband Consumers Through Transparency*, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13686 (2022) ("*Broadband Labeling Order*"); *Empowering Broadband Consumers Through Transparency*, Order on Reconsideration, 38 FCC Rcd 8238 (2023) *Empowering Broadband Consumers Through Transparency*, Report and Order, FCC 26-48 ¶ 3 (rel. Jul. 23, 2026), https://docs.fcc.gov/public/attachments/FCC-26-48A1.pdf ("*2026 Order*").

[14] 47 U.S.C. § 1753(a) (directing the FCC to "to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.").

[15] *Broadband Labeling Order* ¶ 24.

[16] *Id.*

either as a maximum or an "up to" amount.[17] This updated framework appropriately strikes the right balance for consumers. Far from the deceptive "bait and switch" practices that DCWP seeks to avoid, a wireless consumer will either see the exact total price or end up with a final cost that is *actually lower* than the posted amount,[18] and providers are afforded the flexibility to choose the approach that best serves their customers. The FCC's broadband label rules further contain additional consumer-first measures beyond the Proposed Rules, such as the requirement that providers display the information in any languages in which the provider markets its services in the United States,[19] and the obligation to make labels accessible to consumers with disabilities.[20]

Additionally, for nearly two decades, wireless voice providers have abided by the FCC's Truth-in-Billing requirements, which are broad, binding principles that ensure voice providers offer information on customers' bills that is clear and not misleading.[21] The Truth-in-Billing rules help protect consumers from fraud and unauthorized third-party charges. Importantly, the FCC created a comprehensive framework that affords providers flexibility in their billing procedures without discouraging the introduction of new pricing plans or impairing the ability of providers to adopt improvements to their billing systems or bill structures.[22]

The robust federal regulatory regime was adopted over years of careful consideration by an expert agency seeking to achieves the same goals DCWP seeks to accomplish, and demonstrates why the wireless industry uniquely situated, and underscores why the Proposed Rules need not apply to wireless. The carefully crafted federal regime should not be discounted by broad regulations that do not consider the specific attributes of an industry that is already heavily regulated.

IV. The Federal Landscape Supports a Determination that the Wireless Industry Should Be Deemed Compliant.

Given this federal regulatory landscape, CTIA requests clarification that service providers' wireless offerings are deemed in compliance with any final rules, consistent with recent trends in

[17] *2026 Order* ¶ 14. A provider may display an "up to" amount for the total fees applicable in any location where the service plan is offered, or as the exact total of such fees in a particular location. These updated rules have not gone into effect yet.

[18] To further ensure that consumers understand the fees they will pay, the FCC adopted the requirement that any provider choosing to use the "up to" option must break out the total "up to" amount into two categories: (1) the maximum amount of passthrough fees that recover government-imposed costs, and (2) the maximum amount of passthrough fees attributable to costs imposed by non-governmental third-party entities. The label must also direct consumers to a provider-maintained webpage with clear descriptions of each type of passthrough fee listed. *2026 Order* ¶ 14.

[19] *Id*. ¶ 30.

[20] *Id*. ¶ 32.

[21] *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) ("FCC Truth-in-Billing R&O"); *Truth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005).

[22] *See* FCC Truth-in-Billing R&O, 14 FCC Rcd at 7499, ¶ 10.

state law and regulation.[23] Recently, the Massachusetts Attorney General's Office issued regulations related to Unfair and Deceptive Fees and guidance.[24] The guidance expressly referenced the telecommunications industry, which includes the wireless industry and provides a useful example:

> **How do these regulations apply to the telecommunications industry?**
>
> For entities that provide broadband Internet access service, on its own or part of a bundle as defined by 47 C.F.R. § 8.1(b) and must comply with the broadband consumer label regulations under 47 C.F.R. § 8.2(a), cable operators and direct broadcast satellite (DBS) providers that comply with the pricing requirements of 47 CFR § 76.310, and telecommunications companies that comply with the requirements of 47 CFR § 64.2401, compliance with these respective federal regulations and their implementing orders shall constitute compliance with 940 CMR 38.04.[25]

CTIA requests that the Department adopt a similar position with respect to the Proposed Rule's application to the wireless industry. The federal regulatory regime to which the wireless industry is already subject achieves the same objectives the Department aims to advance with the Proposed Rules.

V. Applying the Proposed Rules to Wireless Would be Antithetical to the Preemption Provision and Impermissible Under Federal Law.

In addition, application of the Proposed Rules' pricing display requirements to wireless providers is preempted, triggering the preemption provision in Proposed Rule § 5-16(b).

The FCC's Exclusive Authority Over Wireless Service Occupies the "Field," Preempting the Regulations*.* Congress has occupied the field of regulation of many key aspects of wireless services, including advertising, as recognized by the preemption provision in the Proposed Rules.[26] The essence of CTIA members' businesses is transmission via wireless spectrum, and the Communications Act establishes that allocation and regulation of the use of such spectrum are under complete federal control.[27] In addition, the Communications Act empowers the FCC to exercise broad regulatory authority over wireless services where Congress has deemed such regulation justified, and the FCC has done that.[28] Likewise, federal law occupies the field of regulation of broadband and text messaging.[29] The

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[23] *See generally* Minnesota's Deceptive Trade Practices Act (Minn. Stat. 325D.44, Subdivision 1a. (i)); *See* Cal. SB 478, Sec. 3(a)(29)(B) (amending Cal. Civ. Code. § 1770).

[24] 940 CMR 38.00, *et seq*.; *Guidance with Respect to Unfair and Deceptive Fees (940 CMR 38.00)*, Office of the Attorney General (2025), https://www.mass.gov/doc/guidance-with-respect-to-unfair-and-deceptive-fees-07292025/download ("Massachusetts Attorney General Guidance").

[25] Massachusetts Attorney General Guidance at 10.

[26] *See Arizona v. United States*, 567 U.S. 387, 401 (2012) ("Where Congress occupies an entire field, . . . even complementary state regulation is impermissible.").

[27] *See* 47 U.S.C. § 301 *et seq.*

[28] *See id.*; *see also, e.g.*, 47 C.F.R. ch. 1, Subchapter B, pts. 20 & 22 (laying out rules for commercial mobile services and public mobile services).

[29] *See generally Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2017) ("*Restoring Internet Freedom Order*"); *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir.

pervasive and carefully measured federal regulatory scheme for key wireless issues trigger the preemption provision in the Proposed Rules.

The Proposed Rules Would Apply Different Obligations to Conduct Already Regulated at the Federal Level, Rendering Them Subject to "Conflict Preemption." The Proposed Rules, if not preempted, would conflict with federal rules regarding the display of pricing for wireless voice services on bills and broadband services at the point of sale. A state law is subject to conflict preemption when it "prevent[s] or frustrate[s] the accomplishment of a federal objective," including "the purposes and objectives" of the FCC, the federal regulator of CTIA's members' wireless offerings.[30] A federal agency's decision to not regulate or penalize certain conduct for policy reasons preempts contrary state regulatory efforts.[31]

Here, the Proposed Rules would conflict with the federal broadband labeling law and implementing regulations as well as the FCC's broadband transparency rule and voice truth-in-billing provisions, in particular because of how the Regulations approach the display of pricing information.[32] Based on an express directive from Congress, the FCC prescribed a specific labeling format for broadband offerings, with flexibility for broadband providers, including wireless providers, to display information either directly on the label or via easily accessible links.[33] The Proposed Rules would require a different presentation with different information, and therefore conflict with Congress's directions and frustrate the format chosen by the FCC for the national broadband labeling regime. The Proposed Rules call for a "total price" as a "maximum total of all charges and fees that a consumer must pay, including all mandatory fees and charges, but excluding taxes and fees imposed by a government." The FCC's rules , which are subject to recently adopted updates, carve out different details and specific

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2018); *In re MCP No. 185*, 124 F.4th 993 (6th Cir. 2025), *reh'g denied* (Mar. 11, 2025); *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, Declaratory Ruling, 33 FCC Rcd 12075 (2018).

[30] *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000); *Metrophones Telecomms., Inc. v. Glob. Crossing Telecomms., Inc.*, 423 F.3d 1056, 1072–73 (9th Cir. 2005), *aff'd*, 550 U.S. 45 (2007).

[31] *See, e.g.*, *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 178 (1978) ("[W]here failure of federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute, States are not permitted to use their police power to enact such a regulation.") (cleaned up); *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 384 (1983) ("[A] federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated, and in that event would have as much pre-emptive force as a decision *to* regulate.").

[32] Infrastructure Investment and Jobs Act, § 60504(a), (directing the FCC to regulate the advertising of broadband on a national level); 47 C.F.R. § 8.1 (broadband labeling requirements); 47 C.F.R. § 8.1(a) (requiring broadband providers to disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase); *Restoring Internet Freedom Order* ¶ 223 (explaining that the transparency rule requires the disclosure of the price of service, monthly prices, usage-based fees, and fees for early termination or additional network services); 47 C.F.R. § 64.2400, *et seq*. (truth-in-billing requirements).

[33] 47 U.S.C. § 1753(a) (directing the FCC to "to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.").

requirements, creating a conflict that preempts the Proposed Rules.[34] Indeed, if not preempted, wireless service providers would present two different sets of pricing information to consumers – one to conform to the Proposed Rules and one under the FCC's requirements. The Proposed Rules undermine and therefore conflict with the FCC's decisions and thus their application to wireless providers is preempted.

Applying the Proposed Rules to wireless service offerings would be inconsistent with the Commerce Clause of the U.S. Constitution pursuant to the Dormant Commerce Clause doctrine. Pursuant to the dormant commerce clause doctrine articulated, states may not impose a burden on interstate commerce that "is clearly excessive in relation to the putative local benefits."[35] First, wireless communications are unquestionably interstate in nature – wireless services can and are used to communicate throughout the United States without regard to state boundaries. In other words, New York City's regulation would inevitably produce regulatory effects beyond state lines. Second, as discussed above, the Proposed Rules would not benefit New York City consumers, as wireless service providers are already disclosing relevant pricing information to potential customers. Finally, applying the proposed regulations to wireless would impose real costs in terms of monitoring compliance, and any costs here are clearly excessive in comparison with zero benefits. Accordingly, the regulation would be barred.

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If the Department proceeds with adopting the Proposed Rules, it should find that the wireless industry is already deemed compliant pursuant to the federal regulatory regime that already achieves the same objectives as the Proposed Rules with respect to wireless consumers. Accordingly, DCWP should provide guidance materials in connection with any final rules to deem compliant advertising, pricing, and billing information that is consistent with the rules set forth by the FCC for those services, such as broadband labeling, or in the alternative, adopt final rules that expressly determine that the regulation is preempted with respect to the wireless industry.

Respectfully submitted,

s/ Jake Lestock

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Director, State Legislative Affairs

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[34] Further, the Proposed Rules raise concerns that they conflict with federal law, which plainly states that "no State or local government shall have any authority to regulate the entry of or *the rates charged by* any commercial mobile service.... 47 U.S.C. § 332(c)(3)(A) (emphasis added); *see also, e.g.*, *MCI Telecomms. Corp. v. FCC*, 822 F.2d 80 (D.C. Cir. 1987).

[35] *S. Dakota v. Wayfair*, 585 U.S. 162, 173 (2018) (citation and quotation marks omitted).

From: Thomas McNeil
To: rulecomments (DCWP)
Subject: [EXTERNAL] Junk Fees Comment
Date: Friday, August 7, 2026 9:49:12 PM
Attachments: Instacart Comments on NYC Proposed Junk Fee Rule .pdf

Please find attached Instacart's comments on the proposed junk fee rule. We appreciate the opportunity to provide input and look forward to continuing to work with the Department on this issue.

--

Tom McNeil
Senior Manager, Government Affairs

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San Francisco, CA 94105

August 7, 2026

Submitted via email to Rulecomments@dcwp.nyc.gov

Samuel A.A. Levine
Commissioner
New York City Department of Consumer and Worker Protection
42 Broadway, 8th Floor
New York, New York 10004

RE: Comment on the Proposed "Rules Regarding Junk Fees" (Ref. No. 2026 RG 027)

To the Department:

I. Introduction and Statement of Interest

Instacart respectfully submits this comment in response to the Department of Consumer and Worker Protection's ("DCWP" or the "Department") proposed rule adding a new section 5-16 to Title 6 of the Rules of the City of New York, published July 8, 2026.[1] As discussed below, in New York City, Instacart discloses the existence and calculation of its delivery, service, and regulatory response fees at the top of each retailer's storefront when a consumer begins shopping, as well as an itemized breakdown of all fees prior to completing the purchase.

Without modifications, we believe that the proposed rule would harm consumers by making online pricing of multi-item orders less accurate and more confusing. It is crucial to recognize that when consumers place grocery orders online through Instacart, if they request delivery they are actually seeking multiple elements, including: (1) they are purchasing groceries from a retailer, and (2) they are obtaining the services of an independent contractor to shop for and deliver those groceries for them. Instacart's current treatment of these prices and fees, as shown in Figure 2, allows consumers to clearly see what the price of the grocery item is, and what the fees associated with having the items shopped for and delivered to them are. These two elements carry two fundamentally different kinds of price. The price of a grocery item is the cost to purchase that good, and it is set by the retailer. The fees are something else entirely: they are the price of the selected services—including the cost of using the platform to have an independent shopper select, purchase, and deliver those goods. Instacart's current display, shown in Figure 2, keeps these concepts distinct, so a consumer sees both what the groceries cost and what the delivery services cost. The proposed rule would collapse them, folding the price of the service into the price of the good. That does not make the cost of groceries clearer; it misstates the price of the food and disguises a service charge as part of it.

[1] Notice of Public Hearing and Opportunity to Comment on Proposed Rules, *Rules Regarding Junk Fees*, Ref. No. 2026 RG 027 (proposed July 8, 2026) (to be codified at 6 RCNY § 5-16). Comments are due on or before August 7, 2026.

By mandating the proposed "all-in" pricing rule, consumers would lose the ability to effectively compare online and offline prices because applying the "all-in" pricing mandate to every item would mask the cost of the underlying item. Currently, consumers on Instacart have the ability to easily see what different retailers are charging online for the same item, because the price display is just for that item. Currently, customers can also see the mandatory fees that are charged to have their order delivered, and at checkout they are shown an itemized list of those fees plus any government imposed fees or charges and fees for optional services that a consumer may have chosen, such as a fee for expedited delivery. The proposed rule would actually eliminate the pricing clarity that currently exists. It would make it much harder for a New Yorker to know what a grocery item actually costs. Once each item's displayed price has to absorb the order-level fees, the number shown on the bananas is no longer the price of the bananas—it is the price of the bananas plus a fee for a service. A customer comparing that inflated figure against the price of the same item at another retailer, or on the shelf of a neighborhood store, would be comparing two things that are not alike, and would lose any reliable way to find the best price on the groceries themselves. The rule would thus defeat, for online grocery, the very price comparison it is meant to protect. The rule breaks down when applied to online grocery and other sectors that offer multi-item baskets and allow consumers to select different delivery options because the fees attributable to each individual item in such a transaction cannot be determined until all items are added and consumer selections are made.

None of this reflects how Instacart prices today, where item prices appear alongside a clear, upfront disclosure of fees. Without an exception or clarification for how the rule applies to multi-item order fees, the Department's rule could be interpreted in a manner that leads to absurd results that harm consumers.[2] For example, suppose a New Yorker is purchasing ten grocery items for delivery. The total of the items' cost is $100 with $10 of fees. Today that consumer would see the actual prices of the items accompanied by clear upfront disclosure of all mandatory fees, as shown in Figure 2. Under the proposed rule, would every item appear to cost $10 more as the mock up in Figure 1 shows? $1 of bananas would cost $11, a $5 gallon of milk would cost $15, and $20 of ground beef would cost $30. Unlike tickets or accommodation, the consumer wouldn't actually pay those costs on each item. That doesn't create clarity, is a misrepresentation. The $10 of fees is the order-level charge, so it attaches to the order only once—which leaves the platform no coherent way to show a "total price" for each good as items move in and out of the cart. Say the customer selects the bananas shown at $11 and adds them. Once they have done so, what price should the bananas now display—the real price of $1, or the $11 they saw a moment ago? They then add the gallon of milk with a price that has been reduced from the initial $15 dollars to $5. If the item prices are displayed in their shopping cart does the fee attach only to the banana, or does the fee get allocated across all of the items in their cart, so

[2] Note: as requested in this comment, we hope to work with the Department to find workable interpretations of how the rule will actually apply to order-level fees.

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bananas are now $6 and the gallon of milk is $10? Neither of those prices were ever surfaced for the consumer. Should they then remove the bananas, does the $10 fee migrate onto the gallon of milk that remains in their cart, or does the milk stay at $5, and the fee amount is added back to the price of every item until they select the next item for their cart? There is no answer that is both accurate and stable, because an order-level fee is a feature of the order, not of any item—no allocation rule can turn it into an honest per-item price. A mandate that forces one wouldn't hand consumers a clearer price; it would hand them a number that lurches with every tap and as mentioned below could in and of itself violate the requirements to not misrepresent under § 5-16(e).

Rather than increasing transparency, this approach would make it significantly more difficult for consumers to understand the actual price of individual items and to track the running total of their shopping basket as they add or remove products, because the displayed price of each item would fluctuate as basket-level fees are recalculated. Because § 5-16 is already drafted and industry-neutral, we offer these comments not as input on whether the Department should address junk fees, but as reasons the Department should narrow, clarify, or reconsider § 5-16 as applied to transactions of this kind.

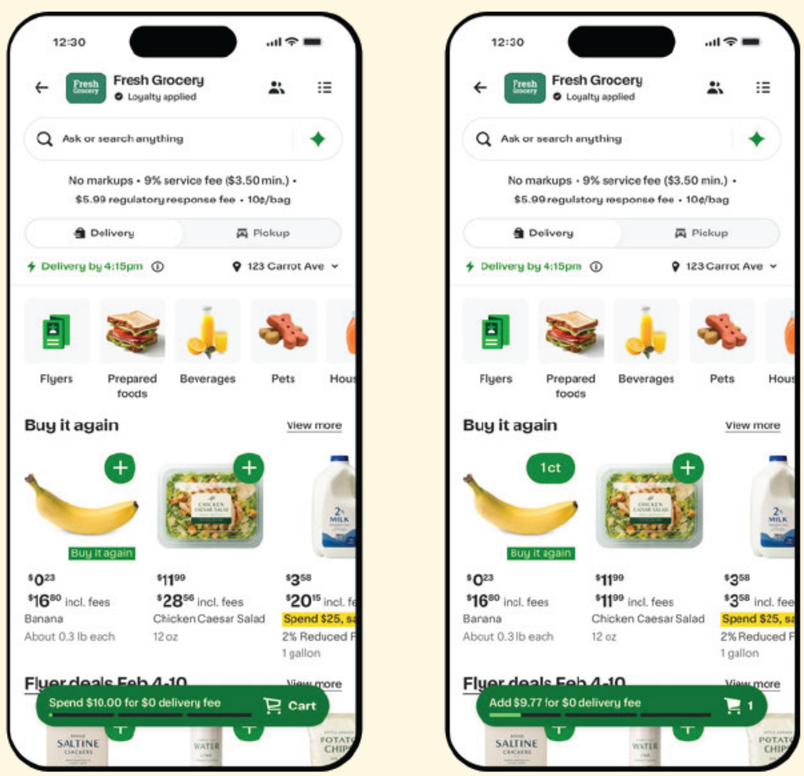

Figure 1. Visual mockup of potential interpretation.

As explained below, a rigid single-total mandate is infeasible when the fees applicable to any individual item will vary based on the cost and quantity of items selected and the delivery options selected by the consumer. For instance, Instacart charges a delivery fee that varies based on the retailer, delivery window, and order total (which is waived for Instacart+ members on eligible orders $10 or more per retailer) as well as a service fee that is based on factors like location and the number and types of items in a cart. Under the rigid single-total mandate, Instacart would need to build these basket fees into an item price. So, when a consumer initially browses a store front (i.e. before adding any items to the cart) the item prices would need to include the fees that would be added to the entire basket. Yet, once a consumer added an item that contained the basket fees, then the prices would decrease to the actual item price. As a result, an all-in mandate for these types of transactions would produce confusion and inaccuracy rather than transparency, and it would sweep more broadly than the analogous federal rule (the FTC's 2025 Fees Rule). It also exposes the Department to a potential conflict with the Federal Trade Commission ("FTC" or "Commission"), which is actively considering price-transparency rules for online food- and grocery-delivery platforms.[3]

We therefore respectfully request that the Department (i) exempt or carve out variable-basket, consumer-selection-dependent transactions from the all-in requirement of § 5-16(c), and instead permit disclosure of the price-determining factors together with the clear, itemized pre-purchase breakdown that § 5-16(d) already contemplates; (ii) if not exempting, narrow the rule to align with the sector-specific approach the FTC and other states adopted after extensive study and meaningful engagement with affected industries; (iii) reconsider the recordkeeping mandate and adverse presumption in § 5-16(f); and (iv) should the Department move forward without narrowing the rule, we further request a delayed effective date of 12 months to provide sufficient time to allow platforms and other businesses to implement changes necessary to comply with the rule. New Yorkers can access millions of products from hundreds of retailers via our platform. Fundamentally changing how we display prices for those items and fees for our services will require substantial technical effort. Without sufficient time, Instacart and other similarly situated businesses may be forced to suspend certain product offerings or adopt temporary pricing measures which impose unnecessary costs on consumers.

Instacart stands ready to assist the Department in crafting a narrowly tailored, misrepresentation-focused rule that advances transparency without degrading the consumer experience or exceeding the bounds of the Department's authority.

II. <u>Instacart Benefits Customers, Retailers, and Shoppers</u>

Instacart is a leading North American technology company that offers online grocery delivery services. We partner with more than 390 retailers in New York City, to connect them with customers who place orders of groceries and other household items for pickup or delivery,

[3] *See* Rule on Unfair or Deceptive Fees in Online Food Delivery Services, 91 Fed. Reg. 20381 (April 16, 2026).

and with independent contractor shoppers who pick, pack, and deliver those items. Instacart is not a retailer and does not purchase, own, or resell any groceries. Rather, we provide retail partners with the technology infrastructure to sell their own products through a virtual storefront. Because Instacart does not sell the groceries, the price of each item is not ours to set—it belongs to the retailer. What Instacart charges for is separate and distinct: the services, including the shopping and delivery services the shopper provides. That structural separation between the price of the goods and the price of the services is not a billing convention; it reflects what the consumer is actually paying for, and to whom. Instacart thus provides customers with convenient access to groceries, opens additional sales channels for its retail partners, and generates valuable, flexible work for shoppers. Through our platform, Instacart improves access and affordability for customers, drives growth for retailers, and creates flexible earning opportunities for shoppers[4]. We are therefore deeply familiar with consumer and industry practice in online grocery and food delivery.

Instacart has long been a leader and innovator in pro-consumer disclosure, because an informed, transparent shopping experience is good for customers, retail partners, shoppers, and—ultimately—our business. The continued viability of our platform depends on repeat engagement from these stakeholders, particularly customers, and customers return more frequently when they have an exceptional and transparent experience. We accordingly share the Department's interest in ensuring upfront and transparent disclosures to consumers, promoting clarity for businesses, preserving competition, and combating genuine hidden fees. Instacart's own experience confirms that upfront and transparent fee disclosure can be implemented in a way that is workable—because we already do it on our platform, at a standard that meets or exceeds our legal obligations.

Affordability is one of the central pillars of our platform, and it is critical to ensuring that consumers decide to use the Instacart platform to fulfill their grocery needs. We have helped customers save more than $3 billion in recent years through a combination of deals, discounts, loyalty programs, and membership benefits.[5] Instacart offers some of the lowest delivery minimums and fees in the industry, alongside flexible options like no-rush delivery, that help customers manage costs. By providing a platform where customers can conveniently and affordably find and purchase their goods, Instacart is able to support its retail partners—which include many small businesses that might otherwise have little opportunity to engage in e-commerce. In New York City alone, Instacart has helped add more than 11,000 grocery jobs and $1.1 billion in revenue since our founding in 2012, with one in three of those jobs created at

[4] The term "shopper" is used to reference the independent contractors who provide shopping and delivery services through the Instacart platform. "Customer" is used to refer to those consumers placing orders for goods through the platform.

[5] *New Economic Impact Report Quantifies Instacart's Role as Grocery Industry Growth Engine and Job Creator*, Instacart: Newsroom (Nov. 13, 2025).

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small businesses, and has helped small grocers increase their revenue by over $300 million by bringing their businesses online.

Online delivery platforms like Instacart face fierce competition. Customers do not have to use our platform; they can switch to a competitor, order online directly from any of numerous retailers, or visit retailers' brick-and-mortar stores and shop for themselves. Instacart is thus constantly looking for ways to go above and beyond for customers in order to stay competitive. As a result, across our business, Instacart has long been a leader in customer-friendly practice, particularly as it relates to transparent disclosure of fees.

III. Instacart's Industry-Leading Fee Disclosures

To ensure that customers are fully informed of the fees charged on their orders, Instacart discloses its fees at the outset of the purchasing process, and then presents clear and itemized price and fee amounts before the customer places an order.

At the beginning of the shopping experience, Instacart clearly discloses retailer pricing and Instacart fee information at the top of each retailer's virtual storefront, available at any time through a link (e.g., "Pricing & fees") located centrally in the customer's display, below the search bar and above the choice between delivery and pickup. From the outset of the ordering process, and at any point during it, the customer can access detailed, readable disclosures of each fee applicable—or potentially applicable—to orders from that retailer. Instacart also provides additional fee information in its Help Center. Finally, at checkout—once the customer has gathered the items in the cart and the fees can be determined—Instacart displays the fees applicable to that order in a final, itemized summary that is easily visible before the customer decides whether to complete the purchase. These touchpoints are also illustrated in the storefront and checkout screenshots accompanying Instacart's comment to the FTC on its Food Delivery Fees ANPRM.[6]

In New York City, Instacart provides even greater disclosure of its fees. As illustrated in Figures 1 and 2 below, each mandatory fee is stated in plain terms directly on the retailer's storefront page, above the fold and before the customer adds a single item to the cart. This up-front, itemized disclosure not only discloses the existence and amount of the fee, but does so in a more accurate and transparent manner than a single blended "total price" would and presents that information in a manner that provides full transparency into the variable-fee structure described in Parts IV and III below.

[6] Comment of Maplebear Inc. d/b/a Instacart re Advance Notice of Proposed Rulemaking on Unfair or Deceptive Fees in Online Food Delivery Services (Project No. P267101) (May 18, 2026) ("Instacart ANPRM Comment").

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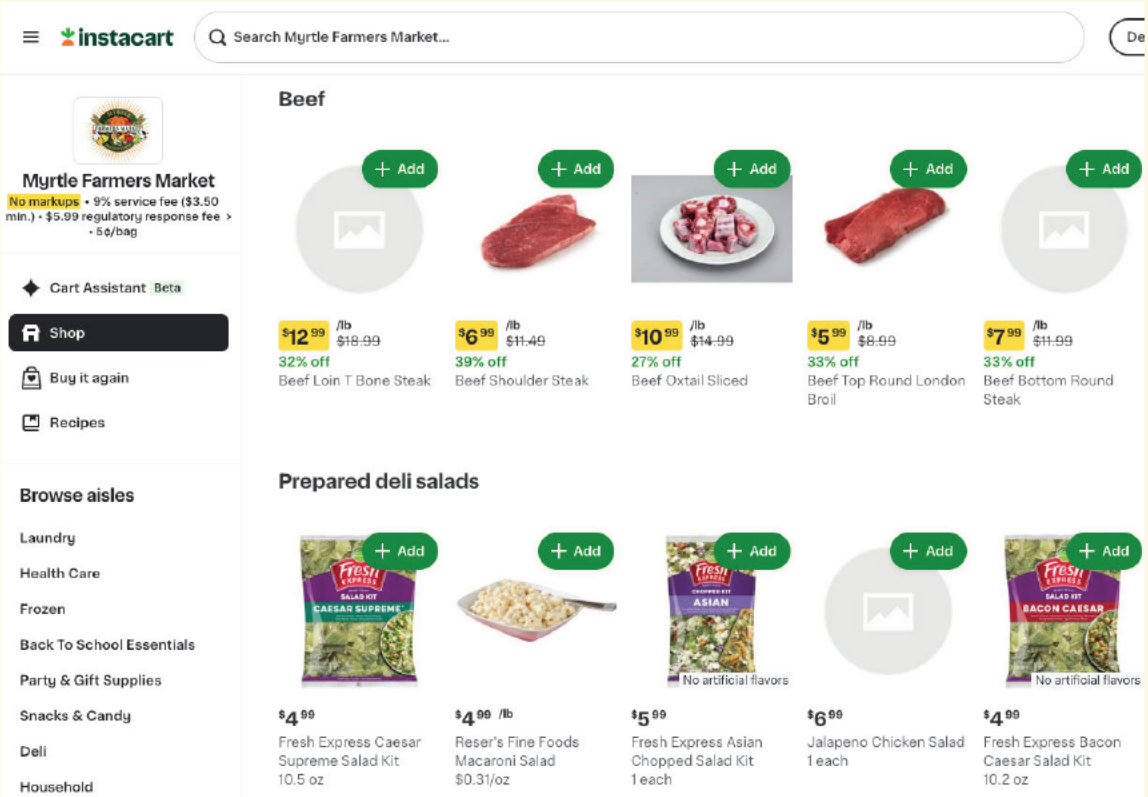

Figure 2. Illustrative storefront showing all mandatory fees disclosed directly on the store page, above the fold, before any item is added.

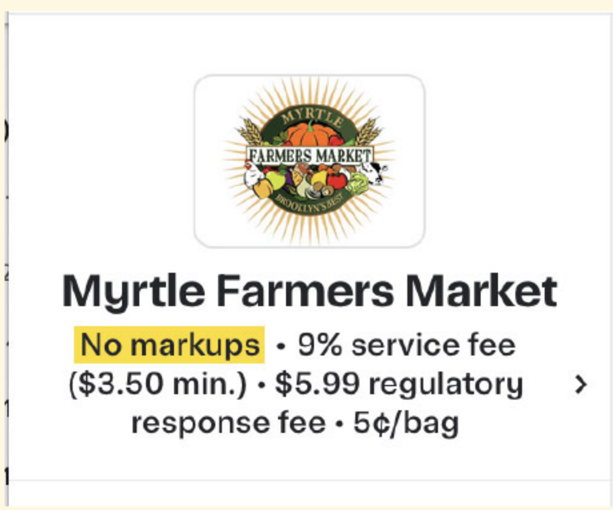

Figure 3. Detail of disclosure of mandatory order level fees

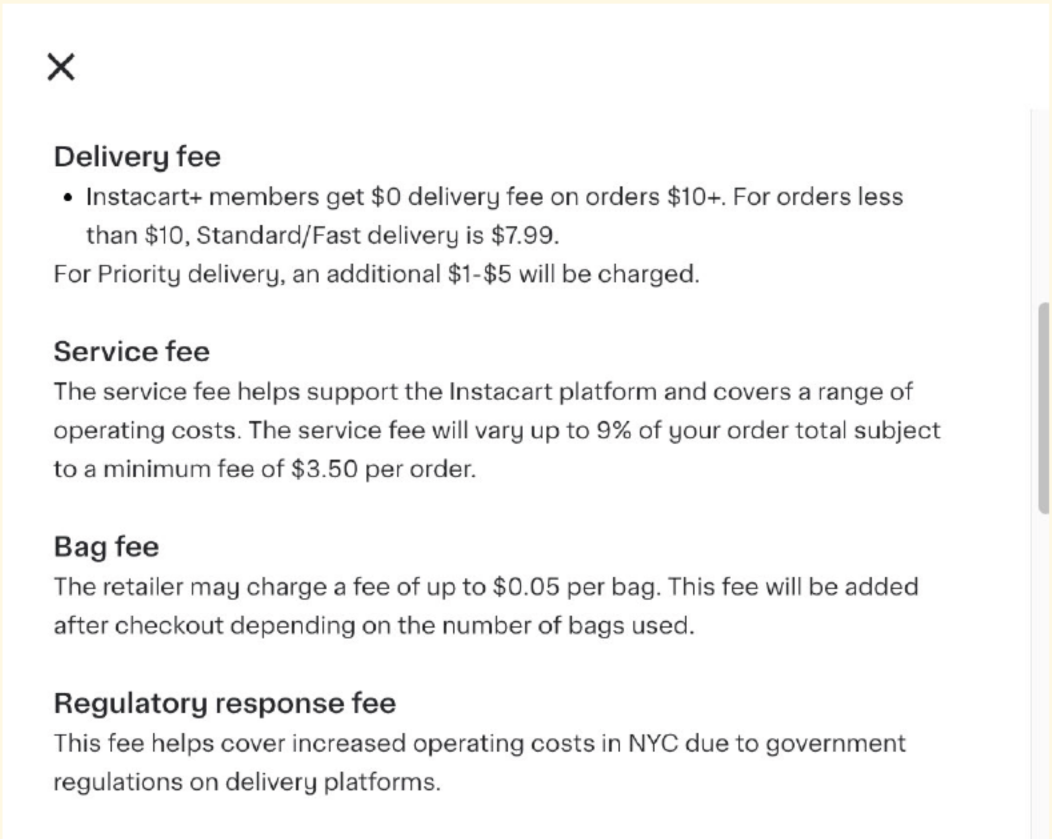

Figure 4. Additional information about fees available as a pop up at each retailer's storefront

These disclosures meet or exceed Instacart's legal disclosure obligations; indeed, they make Instacart a leader on fee disclosure in online grocery delivery. Notably, they already accomplish—through a clear, itemized pre-purchase summary[7]—the core price transparency the Department seeks, and they do so in a manner suited to the structure of a variable-basket transaction. As the balance of this comment explains, that structure is precisely what a single, mandated all-in total cannot accommodate. In fact, shifting to all-in item prices would create a confusing consumer experience that masked underlying item prices. This would harm consumers by making it more difficult to compare online prices and in-store prices and find the best prices and deals.

[7] *See* Figure 4.

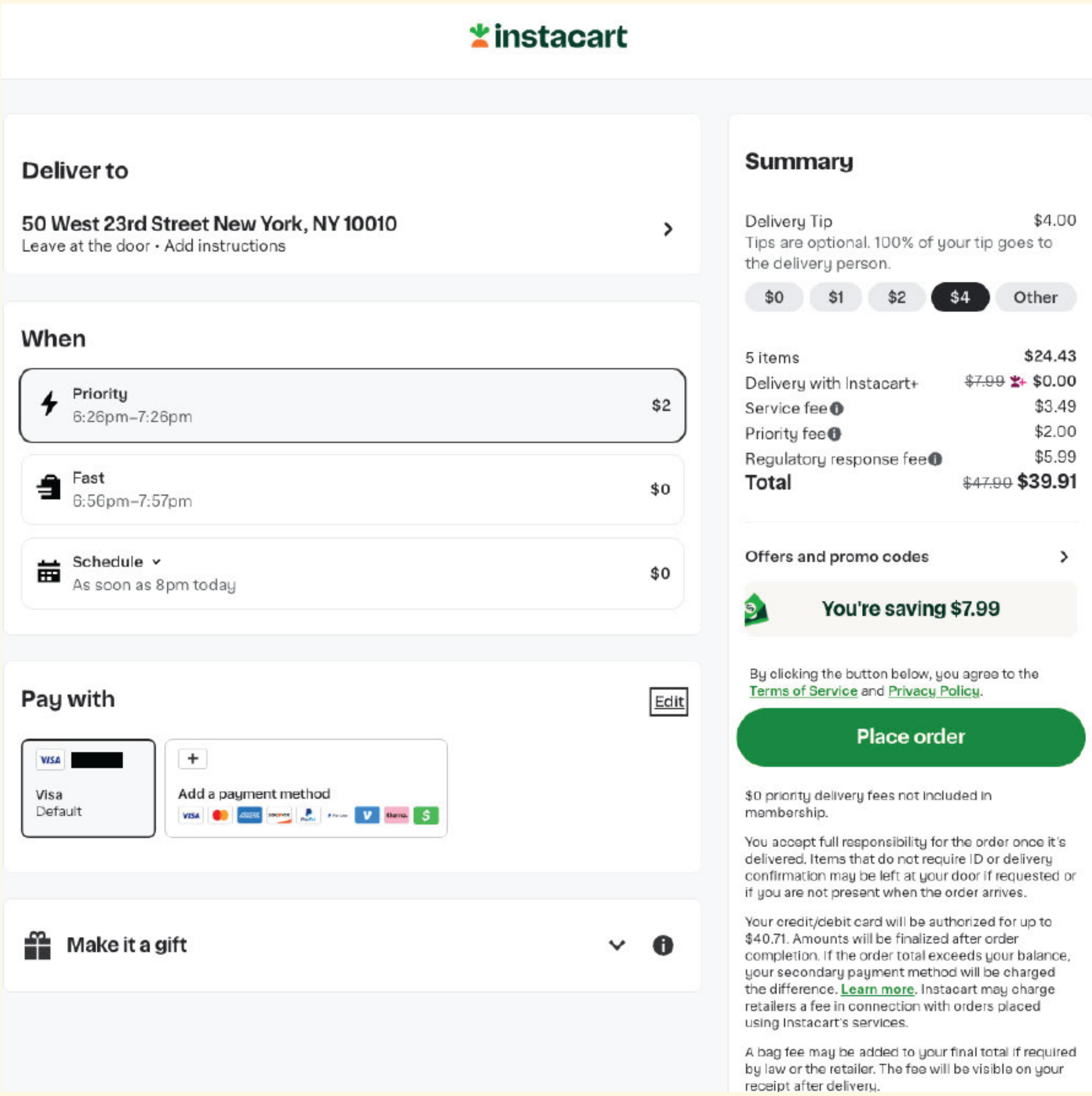

Figure 4. Pre-consent screen showing total item prices and itemized order level fees.

IV. <u>An Industry-Neutral, All-In Mandate Does Not Account for the Structure of Variable-Basket Transactions</u>

The Department defends the rule's economy-wide reach on the ground that "junk fees … persist across many new and evolving industries," so that an "industry-neutral" rule reaching "anyone advertising in New York City and to New York City consumers" is needed to "ensure

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the robust and thorough coverage necessary to protect all consumers." It notes that other jurisdictions, namely California, Massachusetts, and Minnesota "have taken a similarly broad approach."

Instacart does not dispute that price-transparency rules may apply across industries. But breadth of coverage is not the objection, and the relevant question is not whether such rules reach delivery platforms but whether they compel a single "all-in" total displayed against each item. The Department's own examples show they need not. Massachusetts—whose junk-fee regulation the Department cites—provides expressly that "a food delivery platform or grocery delivery platform" may "Advertise the price of menu items set by a food store, restaurant, or grocery store," and must instead "display Clearly and Conspicuously the maximum mandatory charges or fees that a consumer must pay to complete a transaction…any time any pricing information is displayed."[8] Minnesota, also cited by the Department, provides an express carve-out that "A delivery platform is compliant … if the platform satisfies all of the following requirements: (1) at the point when a consumer views and selects either a vendor or items for purchase, a delivery platform must display in a clear and conspicuous manner that an additional flat fee or percentage is charged. The disclosure must include the additional fee or percentage amount; and (2) after a consumer selects items for purchase, but prior to checkout, a delivery platform must display a subtotal page that itemizes the price of the menu items and the additional fee that is included in the total cost."[9] Similarly, California provides that the law "does not apply to a mandatory fee or charge…by a restaurant, bar, food concession, grocery store, or grocery delivery service," provided the mandatory fee or charge is clearly and conspicuously displayed.[10] Virginia has adopted the same approach for a price-variable "food delivery platform." These regimes are broadly applicable, yet none forces a delivery platform to fold its variable, order-level fees into a single per-item price; each lets the platform display the item prices set by the retailer and disclose its own mandatory fees separately. That is exactly what Instacart already does. What unites these regimes is a single recognition: the price of the goods and the price of the services are different things, and transparency is served by displaying each clearly—the retailer's item prices on one hand, the platform's mandatory fees on the other—not by conflating one into the other. Section 5-16, alone among them, could compel that collapse.

Section 5-16(c) makes it "a deceptive and unconscionable trade practice for any person to offer, display, or advertise the price of a good or service without disclosing the total price in a clear and conspicuous manner," and "at least as prominently as any other pricing information." Section 5-16(b) applies that mandate to "any person who offers, displays or advertises goods or services in New York City, or to a New York City consumer," and the Statement of Basis confirms that the mandate reaches prices "tied to a variable like an hourly rate or service based

[8] 940 CMR 38.04 (Mass. Register Issue 1543, eff. Mar. 14, 2025).
[9] Minn. Stat. § 325D.44, subd. 1a(c).
[10] Cal. Civ. Code § 1770.

on a unit of measurement." The premise of an all-in display, however, is that there exists a single, knowable total to display prior to final selection. That premise holds for some transactions but not for others—and the distinction that matters is not between industries but between transaction architectures—and, ultimately, between two kinds of price. A hotel room or a concert ticket has one price: the price of that single product. A grocery-delivery order reflects multiple offerings including: the price of the goods, set by the retailer, and the price of the services. An all-in mandate works for the former because there is only one price to state. It fails for the latter because it forces the second price— a single, order-level service charge—into the first, where it does not belong and cannot be stated accurately item by item.

For a hotel room, an apartment rental, or a live-event ticket, a single all-in total is both feasible and appropriate—even where fixed add-ons such as resort or amenity fees, parking, or cleaning fees apply—because those charges are knowable and fixed at the moment of display and apply to a single product. That is why the Department already regulates hotel stays and event tickets under separate, targeted regimes,[11] and it is why the FTC—after proposing an economy-wide fee rule in 2023[12]—deliberately confined its final 2025 Fees Rule to exactly these single-item industries.[13] As the Commission explained, there was no legitimate reason for companies in short-term lodging or live-event ticketing to delay disclosing an all-in price.[14]

The analysis is different where—as is the case in online grocery—the fees depend on either the consumer's own selections or a basket of multiple different products. For instance, Instacart's service fee varies "based on factors like location and the number and types of items in [a customer's] cart,"[15] and its delivery fee turns on the customer's membership status, order size, requested delivery speed, and delivery distance. None of those inputs are known and/or finalized until the customer builds a basket and chooses how and where to receive the goods. A mandate to display a single "total price" alongside a good therefore cannot be satisfied at the point of advertisement or display in the way it can for a hotel room or a concert ticket because the fee is not based on the single product but rather the variable basket.

As a result fees in a delivery transaction generally attach at the order level, not the item level. The § 5-16(a) definition of "total price," however, is framed as a single total "that a consumer must pay" for "the goods or services being advertised"—language that, applied to an

[11] 6 RCNY § 5-15 (requiring disclosure of the total price in advertisements for hotel stays); NYC Admin. Code § 20-881 (requiring disclosure of the total ticket cost for live events); *see also* Statement of Basis and Purpose (citing the same).

[12] Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (proposed Nov. 9, 2023) (to be codified at 16 C.F.R. pt. 464).

[13] Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066 (Jan. 10, 2025) (the "Fees Rule").

[14] *See id.* at 2073. As Instacart put it to the FTC: "You were buying a ticket to an Olivia Rodrigo concert or renting a condominium in Naples for a week—that was as clear at the beginning of the purchase as at the end." Instacart ANPRM Comment, *supra*.

[15] *Instacart fees and taxes*, Instacart: Help Center.

individual listing, forces an order-level charge to be expressed against a single item. Displaying fees for a service as though they were part of the price of one carton of eggs or one loaf of bread implies a per-item cost that does not exist and misstates how the fee actually operates and would create confusion as the item prices would change once an item was added to the cart that contained the order level charges. A rule that produces that result does not cure deception; it introduces it, by attaching to each item a price that does not actually apply to any individual item but instead applies across all items in the order. This is not merely a practical concern; it puts the rule in conflict with itself. Section 5-16(e) makes it a separate deceptive and unconscionable trade practice to misrepresent "the identity of the good or service for which a fee is charged." Yet § 5-16(c), applied to a variable basket, compels precisely that misrepresentation. To display an all-in price on a carton of eggs, a platform must attribute its fees to the eggs— representing that those fees are charged for the eggs, when in fact they are charged for the distinct service of shopping for and delivering the entire order. A regulated party thus cannot satisfy both provisions at once: disclose the true, item-only price the retailer sets, and it omits the all-in total § 5-16(c) demands; fold the fee into the item price to produce that total, and it misrepresents the good for which the fee is charged, in violation of § 5-16(e). Forcing platforms to choose between two of the rule's own commands is a strong indication that the all-in mechanism was never designed for—and cannot without modification coherently govern—transactions in which the mandatory fees attach to a service rather than to any individual good.

Finally, a single total for a basket of goods necessarily changes each time an item is added or removed: the total after the first item differs from the total after the second, and so on throughout the shopping session. Any figure displayed while the customer is still shopping is therefore transient and cannot function as the stable, "advertised" total the rule contemplates. The all-in concept presupposes a fixed number to advertise even though no fixed number exists until the customer completes their basket—which is precisely the point at which Instacart already provides a complete, itemized total of fees under § 5-16(d)-style disclosure.

V. A Single "Total Price" Cannot Be Computed Without Specific Variable Information

Even setting aside the composition of the basket, a true total often cannot be computed at the point of advertisement or general display, because the variables—relating to the services, not the price of the good—that determine mandatory fees are unknown until certain information is known and the consumer has made their final selections. In a print or digital advertisement, or in a general product display, the seller does not know who is viewing the price, and therefore cannot know which fees will apply. Three price-determining variables illustrate the point:

Membership. Instacart cannot know whether a given viewer is an Instacart+ member entitled to $0 delivery fees. The same advertised item carries a different delivery cost for a member and a non-member.

Distance. Instacart cannot know a viewer's delivery address, and so cannot know whether distance- or service-distance-based fees will apply to that viewer's order.

Fulfillment method. Different fees apply to pickup vs delivery and Instacart cannot know which method a consumer will choose until the consumer chooses it.

Because § 5-16(a) defines "total price" as the *maximum* total of all charges a consumer must pay, the only way to state a compliant "total price" to an unknown viewer would be to display the worst-case fee stack—the highest combination of delivery, distance, and service fees—for every viewer. That would overstate and misrepresent the price for the large share of customers who are members, who live nearby, or who choose pickup, and it would defeat the very comparison-shopping rationale the rule is meant to serve. Consumers who compare two advertised "totals," each inflated to a maximum that neither will pay, learn nothing useful about which option is actually cheaper for them. And the rule hurts the very consumer it is meant to protect.

The proposed rule already concedes the underlying point. Section 5-16(a) excludes from "total price" the "postage or carriage charges that will be reasonably and actually incurred to ship a physical good to the consumer," because such shipping costs cannot reliably be known up front—the same reason the FTC permitted even lodging and ticketing sellers to exclude shipping charges from the all-in price it otherwise required.[16] The costs of delivering groceries are subject to the same contingency, and indeed to more of it: they vary not only with the buyer's location but with the date and time of delivery, the fulfillment method, the customer's membership, and the composition of the basket. The logic that justifies the rule's own shipping carve-out applies with at least equal force to delivery-dependent fees.

The better course for these transactions is the one the pre-consent provision of the rule already gestures toward: clear and conspicuous disclosure of the nature and existence of the fees that may apply, together with the price-determining factors, followed by a complete, itemized total once the consumer has made the choices that fix the price. That is precisely the approach Minnesota and Virginia adopted for price-variable transactions—disclosing up front "(1) the factors that determine the total price, (2) any mandatory fees associated with the transaction, and (3) that the total cost of the services may vary"[17]—and it is, in substance, what § 5-16(d) already requires before the consumer consents to pay.[18]

[16] Fees Rule, 90 Fed. Reg. at 2091 (recognizing that "precise shipping costs may not be knowable until the end of a transaction" and permitting even the live-event ticketing and short-term lodging industries to exclude shipping charges from the total price displayed up front); *see also* The Rule on Unfair or Deceptive Fees: Frequently Asked Questions, Fed. Trade Comm'n (May 2025).

[17] Minn. Stat. § 325D.44; Minn. Att'y Gen., *Frequently Asked Questions About Minnesota's New Price Transparency Law*, at 3.

[18] Va. Code § 59.1-587 (a "price-variable supplier," such as a food delivery platform, need disclose at the point of selection only the factors determining the final price, any mandatory fees, and that the total cost may vary).

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VI. The Rule's Economy-Wide Scope and Enforcement Provisions Raise Questions of Authority That Warrant Narrowing

Beyond these practical difficulties, the breadth of § 5-16 raises two related questions about the scope of the Department's authority that, in our respectful view, counsels in favor of narrowing the rule and grounding it more firmly in established law. We raise them not to invite dispute but because addressing them now would place the rule on the firmest possible footing and reduce the risk—and associated regulatory uncertainty—that the rule is later found to be overbroad or beyond the Department's authority.

New York City's Consumer Protection Law was enacted as a supplement to Section 5 of the FTC Act and is to be interpreted consistent with how Section 5 has been construed by the FTC and the courts.[19] On that understanding, Section 5 marks the outer boundary of the Department's authority in this area. As a result the rulemaking authority the Department invokes for this rule—NYC Admin. Code §§ 20-701 and 20-702—operates within that boundary and does not provide a vehicle to implement requirements that are inconsistent with how Section 5 has been interpreted by the FTC and the courts.

That matters here because the FTC has already addressed junk fees and did so with deliberate restraint. Although the Commission proposed an economy-wide fee rule in 2023, it confined its final 2025 Fees Rule to short-term lodging and live-event ticketing—industries with a documented history of deceptive pricing and comparatively homogeneous products—and chose a case-by-case approach for other industries, without any recordkeeping requirement and without a burden-shifting presumption.[20] The Commission narrowed its rule for the very reasons discussed above: an all-in mandate suits single-item, homogeneous transactions, not variable-basket transactions whose price depends on consumer selections and cannot be known until the end of the ordering process. The Department's industry-neutral rule thus departs from, rather than tracks, the FTC's considered interpretation of how price-transparency obligations should apply across differing transaction structures.

The Department's rule also threatens to open a wider gap with the FTC in the online food- and grocery-delivery sector. That sector is the subject of active rulemaking by the FTC, which is considering, among other things, how to handle variable and contingent fees. The FTC's advanced notice of proposed rulemaking recognizes that the sector is unique: It involves at least three parties, with a delivery platform serving as an intermediary between the other two. Prices may be affected by merchant policies, platform policies, or both. And prices are inherently variable. For example, delivery costs cannot be fixed across the board because consumers order

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[19] *See* NYC Admin. Code §§ 20-702. The New York City Consumer Protection Law was enacted as a supplement to, and is to be interpreted consistently with, Section 5 of the FTC Act as construed by the FTC and the courts.

[20] Fees Rule, 90 Fed. Reg. at 2083–84 (explaining the decision to narrow the rule to short-term lodging and live-event ticketing and to proceed case-by-case elsewhere).

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goods from different locations. These features will likely lead the FTC to adopt an approach tailored to the sector—one that will doubtless differ from the Department's proposed rule.

Section 5-16 departs from that federal interpretation in three respects that map directly onto the concerns above: First, it imposes an economy-wide all-in mandate rather than a sector-specific one (§ 5-16(b)–(c)). Second, it adds an affirmative recordkeeping mandate, enforceable on the Department's demand (§ 5-16(f)(1)). Finally, it creates an adverse evidentiary presumption when required records are not produced (§ 5-16(f)(2)). Each of these extends beyond what the FTC adopted after extensive study. Aligning § 5-16 with the FTC's narrower, sector-specific approach—or, at a minimum, carving out the variable-basket transactions the FTC itself declined to subject to an all-in rule—would mitigate the concern and bring the rule into closer harmony with the federal standard the Consumer Protection Law is designed to track.

The decision whether to impose an economy-wide all-in pricing regime is not a matter of administrative statutory interpretation, but rather involves a substantial policy judgment about which pricing practices are fair. Policy judgments belong to the city council, not the Department.[21] Yet several features of the proposed rule, considered together, suggest that the Department is making the fundamental policy judgment for itself. First, the rule makes a value judgment about which pricing practices are fair or deceptive, rather than balancing the costs and benefits of a particular disclosure. Second, rather than filling in the details of a substantive standard the City Council itself prescribed, the rule is providing a new, economy-wide statutory requirement on how prices may be presented. Third, it follows a legislature that did not resolve the underlying pricing question, did not delegate to the Department the authority to decide which specific practices to prohibit. Fourth, the Statement of Basis rests principally on the actions of other jurisdictions rather than on studies, surveys, or an evidentiary record developed through the Department's own expertise.

These concerns warrant caution. The Department must exercise its authority in a way that is closely tied to Section 5 as the FTC and the courts have construed it. Narrowing the rule to track the FTC's sector-specific approach mitigates this concern because it tethers the Department's exercise of authority directly to the federal interpretation the Consumer Protection Law incorporates.

[21] *See N.Y. Statewide Coal. of Hisp. Chambers of Com. v. New York City Dep't of Health & Mental Hygiene*, 23 N.Y.3d 681, 16 N.E.3d 538 (2014) ("By choosing between public policy ends in these ways, the Board of Health engaged in law-making beyond its regulatory authority . . . ." (citing *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987))); *see* also *Greater N.Y. Taxi Ass'n v. N.Y.C. Taxi & Limousine Comm'n*, 36 N.E.3d 632 (N.Y. 2015) (holding that a legislature may delegate rulemaking authority only when "reasonable safeguards and guidelines are provided to the agency"); *McKinney v. Comm'r of New York State Dep't of Health*, 15 Misc. 3d 743, 755, 836 N.Y.S.2d 794, 804 (Sup. Ct. 2007) ("The Legislature may constitutionally confer discretion upon an administrative agency only if it limits the field in which that discretion is to operate and provides standards to govern its exercise."), aff'd, 41 A.D.3d 252, 840 N.Y.S.2d 6 (2007).

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VII. <u>Clear, Itemized Disclosure Tailored to Variable-Basket Delivery Serves Consumers Better Than a Rigid Single-Total Mandate</u>

As explained above, for variable-basket, consumer-selection-dependent transactions, clear and itemized fee disclosure serves consumers better than a rigid single-total mandate. A single mandated total in this setting does not produce the type of transparency that the rule is designed to address. Rather, it produces multiple different types of consumer confusion, including: (1) a fictional per-item total that will change once an item is added with the order level fees; (2) a transient total that changes with every item added to or removed from the cart; and (3) an overstated "maximum" total that misstates the price for the many customers who pay lower fees because of the choices they make when placing the order. The itemized, pre-purchase breakdown Instacart already provides is more accurate than a single mandated total—as is the breakdown § 5-16(d) itself contemplates. Indeed, on Instacart's New York City storefronts, every mandatory fee—the service fee, the delivery fee, and any applicable regulatory response fee—is already disclosed on the store page itself, before the customer selects a single item, as Figure 2 illustrates. That up-front, itemized disclosure gives customers the fee information they need in a form that a single blended "total price" cannot match, and it does so without implying a per-item charge that does not exist.

The alternative Instacart supports is a narrowly tailored rule that bars misrepresentations and requires clear and conspicuous disclosure of the fact that fees apply—particularly where delivery is advertised as "free," nominal, or discounted—rather than a rigid all-in total for transactions whose total cannot be stated prior to checkout. This is the approach Instacart urged the FTC to adopt,[22] and it directly serves the transparency the Department seeks: it ensures that promotional "free delivery" claims are paired with clear disclosure of any other mandatory fees, without demanding a single advertised number that is speculative or wrong for most viewers. This alternative is not less transparent—it is transparency that accounts for the structure of the transaction: display the retailer's item prices as the price of the goods, and disclose the platform's mandatory fees, clearly and conspicuously, as the price of the services. That is what Instacart already does, what Massachusetts expressly permits for delivery platforms, and what gives the consumer an accurate picture of both prices rather than a single figure that is accurate as to neither.

A rule that instead requires every item price to incorporate all order-level fees would distort prices and undermine the objective of the rule. Screen space—especially on the smartphones most customers use—is scarce. Requiring that space to be devoted to speculative or artificially inflated maximal fee figures would crowd out the information customers value most,

[22] Instacart ANPRM Comment, *supra* (urging a rule barring misrepresentations about the amount a customer will pay, the fact that fees apply, and "free" or discounted delivery claims, coupled with clear and conspicuous disclosure of the fact that mandatory fees apply); *see* Rule on Unfair or Deceptive Fees in Online Food Delivery Services, 91 Fed. Reg. 20381 (Apr. 16, 2026).

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such as item prices, delivery timing, and product and nutritional information; it would bury rather than surface the price signal that consumers need to make informed online grocery purchases; and it would impair the item-by-item comparison shopping that drives competition and lower prices.[23] Disclosure of this kind—where information is inaccurate or misleading—degrades the very consumer experience the rule is meant to protect. The rule would make upfront item prices meaningless and force consumers to wait until checkout to gain an accurate understanding of the total price of their grocery order.

We note, finally, that § 5-16(b) already excepts from the rule any offer, display, or advertisement whose regulation is preempted by federal or state law, and that the Statement of Basis expressly invites comment on whether particular laws conflict with the rule. Again, the Department's authority under the Consumer Protection Law is bound by Section 5 as the FTC has construed it. So it should mirror the considerations that led the FTC to exclude variable-basket transactions from its all-in rule. That is, § 5-16 should be construed not to require a single all-in total for those transactions. Even better, the Department should revise it to say so expressly.

VIII. Requested Modifications and Conclusion

Instacart shares the Department's goal of protecting consumers from hidden fees, and its own disclosures show that transparent, itemized fee disclosure is both achievable and good for consumers and businesses alike—in New York City, Instacart already discloses every mandatory fee directly on the storefront, before any item is added to the cart. To ensure the proposed rule advances that goal without producing confusion and inaccuracy in variable-basket transactions, and to place the rule on the firmest legal footing, Instacart respectfully requests that the Department:

> **1.** Exempt or carve out variable-basket, consumer-selection-dependent transactions—such as online grocery and prepared-food delivery—from the all-in requirement of § 5-16(c), and instead permit, for those transactions, disclosure of the price-determining factors together with the clear, itemized pre-consent breakdown that § 5-16(d) already requires, as Minnesota and Virginia allow;
>
> **2.** Narrow the rule to align with the sector-specific approach the FTC adopted in its 2025 Fees Rule after extensive study, rather than an economy-wide all-in mandate; and

[23] Research confirms that more disclosure is not always better: a study by the MIT Sloan School of Management concluded that "[t]oo much information dilutes the potency of the message[,] and it will be ignored." MIT Sloan Office of Communications, *MIT Sloan study highlights how disclosures have minimal impact on consumer behavior* (May 9, 2019).

3. Reconsider the recordkeeping mandate and adverse evidentiary presumption in § 5-16(f), which extend beyond the federal standard and impose burdens not shown to be necessary for the transactions addressed here.

4. If a rule is adopted without the requested exemption or narrowing, provide a delayed effective date of at least 12 months from publication of the final rule to provide sufficient time to allow businesses to implement changes necessary to comply with the rule.

Instacart would welcome the opportunity to work with the Department on a narrowly tailored, misrepresentation-focused rule of this kind, and to share what we have learned in building disclosures that consumers understand and value. We appreciate the Department's consideration of these comments and its continued work to protect New York City consumers.

Respectfully submitted,

MAPLEBEAR INC. d/b/a INSTACART

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Tom McNeil
Government Affairs Senior Manager
Maplebear Inc. d/b/a Instacart

From: Kevin Erickson
To: rulecomments (DCWP)
Subject: [EXTERNAL] NYC junk fee rule
Date: Friday, August 7, 2026 11:44:11 PM
Attachments: FMCnycjunkfeerule.pdf

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Please see the attached file. Thanks!

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Kevin Erickson
Director
Future of Music Coalition
[redacted]

Via rules.cityofnewyork.us
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
Re: Proposed Rule Prohibiting Charging Consumers Hidden "Junk Fees"

Comments of Future of Music Coalition

For 25 years, Future of Music Coalition has worked to ensure artists have an independent voice on policies, laws, and business practices that impact their lives and livelihoods. In our view, good public policies align the interests of artists and fans; no one cares more than artists about ensuring that fans have positive experiences, because our careers depend on it.
We offer comments in strong support of the proposed rule, and also suggest some potential further steps for future action to more extensively protect workers, consumers, and the arts and culture ecosystem.

In our experience, rules requiring full pricing transparency can offer practical support and protection to individual creative workers in their capacities as consumers of products and services. As one example, NYC's tough hotel fee disclosure rules have already been quite helpful to musicians booking accommodations when visiting NYC for performances or recording sessions by facilitating easy comparison shopping between lodging options. This has the added benefit of encouraging cultural tourism, making it easier and more affordable for patrons to visit the city and take in music, art, dance, theater, and other forms of culture.

The new proposed rule as applied on an industry-neutral basis to the rest of the economy would similarly be helpful in practical ways to keep the pursuit of creative careers in the city more affordable and sustainable. For example, working musicians renting apartments in NYC would no longer encounter surprise fees appended to their rental bill, or fees that don't actually go where they say they're going. We welcome this enthusiastically.

Musicians also have an interest in fee transparency in their capacities as workers in the live entertainment industry, and most of our comment will focus on this part of the picture. It's widely understood that ticket fees have been a source of frustration for consumers, both because of the unwelcome surprise of fees that are hidden until the end of the transaction, and because the amount of these fees has risen sharply over time for some categories of events, both in real dollar amounts and as a percentage of the overall ticket price. Fees are also frustrating to performers, who typically do not have any role in setting these fees or receive any part of them, yet may bear the reputational costs of high fees. As one artist recently noted in a federal hearing on live music policy:

> "we, the bands and musicians are also, to fans, the face of ticket sales. [...] if mysterious fees add twenty or thirty percent at checkout, they can't complain to Ticketmaster—they come to our Facebook page. So, business practices we can't control hurt our crucial relationship with our fan community."[1]

[1] Franz Nicolay.(2026). "Testimony Before House Judiciary Spotlight Forum on Live Nation" https://pianofighter.substack.com/p/my-full-congressional-testimony-on

Regulators and policymakers at federal and state levels have sought to address these frustrations, but only with mixed success. We are encouraged that DCWP has been more deliberate about seeking perspectives from diverse impacted stakeholders including creative workers and small businesses; this is crucially important for arriving at the right policy result.

DCWP's proposed rule for NYC builds upon the floor created by the FTC's rule. It is carefully drafted to comply with the FTC's guidance that state and local authorities are free to enact rules that go further as long as it remains possible to simultaneously comply with the FTC rule. As drafted, it also avoids conflict with NY State law on ticket fee transparency, which is admirably tough, though frustratingly under-enforced.

That said, NYC has an opportunity to go further. The proposed rule is a meaningful step forward, and we welcome it, but we also encourage DCWP to consider adoption and enforcement of industry-specific rules for live events that go beyond this proposed industry-neutral rule and match or exceed the standard set in NY state law. Stronger protections for consumers, attuned to the unique considerations present in the live events industry will benefit eventgoers, creative workers, and small businesses including promoters and venues, and more effectively put the power of competition to work.

Understanding the basics

A comprehensive account of the origin of ticket fees, where the money typically goes, and what accounts for increases in ticket fees over time is beyond the scope of this docket. Nonetheless, a few basics may be worth stating directly. First, it would be an analytical mistake to call all mandatory ticket fees "junk," as in many cases, fees are associated with real expenses, are fairly assessed, and are transparently communicated to consumers; venues and presenting organizations may regard them as an important and necessary source of revenue in the current marketplace. In other cases though, fees are unreasonably high, untethered from expenses, and exist to pad profits, as has been the case in the consumer banking industry that led regulators to first coin the phrase "junk fees."

Secondly, artists and other performers rarely have any insight into or control over fees. Most typically, a headlining performer or her representative may negotiate the face price of the ticket based on a range of factors, including projected production expenses, audience needs and expectations, and the competitive marketplace,[2] but have no role in setting fees or ancillary charges beyond that face price; they typically receive no portion of these fees.

Thirdly, while practices vary from venue to venue and show to show, arts nonprofits and independent venues typically charge lower fees than venues owned and operated by large

[2] Note that our comments focus on concerts, comedy/lecture events, or other performing arts events; pro sports ticketing operates with a different labor model and thus a different set of considerations.

corporations.[3] All of these unique factors are important to keep in mind when evaluating proposed interventions. Considered together, they call for an approach that may offer more extensive disclosure requirements for live event ticketing fees than other parts of the economy.

Building on existing foundations without conflict

This proposed rule builds upon the floor set by the FTC's 2025 rule on unfair and deceptive fees, but extends beyond the ticketing and short-term lodging industries. As various states have sought to regulate fees, including ticket fee transparency, we've observed some misleading claims from stakeholders who prefer fee disclosure mandates not go beyond the standard set by the FTC rule.[4] Typically, these arguments seem crafted to deceive state or local policymakers who haven't followed federal developments closely. These stakeholders have suggested that proposed tougher regulations conflict with the FTC's rule, but they never actually identify a specific point of conflict.

In fact, the FTC's current rule does not conflict or preempt with well-drafted state and/or local efforts to go further, whether by increasing the range of businesses that rules apply to or by adding tougher provisions on either/both an industry-neutral or industry-specific basis.

A careful side-by-side reading of the proposed NYC rule alongside the FTC rule make it clear that no conflict exists. While is understood that valid federal law can preempt state or local law in a handful of circumstances, none apply here: there is no express pre-emption in the FTC rule, nor is there any claim of "field preemption" in consumer protection; businesses have long complied with both Section 5 of the FTC Act and parallel state and municipal statutes modeled on that act. To the contrary, the FTC rule expressly makes clear that states are free to offer stronger consumer protections than exist in the FTC rule, as long as businesses can comply with both state law and the FTC rule simultaneously.[5] While the rule itself does not explicitly describe the same lack of preemption applied to local/municipal law, FTC's official FAQ guidance does just that:

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[3] see National Independent Talent Organization, 2024 "New York Ticket Fees Report" https://nitolive.org/wp-content/uploads/2025/10/NITO-NY-Ticket-Fees-Report-.pdf "Generally, independent venues—those unaffiliated with corporate operators—had lower fees. These venues often used non-Ticketmaster platforms like DICE, Tixr, Eventbrite, or in-house systems."

[4] See for example National Consumers League. 2026. "Let's Bring Real Reform to Live Events In Maine." https://nclnet.org/lets-bring-real-reform-to-live-events-in-maine/ alleging that Maine's proposed law would be "inconsistent" with the FTC rule, or Sports Fans Coalition 2025. "Testimony on Connecticut HB7182" https://www.cga.ct.gov/2025/gldata/TMY/2025HB-07182-R000312-Hess, Brian, Executive Director-Sports Fans Coalition-Supports-TMY.PDF claiming falsely "the language as drafted would likely fall into conflict with the FTC's junk fee rule." Notably, National Consumers League and Sports Fans Coalition have both long enjoyed the financial support of major players in the ticket resale industry who prefer only weak versions of all-in pricing legislation. While these objections appear motivated by opposition to mandatory itemization of fees, which is not present in the current DCWP proposal, they illustrate how misleading claims about "conflict" with federal rules can be used to undermine transparency and worker protection.

5 As the rule notes: "Proposed § 464.4(b) specified that a State law providing consumers with greater protections than the rule does not, solely for that reason, make the State law inconsistent with the rule. When a State law offers greater (or,in some circumstances, even lesser) protection than the rule, if businesses can comply with both, they are not inconsistent. Thus, as commenters noted, the rule would establish a regulatory floor rather than a ceiling"

- "Businesses must comply with the Rule and all applicable state or local laws and regulations. If a state or local law or regulation directly conflicts with the Rule and a business can't comply with both, the Rule will supersede the state or local law or regulation but only to the extent of the conflict. In other words, a business still must comply with all parts of the state or local law or regulation that do not directly conflict with the Rule.
- If a state or local law or regulation gives people greater protections than the Rule, businesses must comply with the Rule and the greater protections provided by the state or local law or regulation."[6]

Industry Neutral vs Industry Specific

The proposed rule is industry neutral, and there is clear value in an approach that offers protection to consumers and workers in as many parts of the economy as possible, given that surprise fees and misleading fees are an issue in so many different industries. At the same time, industry-neutral approaches can be supplemented by additional rules that address unique considerations on an industry-specific basis.

We are aware that some advocates have historically expressed concerns about industry-by-industry approaches to regulation and rulemaking, stemming from a concern that industry-specific approaches might be an invitation to industry stakeholders to seek carveouts that weaken proposed interventions. We therefore want to be very clear that what we are advocating for is precisely the opposite: we want *stronger* rules for the live event sector, not weaker.

There is clear precedent for such an approach. NYC already recently adopted rules on hotel fee disclosures that go beyond all-in pricing to include provisions regarding mandatory up-front disclosure of deposit fees and holds charged to debit/credit cards for hotel reservations. This is an industry-specific concern and an additional tougher level of consumer protection based on unique business practices associated with that sector. Rules specific to the live event ticketing sector beyond the industry-wide approach proposed in this rulemaking could similarly address specific concerns and fill existing enforcement gaps.

Up-front itemized fee disclosure for live event ticketing can accompany economy-wide junk fee approaches.

Multiple of the state "junk fee" laws positively cited by DCWP in the "Statement of Basis and Purpose of Proposed Rule" are accompanied by additional levels of fee transparency applied specifically to the live event ticketing market. For example, Minnesota's "junk fee" law HF 3438 was accompanied by HF1989, which included mandatory up-front fee itemization for live event tickets; these bills were intended as complementary. Similarly, Massachusetts' 2025 economy-wide junk rules were preceded by 2024 rules that similarly require up-front itemization of fees alongside the total price of the ticket. Most recently, Washington DC's RESALE Act, adopted unanimously last

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[6] Federal Trade Commission. 2025. "The Rule on Unfair or Deceptive Fees: Frequently Asked Questions." Federal Trade Commission. May 1, 2025. https://www.ftc.gov/business-guidance/resources/rule-unfair-or-deceptive-fees-frequently-asked-questions#differentrequirements.

month by the DC council, includes strong itemization disclosure provisions in addition to requiring display of the total price.[7] All of these laws were adopted with broad support from artists, independent venues, and nonprofit arts presenter groups.

This is in addition to the precedent that exists in NY state law. While current NY state law on ticketing is decidedly a mixed bag, the state has in place tough all-in-pricing requirements that go further than either the FTC rule or the proposed NYC rule while conflicting with neither.

What NY state law on ticket fees says

NYC's draft rule addresses two problems: surprises at the end of the transaction, and problems of fees not going where they are described as going. However, the draft rule on its own does not provide a mechanism to address the problem of fees climbing higher and higher, both in real dollars, and as a percentage of a total purchase price, in ways that may not be evident to consumers.

The good news is that New York State's tough transparency measures fill this gap. They require that operators and ticket sellers

> […]shall disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket, and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser. Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase. Disclosures of subtotals, fees, charges, and any other component of the total price shall not be false or misleading, and may not be presented more prominently or in the same or larger size as the total price.[8]

The bad news is that unfortunately, we have seen this provision go unenforced; we've been unable to find evidence of enforcement action since it was adopted in 2022.

Anecdotally, compliance with the total price display requirement as required by both the FTC rule and NY state law currently appears fairly strong, but compliance with the state law's requirement of up-front itemization of fees is more mixed, particularly among large corporate ticket firms. If fee breakdowns are offered, they are often hidden behind additional clicks and toggles, or delayed until checkout, after payment and purchaser info is collected—after a prospective consumer is all but committed to the purchase. Much of this is in direct defiance of clear guidance provided by the Department of State.[9] (Compliance is typically better among non-profit and independent venues.) In this way, some of the biggest companies in both the primary and secondary market are using the same "dark patterns" to hide or delay the breakdown of fees that were once employed to hide or delay the displayed total price.

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[7] Massachusetts' law will go into effect later this year; DC's takes effect Jan 1, 2027.

[8] NY Arts & Cult Aff L § 25.07 (2025)

[9] N.Y. Dep't of State, Response Letter (June 2023), https://dos.ny.gov/system/files/documents/2023/06/response-letter-redacted.pdf.

Whether the lack of enforcement at the state level stems from a need for the Department of State to belatedly codify these provisions or resourcing/prioritization concerns, the result is that NY has a tough law that is largely going unenforced, and ticketbuyers and artists are being harmed as a result.

NYC could step up here and use its own regulatory and enforcement authorities to help address this, at least for events that take place in the city. Whether by a rulemaking subsequent to this one or by council action, NYC should adopt and enforce city-level policies that match or surpass the standard in New York State law regarding itemization of fees.

Alternatively, we see no conflict between NYC's proposed rule and the state law, and so another viable approach to achieve the same outcome may be simply to find or designate appropriate city enforcement authority to enforce the state law. If this would require legislative action at the state level, we would be supportive of such a move.

We also understand that Ticketmaster is apparently interpreting "clear and conspicuous" disclosure as allowing them to continue to hide fee breakdowns behind additional clicks/toggle buttons while claiming to be in compliance with the state law. It may be advisable to consider language that clarifies that itemized fee disclosure must be *unavoidable*.

Under the current proposal, live events would be subjected to more overlapping rules and regulations than other industries, but despite minor technical differences, it is not difficult for ticket sellers to comply with all applicable pieces. For example, the proposed NYC rule requires that the total price be at the same size or larger than any component piece, while the state law requires that that components of a total ticket price be displayed at a smaller size than the total price. Meanwhile the FTC rule does not mention size or font but requires that the total price be "more prominent" than component parts. And NYC's § 20-881 requires display of the total price in any advertising but makes no mention of size. A ticket seller simply complies with all four of these simultaneously by displaying any component charge at a smaller size than the total price, and ensuring that the overall display renders the total price as more prominent.

Why itemization matters to various stakeholders

Seeing how much of the ticket price consists of fees can be important information for consumers; as US PIRG has elsewhere argued: "Both the Total Price and list of mandatory fees are important for consumers to make an informed decision and to have the ability to price shop and compare apples to apples."[10]

Ideally, clear and conspicuous upfront disclosure of fee amounts alongside total prices allows two important forms of healthy competition to happen simultaneously. These are: competition between various entertainment providers on the basis of total price, and competition between various

[10] US PIRG Education Fund. 2024. "RE: "Unfair or Deceptive Fees" (Junk Fees) NPRM, R207011." https://publicinterestnetwork.org/wp-content/uploads/2024/02/USPIRG-COMMENTS-to-FTC-FEB072024-Unfair-or-Deceptive-Fees-NPRM-R207011.pdf

venues and ticketing services on the basis of how much they're charging in fees. This competition works to benefit consumers and allow them full transparency to make informed choices.

Artists, performers, and ensembles care about this issue because they are only typically able to negotiate pricing and compensation based on the face price of the ticket, not the fee amounts. In the worst situations, companies like Ticketmaster can continue to charge more and more in fees, so consumer-facing prices go up, but more and more of the overall total price consists of fees and less and less of that price actually makes it to performers. Yet artists can face reputational harms as a result of high fee-inflated prices they can't control.

These are some of the reasons why artist groups including Future of Music Coalition, The Recording Academy, Artist Rights Alliance, Music Artists Coalition, Music Workers Alliance, United Musicians and Allied Workers, American Federation of Musicians and SAG-AFTRA all have called for all-in pricing with up-front itemization of fees (as is called for in NY Arts & Cult Aff L § 25.07) as it is the only truly worker-friendly and fan-friendly version of all-in pricing.

Similarly, without itemization requirements, small upstart competitors in primary ticketing who've been working to keep fees lower than the biggest firms lose much of the consumer-facing competitive advantage associated with keeping those fees down, since consumers aren't easily able to compare fee amounts to see that companies like Dice or Eventbrite routinely charge less in fees than Ticketmaster. The same is true of the many independent venues, small businesses and arts nonprofits that endeavor to keep fees relatively low—certainly lower than what is typical of Live Nation and AEG venues. We want event presenters and ethical ticketing firms that charge lower fees than rivals to benefit from positive goodwill associated with this business choice.

For live events, merely allowing voluntary itemized disclosure is insufficient

The proposed rule makes it a deceptive trade practice to offer, display or advertise the price of a good or service without clearly and conspicuously displaying the total price, meaning the price including all mandatory charges and fees. Appropriately, the proposed rule does not prohibit anyone from providing more detailed pricing breakdowns that detail the components of the total price as long as the total price also appears. In this way, DCWP's proposal is superior to some other approaches, such as the recently passed Illinois law HB228 which on its face fails to explicitly allow disclosure of component pieces of the price, even when the total price is displayed alongside it.[11]

Still, in our view, allowing firms to voluntarily disclose this info is insufficient to create the healthy competitive dynamic we want to see. The many arts nonprofits and independent venues that currently display total price alongside a fee breakdown are doing the right thing for audiences and performers (and complying with the state law) but as a result of doing the right thing, face a competitive disadvantage compared to corporate venues and secondary platforms that make it

[11] Ultimately, after belatedly understanding musicians' and venues' concerns, that bill's sponsor offered a statement of legislative intent from the floor clarifying intent and (hopefully!) protecting ticket-sellers ability to offer consumers full transparent breakdowns of pricing, but this remains a pitfall that well intentioned regulators and policymakers working on fee transparency should be mindful to avoid.

difficult to see how much of the purchase price consists of fees (and who may be ignoring the state law.)

To use typical figures, if venue X charges 19% fees and chooses to display the itemized fee breakdown to prospective ticketbuyers, but venue Y charges 35% and hides the breakdown of fees behind toggles so most consumers see only the total price, consumers get annoyed at Venue X's 19% fees, but not at venue Y, the worse offender.

This is a corollary to the same logic problem that drove the adoption of up-front all-in pricing mandates: disclosure only really works to competitive benefit resulting in lower fees if everyone in the ecosystem operates at the same level of disclosure; otherwise firms that voluntarily do the right thing can be penalized.

New Developments

Recent news reporting has contributed new evidence of the importance of upfront fee disclosures in event ticket listings. In one case,[12] Ticketmaster was found to have hiked per-ticket fees after transitioning to all-in pricing. Because those fees are typically hidden behind a toggle (in our view, failing to meet the clear and conspicuous standard in existing NY law), consumers don't typically see how much of their ticket price consists of fees (or if they do, they don't see it until checkout/ after payment and purchaser info is entered, which mirrors standard "dark patterns" practices.) While there's an arguable case that there could be an enforcement action here under the existing FTC rule, or under the provision in the proposed NYC rule that requires fees be described accurately, enforcing NY state law's required upfront itemization of fees would disincentivize this fee-hiking and reward firms that keep fees low.

Another recent report[13] found that Stubhub and Ticketmaster's secondary marketplace have been experimenting with undisclosed variable pricing on the resale market, offering different consumers the same ticket for different total prices.—the ticket price doesn't change but the fees do. Some have speculated that the differences in prices may be personalized, reflecting the use of surveillance pricing. It's easy for them to get away with this because they don't make it easy to see how much of the ticket consists of fees. Perhaps direct regulation of surveillance pricing would address this. But enforcing fee itemization provisions would disincentivize this behavior by putting consumers' dislike of fees to work.

Addressing objections

Some opponents to full up-front fee disclosure have claimed that consumers only care about the total price, not how much of their ticket price consists of fees. While we're not aware of any survey

12 Rosalind Adams.(2026) "Ticketmaster Quietly Raised Other Fees After US Crackdown on Hidden Charges." *The Guardian*. https://www.theguardian.com/business/2026/mar/26/ticketmaster-fees-hidden-charges

13 Emily Stewart. (2026) "StubHub Dynamic Pricing Experiment Fees Ticket Costs." *Business Insider* https://www.businessinsider.com/stubhub-dynamic-pricing-experiment-fees-ticket-costs-2026-6

data that measures this point directly, we certainly have plenty of anecdotal evidence that fans are frustrated both by high ticket prices generally and high fees specifically.

One compelling example is provided by The Cure's 2023 tour, which included a 3 day stint at Madison Square Garden. The band endeavored to engage in fan-friendly ticketing practices and negotiated for tickets to be priced affordably ranging from $25-approximately $125 face value. Fan excitement turned to frustration when fans found fees added to the face price of tickets that ultimately resulted some fans paying total prices that were more than double the face price. Responding to outcry from fans, Robert Smith, the band's frontman, personally intervened and (using leverage most musicians don't have) compelled Ticketmaster to refund $5-$10 of the fees to purchasers for each ticket sold and charge less for remaining tour dates.[14]

Here, fans were not upset merely about fees being a surprise at the end of the transaction but that fees were so egregiously high compared to the cost of the ticket. If fans had only been presented with a $50 ticket rather than seeing a $25 face price ticket, they might have thought they were getting their money's worth. Consumers have to be able to *see* fee amounts to be able to tell whether they're getting hit with too-high fees, in order to generate the competitive imperative for firms to keep fees low. This illustrates that requiring a ticket seller to display the total price solves the problem of an unpleasant surprise, but it doesn't actually get rid of "junk fees." Rather, it can just make them invisible by bundling junk fees into the total price, which is not a good outcome for consumers.

Other critics of fee disclosure provisions like those in the state law have claimed that fee disclosure is "confusing" to ticketbuyers. This is easily debunked by looking at any of the venues that are complying with NY's state law (or by shopping online for tickets to events in jurisdictions with similar provisions, such as Minnesota).

Additional guidance would be welcome

The provisions that forbid "mispresenting the nature, purpose, amount or refundability of any fees or charges, or the identity of the good or service for which the charge or fee is imposed" are important. However, we have some questions about when a fee description would be considered deceptive. As the Statement of Basis and Purpose argues, "businesses cannot, for example, deceptively charge a 'service fee' that does not support service workers. This is a useful frame for examining "service fees" that added to a bill by food delivery apps, for example; a consumer who sees a service fee on a delivery app bill might reasonably assume that money goes to the individual worker who delivers their meal, and if that isn't the case, that would be misleading. Service fees for tickets, however, don't typically go to service workers, nor is there any consumer expectation that this would be the case. Existing state law explicitly describes "service charges" being assessed and added to a ticket price for a range of services where this would not be

14 Ben Sisario. (2024) "How Robert Smith of the Cure Became Rock's Most Dogged Activist." *The New York Times*. https://www.nytimes.com/2024/11/01/arts/music/robert-smith-cure-songs-of-a-lost-world-ticketmaster.html

the expectation.[15] To be clear, we see this not as a conflict between state law and the proposed rule, but as an area where additional interpretive clarity would be welcome.

Therefore, we encourage DCWP to prepare written guidance to diverse event presenters and ticketing firms on recommended language they can use to adequately and concisely communicate to prospective ticket buyers the nature and purpose of fees, given the complexity of contractual relationships, where a line item for "fees" may bundle different kinds of fees including facility charges, credit card processing, and complicated ticketing service deals, all which add up to a fee charged beyond the negotiated face price.

In other industries, it might be actually be a good outcome for sellers of goods or services to offer only a total price rather than wrestle with the question of how to get the itemized language right for fees. But as we've discussed, in live events, consumers and workers both benefit when prospective ticketbuyers see the breakdown of face price and fee alongside the total.[16] And in light of existing state law, event presenters and ticket sellers really must break these fees out into their components.

All that said, this should be relatively easy to address with communication and collaboration between DCWP and event presenters/ticket sellers ahead of the implementation of the new rule.

In conclusion...

We are grateful for the work of DCWP's team in drafting and preparing this important measure to protect workers and consumers, and remain available for further consultation on future steps.

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[15] see NY Arts & Cult Aff L § 25.29 (2025) "nothing in this article shall be construed to prohibit a reasonable service charge by the operator or agents of the operator for special services, including but not limited to, sales away from the box office, credit card sales or delivery;"

[16] For the purpose of creating healthy competitive dynamics that encourage ticket fees to stay lower and empower workers, displaying *total* fees up front gets most of the job done; this is why some fee proposals in other jurisdictions have focused on early disclosure of "total fees" as a component of purchase prices. This is in contrast to rideshare apps, for example where drivers especially need the additional assurance about where each fee goes for fee disclosure to be useful/meaningful.

From: russ haven
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comments DCWP Junk Fee Rules
Date: Friday, August 7, 2026 4:02:32 PM
Attachments: NYPIRG Comments to DCWP on Proposed Junk Fees Rules 8-7-2026.pdf

You don't often get email from [redacted] Learn why this is important

Please see attached comments.

Russ Haven, Esq.
General Counsel
NYPIRG
107 Washington Avenue, 2nd Floor
Albany, New York 12210
[redacted]

NYPIRG NEW YORK PUBLIC INTEREST RESEARCH GROUP

VIA EMAIL [rulecomments@dcwp.nyc.gov]

New York City Department of Consumer and Worker Protection
42 Broadway
New York, New York 10004

Re: Prohibitions on Consumer "Junk Fees"

Greetings:

The New York Public Interest Research Group Fund, Inc. ("NYPIRG") submits these comments in support of the New York City Department of Consumer and Worker Protection's ("DCWP's") proposed rules to crack down on deceptive and often hidden fees that can significantly boost the costs of goods and services to consumers – *i.e.*, "junk fees."

Junk fees are a predatory practice, preying on consumers by adding hidden and often unnecessary charges to services and products like banking, hotel reservations, car rentals, cellphone service contracts, event tickets, and car purchases. These gotcha fees often surprise consumers after they've done their shopping and right before they complete the transaction — sometimes even after the purchase has been made.

Call it false or deceptive advertising, a classic "bait and switch" tactic, or a consumer scam, junk fees are big business. The White House Council of Economic Advisors estimated that junk fees cost American consumers some $90 billion each year.[1] Consumer Reports projects that junk fees costs a typical American family of four $3,200 per year.[2]

At their core, junk fee tactics prevent cost comparisons and therefore undermine price competition – a cornerstone of our "free market" system. And they frustrate and harm businesses that act transparently and responsibly.

[1] *Remarks of Chair Lina M. Khan as Prepared for Delivery White House Convening on Junk Fees*, Federal Trade Commission, April 24, 2024. Accessed at www.ftc.gov/system/files/ftc_gov/pdf/remarks-by-chair-lina-m-khan-at-the-white-house-virtual-convening-on-junk-fees.pdf.
[2] *Consumer Reports: Relief from Hidden Fees*, KCRA, August 4, 2025. Accessed at https://www.kcra.com/article/consumer-reports-hidden-fees/65593658.

Regulators have taken notice of the big bite junk fees are taking out of consumers. Federal Trade Commission regulations crack down on deceptive cost disclosure practices with respect to live-event ticketing and short-term rentals.[3]

NYPIRG applauds DCWP for joining the fight against junk fees by adopting a broad-based "industry-neutral" rule that "applies to anyone advertising in New York City ad to New York City consumers."

We look forward to following New York's implementation and enforcement of the junk fees rule and to advocating for similar protections statewide.

Sincerely,

Russ Haven, Esq.
General Counsel

[3] *The Rule on Unfair or Deceptive Fees: Frequently Asked Questions*, Federal Trade Commission. Accessed at www.ftc.gov/business-guidance/resources/rule-unfair-or-deceptive-fees-frequently-asked-questions.

Online comments: 18

- **Efstathios Georgiou**
  I support DCWP’s proposed junk fee rule (§5-16). Hidden fees cost NYC families an estimated $3,200/year, and this rule is a needed step toward transparent pricing. I urge DCWP to: (1) strictly enforce the “mandatory fee” definition so businesses can’t disguise expected charges as “optional”; (2) apply total-price disclosure equally to third-party platforms and apps, not just company websites; (3) consider raising penalty amounts to deter high-volume businesses; and (4) keep the recordkeeping/burden-shifting provision, which is essential for real enforcement. Thank you for protecting consumers from hidden fees.

  —

  Comment added July 9, 2026 10:29am

- **Jacob Quinn**
  Love this, companies love to nickel and dime their customers nowadays. Any laws and protections from that I say Amen!

  Comment added July 9, 2026 6:16pm

- **Anonymous**
  As an NYC resident, consumer, and renter, I fully support DCWP’s efforts to prohibit junk fees. It’s increasingly common for renters to encounter mandatory amenity fees, unavoidable utility sub-metering fees, and even electronic ACH payment convenience fees that are not factored into the headline monthly rent figure (even if separately disclosed later) and thus discourage proper consumer price comparison against total monthly rent.
  Similarly, internet service providers service NYC will often tease a promo monthly rate for new customers, but then add a substantial installation fee at check-out to be able to continue. Much of these practices are the equivalent of a modern-day bait and switch.

The proposed rules will hopefully put an end to these practices across all forms of applicable advertising in NYC. I will join other commenter(s) in suggesting that DCWP raise the proposed fines for Second/Third violations/defaults in pursuit of an appropriately effective deterrent effect.

Comment added July 14, 2026 10:07am

- **S**
  Great idea and should definitely include bills from utilities and phone service, especially Verizon.

  Comment added July 15, 2026 12:24pm

- **Anonymous**
  I respectfully request clarification regarding the scope of the proposed rule. Specifically, it is unclear whether the rule is intended to apply solely to transactions for the purchase of consumer goods or services or whether it also extends to business-to-business advertising and marketing involving goods and services that are not purchased primarily for personal, household, or family use.

  As drafted, the proposal broadly refers to the advertising, display, and offering of goods and services, but it does not expressly distinguish between consumer and commercial transactions. This creates uncertainty for businesses that advertise or market products and services exclusively to other businesses.

  If the Department intends the rule to apply only to consumer transactions, I encourage it to expressly state that limitation in the final rule. Conversely, if the Department intends the rule to reach business-to-business transactions, additional guidance regarding the scope and application of the rule to commercial transactions would be helpful.

  Thank you.

Comment added July 17, 2026 9:36pm

- **National Consumer Law Center**
  Attached please find the comments of the National Consumer Law Center, which focus on rental housing junk fees.

  Comment attachment
  National-Consumer-Law-Center_-Comments-re-NYCDWP-Proposed-Rule-Prohibiting-Charging-Consumers-Hidden-Junk-Fees.pdf

  Comment added July 28, 2026 9:13am

July 28, 2026

Via rules.cityofnewyork.us
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Proposed Rule Prohibiting Charging Consumers Hidden "Junk Fees" – Comments Concerning Rental Housing Junk Fees

The National Consumer Law Center (NCLC)[1] is pleased to submit these comments in response to the New York City Department of Consumer and Worker Protection's (DCWP or Department) proposed rule to prohibit charging consumers hidden "junk fees."[2] We thank the Department for proposing an industry-neutral rule that would apply to rental housing. If finalized, these regulations would be a significant step toward protecting New York City renters and rental housing applicants from pervasive and egregious junk fees-related practices.

NCLC has written two reports about rental housing junk fees and submitted comments to the Federal Trade Commission (FTC) that discussed these fees and evaluated the agency's initial all-in pricing proposal (which was similar to the proposal here):

Reports:

- NCLC Report: "What the Heck, Dude!": How States Can Fight Rental Housing Junk Fees (updated 2025)
- NCLC Report: Too Damn High: How Junk Fees Add to Skyrocketing Rents (2023)

FTC Comments:

- NCLC and Other Groups' Comments re: the FTC's Unfair or Deceptive Rental Housing Fee Practices Advance Notice of Proposed Rulemaking (2026)
- NCLC Comments re: the FTC's Unfair or Deceptive Fees Notice of Proposed Rulemaking (2024)

In addition to highlighting these rental housing junk fees resources, these comments provide an overview of the array of junk fees renters must pay to secure and maintain rental housing and

[1] NCLC is a nonprofit organization specializing in consumer protection issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all 50 states who represent low-income and elderly individuals on consumer issues. NCLC also publishes and annually supplements twenty-one consumer law practice treatises. It is from this vantage point—and from years of observing and analyzing issues at the intersection of consumer law and rental housing, including rental housing junk fees, rental debt, and tenant screening—that NCLC offers these comments.

[2] NYC Dep't of Consumer and Worker Prot., Notice of Public Hearing and Opportunity to Comment on Proposed Rules (Proposed June 16, 2026), https://www.nyc.gov/assets/dca/downloads/pdf/about/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf.

how these fees contribute to housing unaffordability and precarity. These comments also provide recommendations about what the final rules should contain.

I. Pervasive Junk Fees Render Rental Housing Even More Unaffordable and Precarious and Also Jeopardize Access to Future Housing

Renters across the country, including in New York City, face an affordable housing shortage.[3] A dizzying array of fees to secure and maintain rental housing contributes to high rent prices and housing instability. Renters often must pay these unavoidable junk fees:

- During their search for housing (such as application fees, administrative fees, and "holding" fees),
- Throughout the duration of their lease (such as pest control fees, valet trash fees, utility-related fees, technology package fees, pay-to-pay fees, late fees, and court costs/legal fees), and
- At the end of their lease (such as move-out fees).

These fees can cost hundreds of dollars per month, compounding the already heavy burden placed on rental households, which make up over 67% of New York City residents.[4] And over half of renter households are rent burdened, meaning they spend 30% or more of their income on rent.[5]

Landlords frequently do not disclose up front the avalanche of mandatory fees renters must pay. A renter may be able to manage and plan for a higher rent payment if they know about it in advance, but an unexpected laundry list of steep junk fees can push them over their budget.

Landlords also may fail to accurately and adequately explain the nature and purpose of certain fees.[6] Throughout the course of their lease, renters may be forced to pay:

- Fees for services ultimately not provided,
- Fees for services that the landlord is legally obligated to provide as part of renting a habitable premises,
- Fees significantly greater than the cost to the landlord of a service, or
- Fees prohibited by state or local law.

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[3] Patrick Spauster, *Record-High Street Homeless Count a Sign of City's Growing Housing Crisis*, CityLimits (July 6, 2026), https://citylimits.org/record-high-street-homeless-count-a-sign-of-citys-growing-housing-crisis/.
[4] NYU Furman Ctr., State of Renters and Their Homes (Updated Feb. 2026), https://www.furmancenter.org/soc-report/state-of-new-york-citys-housing-and-neighborhoods-in-2023/state-of-renters-and-their-homes-2023/.
[5] *Id.*
[6] *See, e.g.*, Ariel Nelson, April Kuehnhoff, Chi Chi Wu, & Steve Sharpe, Nat'l Consumer L. Ctr., Too Damn High: How Junk Fees Add to Skyrocketing Rents 16 (2023), https://www.nclc.org/resources/too-damn-high-howjunk-fees-add-to-skyrocketing-rentins/.

Surprise junk fees that renters cannot afford also jeopardize access to future housing and financial stability. Junk fees can become alleged rental debts that lead to dunning by debt collectors and negative marks on credit reports that lead to automatic rejections by future landlords.

Although these fees harm all renters, they are particularly harmful to certain groups, including renters of color. According to Zillow, renters of color, particularly Asian American/Pacific Islander and Hispanic renters, are more likely to report paying at least one recurring fee compared to white renters. Additionally, larger portions of Black (84%), Asian American/Pacific Islander (80%), and Hispanic (78%) recent renters reported paying an application fee than white recent renters (67%). Recent renters of color also reported paying higher total amounts in application fees. Black and Hispanic renters were also about twice as likely as non-Hispanic white renters to submit five applications or more.[7]

Local governments can protect vulnerable renters from widespread and abusive junk fees practices by prohibiting and otherwise regulating these fees and through enforcement of junk fees-specific and other existing laws. Indeed, over 20 states and a growing number of local governments have passed laws regulating these fees.[8]

II. Recommendations

We support the Department's overall approach to regulating junk fees, including the industry-neutral, all-in pricing requirement and the prohibition on businesses misrepresenting the nature, purpose, amount, or refundability of any fees or charges, or the identity of the good or service for which the charge of fee is imposed. We also support the recordkeeping requirement, which would facilitate critical enforcement efforts and thereby help ensure the effectiveness of any final rules.

We urge the Department to promulgate strong final rules that:

- Include rental housing junk fees.
- Apply to anyone advertising in New York City and to New York City's consumers. This should include landlords, property management companies, rental listing platforms, and any third parties charging or conveying information about rent and/or fees related to rental housing.
- Prohibit hidden, misleading, and excessive fees.

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[7] Manny Garcia, Renters: Results from the Zillow Consumer Housing Trends Report 2025 (2025), https://www.zillow.com/research/renters-housing-trends-report-2025-35647/.

[8] Ariel Nelson, Steve Sharpe, April Kuehnhoff, & Chi Chi Wu, Nat'l Consumer L. Ctr., "What the Heck, Dude!": How States Can Fight Rental Housing Junk Fees 22 (Updated 2025), https://www.nclc.org/resources/what-the-heck-dude-how-states-can-fight-rental-housing-junk-fees/.

- Clarify, either in the text of the rules or in guidance, that the "final amount the consumer must pay for the transaction" includes the total price as well as any other fees (e.g., "optional add-ons").

- Clearly prohibit all fees—whether they are included in the total price or are other fees that constitute part of the "final amount the consumer must pay for the transaction"—that:

    - Are excessive in amount or greater than the cost of a service.[9]
    - Provide little or no value to the consumer in exchange for the charge.
    - Pay for services the person is required to provide.
    - Pay for services not ultimately provided.
    - Prevent competition.
    - Violate the common-law doctrine against liquidated damages
    - Are prohibited by state or local law.
    - Are contrary to public policy.

- Clarify, either in the text of the rules or in guidance, that vague descriptions of fees—both fees included in the total price and fees included in the final amount the consumer must pay for the transaction—that a reasonable consumer would not understand violate the rules.

- Require disclosure of how the consumer can cancel or opt out of any non-mandatory goods or services for which a person charges fees. This requirement should be in addition to requiring disclosure of the nature, purpose, and amount of any fee or charge excluded from the advertised total price, and the identity of the good or service for which the fee will be imposed.

- State that, where any fees or costs excluded from the total price are variable (e.g., utility costs), the business must disclose the existence of such costs, an estimate of the costs, and any formula or method for their calculation.[10]

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[9] The Statement of Basis and Purpose of the Proposed Rule suggests that the proposed rule may prohibit charging fees that are greater than the cost of a service under some circumstances. NYC Dep't of Consumer and Worker Prot., Notice of Public Hearing and Opportunity to Comment on Proposed Rules (proposed June 16, 2026), https://www.nyc.gov/assets/dca/downloads/pdf/about/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf (recordkeeping requirements "will help ensure business cannot, for example, deceptively charge . . . a "processing fee" unrelated to the costs of processing transactions"); *id.* ("[I]f the Department alleges a violation based on the exclusion of an excessively high shopping fee from the total price, the absence of records demonstrating that the fee is based on actual shipping costs, will create a presumption that the fee is not based on actual shipping costs."). We urge the Department to clarify this in the text of the rule or, at minimum, in guidance.

[10] Proposed rental housing junk fees legislation in Seattle includes language on disclosure of estimated variable fees. Seattle City Council, Housing, Arts, and Civil Rights Committee, Agenda Packet 12–13 (July 8, 2026), https://seattle.legistar.com/View.ashx?M=PA&ID=1427265&GUID=CECF5E7D-64B4-424F-B8F9-0282301D999A ("For variable fees, a landlord shall disclose the average monthly amount over the previous 12 months. For newly constructed buildings or other circumstances where such

In addition to finalizing rules, we also urge the Department to commit to:

- Issuing guidance and FAQs to address any need for subsequent clarification.[11]

- Bringing enforcement actions against actors who violate the rule.

Thank you for your consideration. If you have any questions about these comments, please contact Ariel Nelson at anelson@nclc.org or 617-542-8010.

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information is unavailable, a landlord shall provide an estimate of variable fees and clearly indicate that the amount of variable fees is an estimate. A landlord shall also provide a monthly statement with the amount of each variable fee to the tenant delivered in a clear and conspicuous manner.").

[11] Massachusetts has issued guidance on its junk fees regulations to "facilitate compliance with the regulations and answer expected questions from the public." Off. of the Att'y Gen., Guidance with Respect to Unfair and Deceptive Fees (940 CMR 38.00), https://www.mass.gov/doc/guidance-with-respect-to-unfair-and-deceptive-fees-2026123/download; *see also* Off. of the Att'y Gen., Junk Fees Regulations, https://www.mass.gov/info-details/junk-fee-regulations (last visited July 27, 2026) (website with junk fees guidance, including industry-specific guidance).

- **Gloria Lisa Baksh**
  I support the enactment and enforcement of rules that prohibit charging consumers hidden "junk fees." The most vulnerable people are elderly and immigrant consumers. They need the support of The Department of Consumer and Worker Protection, and I encourage elected officials to review and ensure the enactment of a strong and effective proposal.

  Comment added July 29, 2026 10:29am

- **New York State Office of the Attorney General**
  See Attachment.

  Comment attachment
  Comment-Letter-on-DCWP-Proposed-Junk-Fees-Rule.pdf

  Comment added August 3, 2026 12:21pm

Office of the New York Attorney General

Letitia James
Attorney General

August 3, 2026

BY ELECTRONIC SUBMISSION

Samuel A.A. Levine
Commissioner
New York City Department of Consumer and Worker Protection
42 Broadway
New York, New York 10004

Comment Letter on Proposed Rules Regarding Junk Fees, Reference No.: 2026 RG 027

Dear Commissioner Levine:

I submit the following comments in response to the New York City Department of Consumer and Worker Protection's Proposed Rules Regarding Junk Fees ("the Proposed Rule"). As the chief enforcer of consumer protection laws in New York State, I applaud your efforts to address deceptive and unconscionable pricing practices in New York City through the Proposed Rules. The rules are well-calibrated to protect New York City consumers from unscrupulous "drip pricing" and other practices that waste consumers time and drain their wallets. I encourage you to adopt the Proposed Rules with the minor enhancements described below.

As the Federal Trade Commission observed in its own Rule on Unfair and Deceptive Fees, drip pricing is a "quintessential example of bait-and-switch pricing."[1] By luring in consumers with a low price, only to surprise them with a higher price once they've invested time and effort into the transaction, businesses squeeze money from consumers that is unrelated to the quality of the product or service they offer. And by impairing the ability to comparison-shop, these practices harm not only consumers, but also honest businesses who do present up-front pricing. Without intervention, junk fees will continue to proliferate as more businesses find it in their interest to use them.

My office has and will continue to take action to crack down on these junk fees, aided by the new FAIR Business Practices Act. For instance, we recently announced a settlement

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[1] Trade Regulation Rule on Unfair or Deceptive Fees, 16 C.F.R. Part 464.

with several Nissan dealerships that tricked consumers seeking to exercise their end-of-lease buyout rights into paying for "dealership fees" or "administrative fees" that were not clearly disclosed to the consumers upfront.[2] We've also led multi-state coalition letters urging the FTC to strengthen its Rule on Unfair and Deceptive Fees by expanding its application to more industries.[3]

The Proposed Rule would provide an additional tool to fight these unscrupulous business practices alongside the consumer protection laws that our respective offices already enforce. Critically, the Proposed Rule avoids creating industry-specific carve-outs that have plagued other attempts to regulate drip pricing. Such carve-outs, as the Proposed Rule's Statement of Basis and Purpose note, would undermine consistency and fair competition across industries and risk allowing exceptions to swallow the rule.

Moreover, by defining "Total price" and requiring businesses to prominently display that price whenever they show any price of a good or service, the Proposed Rule offers clear, plain-language guidance for businesses to follow. And by requiring businesses to keep records regarding fees they charge, the Proposed Rule ensures that any necessary enforcement is efficient and not unduly burdensome.

In addition, to further strengthen the Proposed Rule, I would encourage DCWP to include a definition for "clear and conspicuous," such as that incorporated into the agency's recently-adopted Rules Relating to Debt Collectors.[4] The Proposed Rule could also clarify that charging fees in amounts that are not reasonably related to the disclosed purpose for collecting the fee – including by generating profit unless so stated – constitutes a deceptive and unconscionable practice in violation of § 5-16(e). Similarly, § 5-16(e) would benefit from including a clause providing that for any non-mandatory fee or charge, the fact that the fee or charge is optional must be clearly and conspicuously disclosed, along with instructions regarding how to avoid the fee or charge.[5]

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[2] Press Release, N.Y. State Off. of the Att'y Gen., *Attorney General James Secures Refunds for All New Yorkers Cheated by Nissan Dealerships' Lease Overcharge Schemes* (June 3, 2026), https://ag.ny.gov/press-release/2026/attorney-general-james-secures-refunds-all-new-yorkers-cheated-nissan.

[3] Press Release, N.Y. State Off. of the Att'y Gen., Attorney General James and Bipartisan Coalition Urge FTC to Address Deceptive Rental Fees (Apr. 13, 2026), https://ag.ny.gov/press-release/2026/attorney-general-james-and-bipartisan-coalition-urge-ftc-address-deceptive; Christopher H. Casey & Daniel R. Walworth, *State Attorneys General Urge FTC to Regulate Pricing Practices by Online Food Delivery Services*, Duane Morris (June 1, 2026), https://www.duanemorris.com/alerts/state_attorneys_general_urge_ftc_regulate_pricing_practices_online_food_delivery_services_0626.html.

[4] N.Y.C. Rules tit. 6, §§ 2-193, 5-76, 5-77 (2026) (N.Y.C. Dep't of Consumer & Worker Prot., Notice of Adoption to Amend Rules Relating to Debt Collectors, effective Sept. 1, 2026). That definition reads as follows:

> "The term 'clear and conspicuous' means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation, or element being disclosed is of such location, size, color, and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it. In any clear and conspicuous disclosure, any required modifications, explanations, or clarifications to other information are presented close to the information being modified, so as to be readily noticed and understood."

[5] Rules recently promulgated by the Massachusetts Attorney General, cited in the Proposed Rule's Statement of Basis and Purpose, are instructive here. *See* 940 CMR 38.04(2)(b).

By eliminating the incentive for businesses to exploit consumers with junk fees, adoption of the Proposed Rule would be a meaningful step in restoring fairness and transparency for New York City consumers. I strongly support DCWP's efforts to reign in these kinds of deceptive and unconscionable business practices and encourage you to adopt the rule with the additional safeguards described above. I look forward to our offices continuing to collaborate on this and other issues to make New York City more affordable for everyone.

Respectfully submitted,

Letitia James

LETITIA JAMES
ATTORNEY GENERAL
STATE OF NEW YORK

- **Yosep Blake Bak - NYS PE 107881**
  COMMENT ON PROPOSED RULE – RULES REGARDING JUNK FEES

  To: New York City Department of Consumer and Worker Protection
  Rule: Proposed 6 RCNY § 5-16 (General Fee Disclosures) and amendment to 6 RCNY § 6-47
  Reference: 2026 RG 027 / DCWP-75
  Comment deadline: August 7, 2026
  Submitted by: Yosep Blake Bak, P.E. – New York State Professional Engineer, License No. 107881
  Capacity: Individual. No client interest is held in any matter addressed in this comment.

  SUMMARY

  I support the proposed rule. I write to propose four amendments, each directed at a category of mandatory charge that the rule as drafted may not reach:

  1. Format lock-in. A fee charged to obtain, open, export, or transfer a digital deliverable the consumer has already purchased is a mandatory fee that is not reasonably avoidable, and the format of a deliverable should be disclosed before the consumer consents to pay.

  2. The governmental-charge carve-out. A charge represented as a tax or government fee should have to be identified and matched to the amount actually imposed.

  3. Substantiation. Subdivision (f) correctly identifies a substantiable basis as the test of a legitimate fee, but makes it evidentiary only. It should be operative.

  4. Scope. The final Statement of Basis and Purpose should confirm that professional design, inspection, and compliance services advertised to New York City consumers are “services” under subdivision (b).

Disclaimer. This comment alleges no wrongdoing by any person or firm. Where a question is open, it is identified as open rather than asserted as a finding. Nothing in Part VI is a request that the Department take action outside its jurisdiction; it is offered solely to establish the basis of the commenter's knowledge.

I. THE RULE'S CORE STRUCTURE IS SOUND

The proposed rule correctly locates the harm. A fee is a junk fee when the consumer cannot see it in time to act on it. Subdivisions (c) and (d) address that directly, and the prominence requirement – that the total price be disclosed at least as prominently as any other pricing information – is the operative mechanism that makes disclosure meaningful rather than nominal.

I note one framing point that motivates the amendments below. Subdivision (f) requires records sufficient to establish the basis of any fee, including its nature, purpose, amount, and refundability. That is the correct engineering test: a charge is legitimate when it corresponds to something the person can document. The Department has identified the right standard. As drafted, however, it operates only after the Department has alleged a material fact in a proceeding. Comment 3 addresses this.

II. COMMENT 1 – FORMAT LOCK-IN AS A MANDATORY FEE THAT IS NOT REASONABLY AVOIDABLE

Current proposed language. Section 5-16(a) defines "mandatory fees and charges" to include fees not reasonably avoidable by the consumer, and separate fees for aspects of a good or service a reasonable person would expect to be included.

Objective issue. A common and growing pattern is not clearly captured. A consumer purchases a good or service whose deliverable is digital. The deliverable is released only inside a proprietary container – a vendor portal, a viewer application, a subscription, or an encumbered file format. A further payment is then required to obtain the file in a form the consumer can open, keep, or give to someone else.

The consumer has paid for the work. The second charge buys access to what they already own. It is not reasonably avoidable, because refusing it means forfeiting the deliverable, and it is for an aspect of the good a reasonable person would expect to be included – nobody buying a document expects to buy the ability to read it separately.

The pattern is industry-neutral, which fits the Department's stated approach. Examples include: photography and videography where original files carry a separate charge; home, roof, and structural inspection reports delivered through a vendor portal; dental and medical imaging; personal fitness, sleep, and health data; tax preparation where the prior-year return is gated; residential design and renovation deliverables provided to homeowners; three-dimensional scans of a property; and stored security-camera footage.

The reason this is a disclosure problem rather than a technical one is that open, published, royalty-free alternatives are already established in every one of these domains. The consumer is not being asked to pay for a capability that does not otherwise exist. Established open standards include, without limitation:

– Building and product geometry: ISO 16739-1 (IFC), IFCx, BCF, IDS
– Three-dimensional scan and point cloud data: ASTM E2807 (E57); ASPRS LAS/LAZ
– Building energy models: gbXML; EnergyPlus IDF; OpenStudio OSM
– Simulation validation and equipment performance: ANSI/ASHRAE Standard 140; ASHRAE Standard 205
– Thermal analysis: ISO 6946; ISO 10211; ISO 14683
– Medical imaging: DICOM (ISO 12052)
– Archival documents: PDF/A (ISO 19005), including PDF/A-3, which permits the native source file to be embedded inside the delivered

PDF
– Tabular and structured data: CSV; JSON; XML

Proposed text amendment. Amend the definition of “Mandatory fees and charges” in § 5-16(a) by adding at the end:

“Mandatory fees and charges further include any fee charged for the delivery, access, retrieval, export, or continued availability of a record, file, image set, model, or data set that the consumer has already purchased, where payment of that fee is a condition of obtaining the item in a format the consumer can open, retain, or transfer without purchasing a separate license, subscription, or application sold or controlled by the person or an affiliate of the person.”

Proposed text amendment. Add a new paragraph (3) to § 5-16(d):

“(3) Where a good or service is delivered in whole or in part as a digital file, record, image set, model, or data set, the person must disclose: (i) each file format in which the deliverable will be provided; (ii) whether opening, retaining, or transferring the deliverable requires a license, subscription, or application sold or controlled by the person or an affiliate of the person; and (iii) the price of any such license or subscription.”

Technical rationale. Disclosing a delivery format costs nothing. It is a single line in an offer. The consumer needs it before consenting to pay, because after payment the leverage has moved: the work is done, the file exists, and the only remaining question is what it costs to hold it.

Producing an open-format deliverable also costs nothing in the ordinary case. A flattened PDF and a PDF/A-3 containing the same content with the native source file embedded are produced by the same export operation, at the same price, in the same amount of time. Where a person nonetheless charges for the open-format version, subdivision (f) requires them to be able to say what that charge is for. That is the correct outcome. The amendment does not prohibit proprietary formats, mandate any particular standard, or require any person to change what they sell. It requires only that the consumer be told the format before paying, and that a charge to escape that format be counted in the total price.

I would note that the City has already adopted this principle for its own data. The Open Data Law requires City data sets to be published in machine-readable, non-proprietary formats. The proposed amendment extends to consumers a norm the City applies to itself.

III. COMMENT 2 – CHARGES REPRESENTED AS TAXES OR GOVERNMENTAL FEES

Current proposed language. Section 5-16(a) defines “total price” to exclude taxes and fees imposed by a government.

Objective issue. The exclusion is appropriate, but nothing in the rule requires a person invoking it to show that the excluded charge is in fact governmental, or that it matches the amount a government actually imposed. As drafted, a person may exclude from the total price a charge labeled “permit fee,” “filing fee,” “regulatory recovery fee,” or “compliance fee” without identifying the government imposing it or the amount imposed. A markup embedded in such a line item is invisible to the consumer and is excluded from the very figure the rule is designed to make visible.

This matters in the trades and professional services a New York City homeowner, cooperative, or condominium board retains. Governmental filing fees, professional service, and administrative markup are routinely presented as a single line item. The consumer cannot tell which portion the City receives and which the vendor retains.

Proposed text amendment. Add a new paragraph to § 5-16(d):

"Where any charge or fee excluded from the total price is represented, expressly or by implication, as a tax or as a fee imposed by a government, the person must disclose the governmental authority imposing the charge, the statute, rule, or published fee schedule under which it is imposed, and the exact amount so imposed. Any portion of such a charge that exceeds the amount actually imposed by a government, or that is not imposed by a government, is a mandatory fee and must be included in the total price."

Technical rationale. Every governmental fee has a published schedule and a citation. A person charging it can identify it. A person who cannot identify it is not passing through a governmental charge. The amendment closes the exclusion to exactly the amount the government receives and no more, which is the exclusion's purpose.

IV. COMMENT 3 – SUBSTANTIATION SHOULD BE OPERATIVE, NOT ONLY EVIDENTIARY

Current proposed language. Section 5-16(f)(1) requires records sufficient to establish the basis of a fee. Section 5-16(f)(2) provides that failure to maintain, retain, or produce such a record, where relevant to a material fact alleged by the Department, creates a presumption that the fact is true.

Objective issue. The presumption is a sound enforcement tool, but it operates only once the Department has already commenced a proceeding and alleged a material fact. A person may therefore impose a fee they cannot substantiate, and be in compliance with the rule, until the Department opens a case. The recordkeeping duty in (f)(1) has no independent consequence.

Proposed text amendment. Add to § 5-16(e):

"It is a deceptive and unconscionable trade practice for any person to impose a fee or charge described by a name, purpose, or basis that the person cannot substantiate from the records required to be maintained under subdivision (f) of this section."

Technical rationale. The Department's own reasoning supports this. The proposed rule explains that recordkeeping will prevent a "service fee" that does not support service workers, or a "processing fee" unrelated to processing costs. That harm occurs when the fee is charged, not when the Department later alleges it. Making substantiation operative aligns the duty with the injury, and it costs a person nothing who is already complying with (f)(1).

V. COMMENT 4 – CONFIRMATION OF SCOPE AS TO PROFESSIONAL SERVICES

Requested action. I ask that the final Statement of Basis and Purpose confirm expressly that professional design, inspection, and regulatory-compliance services offered or advertised in New York City, or to a New York City consumer, are "services" within § 5-16(b).

Technical rationale. Cooperative and condominium boards, small building owners, and homeowners retain registered design professionals, inspectors, and filing representatives directly. These engagements exhibit the fee patterns the rule targets: pass-through line items of uncertain origin, digital deliverables released only through a vendor platform, and charges for a further copy of a report the consumer has already paid for. An express confirmation would remove any argument that professional services fall outside a consumer protection rule, and would give the Department's enforcement staff a clear answer to a question that will otherwise be raised.

VI. BASIS OF THE COMMENTER'S KNOWLEDGE

I am a New York State licensed professional engineer. I prepare and seal design and compliance documentation filed under the New York City Construction Codes and the New York City Energy Conservation

Code, and I have submitted technical comments in two open Department of Buildings rulemakings during 2026.

I offer two observations from that practice, solely to establish that the patterns described above are not hypothetical. I am not asking this Department to act on either. Neither falls within its jurisdiction, and both are being pursued in their proper venues.

Single-implementation dependence. A rule now open for comment would establish a compliance pathway requiring the use of a specific category of jurisdiction-specific simulation software approved by a building official. That metric exists today in one implementation. There is no competitive market of engines for it. When a regulation or a contract requires a deliverable that only one product can produce, the price of that product is not disciplined by anything, and every party downstream – including the ultimate consumer paying for the filing – absorbs it. Whether that dependence is justified is a question that can only be answered if the acceptance criteria are published. That is the same disclosure logic this proposed rule applies to fees.

Absence of a published cost basis. A separate proposed fee, on which I have submitted a cost analysis, would charge licensed professionals an annual amount for a credential whose infrastructure cost, on any generous estimate, rounds to zero, and whose renewal check is a query against a State database that already exists at no cost. No itemized cost basis has been published. I raise it here only because it is the clearest illustration I have of the principle in subdivision (f): a charge is defensible when its basis is documented and available, and indefensible when it is not, and that proposition does not depend on who is charging.

The Department has, in this rule, articulated that principle better than any City instrument I have read. My comments above are directed at making it operate as far as the Department's authority reaches.

VII. REQUESTS

1. Adopt the four amendments proposed in Parts II through V, or state in the final Statement of Basis and Purpose why each category of charge is already reached by the rule as drafted.

2. If the Department concludes that format lock-in is already captured by the existing definition of mandatory fees, state that expressly, so the conclusion is available to consumers, businesses, and enforcement staff.

3. Confirm where the public record of written comments required by Charter § 1043(e) for this rulemaking is maintained, and how a member of the public may inspect it.

I appreciate the Department's work on this rule and would be glad to provide further technical detail on any of the standards referenced in Part II.

Respectfully submitted,

Yosep Blake Bak, P.E.
New York State Professional Engineer, License No. 107881

Comment added August 3, 2026 4:42pm

- **Anonymous**
  This is absurd. The text of the bill does ABSOLUTELY NOTHING to prohibit or even limit junk fees.

  It only requires the 'total price' upfront, instead of at purchase. As if knowing the fees exist upfront instead of seeing them at checkout makes any difference. The junk fees still exist.

  It's deceptive how this rule is being advertised.

  "The proposed rule addresses junk fees by making it a deceptive trade practice to offer, display or advertise the price of a good or service without clearly and conspicuously posting the total price,

meaning the price
including all mandatory charges and fees."

"This "all in" pricing requirement applies to any price for a good or service that is offered, advertised, or displayed, whether it is a fixed price for an item or service, or tied to a variable like an hourly rate or service based on a unit of measurement. Anywhere a person, meaning an individual or business, chooses to advertise, offer, or display a specific price, that advertisement, offer, or display must include a disclosure of the total price"

Comment added August 3, 2026 7:20pm

- **Eric Fruits & Brian Albrecht**

  We submit these comments to the Department of Consumer and Worker Protection's proposed rule relating to "junk fees." The attached letter explains four reasons why the Proposed Rule, as drafted, will impose costs on New York City businesses and consumers that far outweigh any transparency it provides.

  Comment attachment
  ICLE-Comments-to-NYC-DCWP-re-Junk-Fees-2026.pdf

  Comment added August 4, 2026 3:33pm

International
Center for
Law & Economics

VIA ELECTRONIC SUBMISSION

August 4, 2026

Samuel A. A. Levine
Commissioner
New York City Department of Consumer and Worker Protection
42 Broadway
New York, New York 10004

Re: Comment Letter on Proposed Rules Regarding Junk Fees, Ref. No.: 2026 RG 027

Dear Mr. Levine:

I write on behalf of the International Center for Law & Economics (ICLE), a nonprofit, nonpartisan research center that uses law-and-economics analysis to evaluate law, regulation, and public policy. ICLE has written extensively on "junk fee" regulation, including comments to the Federal Trade Commission on proposed rules governing rental-housing fees and online food-delivery fees.[1] We submit these comments to the Department of Consumer and Worker Protection's ("DCWP" or "the Department") proposed rule relating to junk fees, codified at proposed § 5-16 of Title 6 of the Rules of the City of New York ("Proposed Rule").

The underlying problem is real, but uncommon, and does not justify this rule. When a business advertises one price and later reveals additional mandatory charges, consumers may pay more than they expected or choose a product they would not have chosen with full information up front. Economists call this "drip pricing" or "partitioned pricing," and there is credible evidence that some firms have an incentive to obscure mandatory add-on charges from price-sensitive shoppers, even in competitive markets.[2] ICLE does not dispute that this kind of deception harms consumers or that DCWP has the authority to police it. Our concern is that the Proposed Rule, as drafted, will impose costs on New York City businesses and consumers well beyond any transparency it delivers, for four reasons.

[1] Eric Fruits & Daniel J. Gilman, *Comments on FTC Unfair or Deceptive Rental Housing Fee Practices*, ANPRM (Project No. R207011), Int'l Ctr. for L. & Econ. (Apr. 9, 2026), https://laweconcenter.org/wp-content/uploads/2026/04/FTC-Rental-Housing-Fee-Practices-2026.pdf; Brian Albrecht, Eric Fruits, Daniel J. Gilman & Geoffrey A. Manne, *ICLE Comments to FTC on Online Food-Delivery Service Fees*, Int'l Ctr. for L. & Econ. (May 18, 2026), https://laweconcenter.org/wp-content/uploads/2026/05/FTC-Delivery-Fees-2026.pdf.

[2] *See* Xavier Gabaix & David Laibson, *Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets*, 121 Q.J. ECON. 505 (2006).

1. The rule's core terms are too vague to give businesses a predictable standard.

The Proposed Rule defines a "mandatory fee" partly by reference to whether it is "reasonably avoidable" by the consumer or covers something "a reasonable person would expect" to be included in a purchase. These are not settled economic or legal concepts and therefore invite case-by-case, after-the-fact adjudication.

Consider a restaurant that charges $5 for delivery. That fee is not obviously avoidable or unavoidable. A customer can often skip it by picking up the order, which makes the fee look avoidable. But delivery is *the* service the customer is buying from a delivery service, so a "reasonable person" could just as easily expect that cost to be built into the advertised price. Nothing in the words "reasonably avoidable" or "a reasonable person would expect" tells the restaurant which reading DCWP will adopt. Whether the charge is a "mandatory fee" therefore turns not on any objective feature of the fee, but on how an enforcer later construes an open-ended standard—a call the business cannot make when it sets its price, and DCWP will make only after the sale.

A restaurant, retailer, or service provider faces the same uncertainty about a processing fee or an "optional" upgrade, as well as a delivery charge.

Law-and-economics research on mandated disclosure finds that mandatory disclosure regimes routinely fail on their own terms: consumers lack the literacy, time, and capacity to analyze complex terms, while firms fulfill their legal requirements by flooding consumers with fine print and boilerplate caveats that convey little useful information.[3] A vague standard provides little consumer protection while imposing a hidden tax on every business that must guess at its content. That hidden tax is ultimately passed on to consumers through higher prices or reduced product variety.

2. The reversed evidentiary presumption punishes honest uncertainty, not just deception.

The Proposed Rule requires businesses to maintain records "sufficient to establish the basis for" each fee. If a business cannot produce such records on DCWP's request, the Department's factual allegations are presumed true. This is a significant departure from ordinary consumer-protection enforcement, which requires the government to prove its case.

Economically, the reversed presumption converts every ambiguous compliance judgment into a standing strict-liability risk. Because a business cannot know today which fee will be second-guessed years from now, it faces a permanent incentive to over-document, or simply to abandon pricing structures that are convenient for consumers, such as optional add-ons, tiered service levels, or bundled subscriptions, because they are harder to justify to DCWP's future satisfaction. Smaller businesses, which lack in-house counsel and compliance staff, will bear this cost disproportionately.

The delivery fee illustrates the point. To avoid the burden of documenting and defending a separate delivery charge, a restaurant can drop the charge, advertise "free delivery," and raise the price of every item to cover the cost. That restructuring complies with the rule because a bundled

[3] *See* Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647 (2011).

price contains no separate fee to disclose. It also leaves consumers worse off. Customers who pick up their own orders would then subsidize those who receive delivery, and a single bundled price would conceal the delivery cost rather than reveal it. The restaurant may further narrow the area over which it offers "free" delivery, cutting off customers it once served. The rule would then have relocated the opacity into a pooled price and trimmed consumer choice, rather than delivering the transparency it promises.

Such supply responses are the ordinary economics of regulation, and the literature measuring them is more than half a century old. A compliance obligation is a tax on covered transactions, whether or not any money changes hands, and part of any such tax is borne by consumers through higher prices and narrower choices. The evidence dates back to Sam Peltzman's 1973 evaluation of the 1962 drug amendments, which required sellers to document their claims to regulators' satisfaction before selling. The mandate was designed to protect consumers from ineffective drugs. It sharply reduced the flow of new drugs instead, and Peltzman found the losses to consumers exceeded the gains.[4] The pattern holds in modern data with modern methods. When federal ability-to-repay rules exposed mortgage lenders to liability for loans a regulator might later second-guess, lenders raised prices barely at all. Instead, they eliminated roughly 15% of the affected market.[5]

The general lesson is that rules that look costless because they "merely" require disclosure or recordkeeping still change the incentives facing regulated businesses, and those changes can hurt the consumers the rule is meant to help, for example, by pushing smaller, independent businesses out of the New York City market and leaving consumers with fewer choices.[6]

3. The rule duplicates existing federal, state, and City total-price requirements without a matching gain in protection.

New York City consumers are not unprotected today. The Federal Trade Commission's Rule on Unfair or Deceptive Fees requires businesses that offer, display, or advertise prices for live-event tickets or short-term lodging to clearly and conspicuously disclose an all-in "total price"—inclusive of all mandatory fees—more prominently than other pricing information, nationwide.[7] These are two of the sectors most associated with drip pricing.

As proposed in 2023, the FTC's rule would have applied to all industries nationwide, just as the Proposed Rule would reach every business in New York City.[8] After more than 60,800 public comments, the Commission declined to adopt an industry-neutral rule, choosing instead "to use its rulemaking authority incrementally," beginning with the two industries where it had

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[4] Sam Peltzman, *An Evaluation of Consumer Protection Legislation: The 1962 Drug Amendments*, 81 J. POL. ECON. 1049 (1973)

[5] Anthony A. DeFusco, Stephanie Johnson & John Mondragon, *Regulating Household Leverage*, 87 REV. ECON. STUD. 914 (2020).

[6] *See* Lloyd Dixon, Susan M. Gates, Kanika Kapur, Seth A. Seabury & Eric Talley, *The Impact of Regulation and Litigation on Small Businesses and Entrepreneurship: An Overview*, *in* IN THE NAME OF ENTREPRENEURSHIP? 17 (Susan M. Gates & Kristin J. Leuschner eds., 2006).

[7] 90 Fed. Reg. 2066 (Jan. 10, 2025) (effective May 12, 2025) (codified at 16 C.F.R. pt. 464).

[8] 88 Fed. Reg. 77420 (Nov. 9, 2023); see 90 Fed. Reg. at 2119.

documented consumer harm for more than a decade.[9] The agency with the deepest record on this question could not justify economy-wide coverage in quantitative terms, and the Department's own hotel rule already follows its incremental template.

New York State requires "all-in" ticket pricing for places of entertainment.[10] New York City's Department of Consumer and Worker Protection has separately adopted a hotel "junk fee" rule, making it a deceptive practice to advertise a room rate without clearly and conspicuously disclosing the total price of the stay, including all mandatory fees, effective February 21, 2026.

Layering a fourth, city-specific, industry-neutral definition of "total price" and "mandatory fee" on top of these existing regimes means a business operating in New York City must reconcile several overlapping, non-identical compliance standards for what is fundamentally the same disclosure obligation. This is a clear case of duplicative regulation. Because the FTC, state, and city already address a large share of the highest-profile drip-pricing conduct, the marginal consumer-protection benefit of a new, broader rule is small. In contrast, the marginal compliance cost, spread across every other industry now newly covered, is not.

It is also worth remembering that itemized, multi-part pricing is not itself evidence of deception; it often reflects legitimate cost recovery and consumer choice among service levels. A rule that treats ordinary itemization with suspicion, on top of regimes that already police true deception, risks discouraging efficient pricing practices without producing real transparency.

4. DCWP's existing enforcement authority is a better-targeted tool than a broad new rule.

DCWP already has authority under the City's consumer-protection law to act against businesses that conceal mandatory fees or misrepresent their nature, amount, or refundability, which is the precise conduct the Department identifies as most harmful.

Targeted enforcement, built on a developed evidentiary record of actual deception, would allow DCWP to address genuine bad actors without imposing the same compliance burden on the much larger number of businesses that already itemize their fees honestly. If the Department nonetheless proceeds with a generally applicable rule, we respectfully urge it to: (a) narrow "mandatory fee" and "reasonably avoidable" to concrete, administrable standards rather than open-ended reasonableness tests; (b) eliminate or substantially limit the reversed evidentiary presumption in proposed § 5-16(f); and (c) harmonize the definition of "total price" with the FTC's existing rule and New York's own ticket- and hotel-fee laws so that New York City businesses face one workable standard rather than four.

We appreciate DCWP's attention to consumers' concerns, and we share the Department's goal of ensuring that New York City consumers can see, before they buy, what they will actually pay. But a rule built on vague standards, a reversed burden of proof, and a duplicative, city-specific set of

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[9] 90 Fed. Reg. at 2119; id. at 2068 (comment count).

[10] N.Y. Arts & Cult. Aff. Law § 25.07(4) (requiring disclosure of the total ticket cost, inclusive of all ancillary fees, prior to selection for purchase).

definitions is likely to raise prices and reduce the range of pricing options available to New York City consumers and businesses alike, without a matching improvement in transparency.

We respectfully urge DCWP to withdraw the Proposed Rule in its current form or, at a minimum, to revise it substantially along the lines described above before it moves to adoption.

Thank you for your consideration. Please do not hesitate to contact us with any questions.

Respectfully submitted,

Eric Fruits, Ph.D.
Director of Economic Research
International Center for Law & Economics
efruits@laweconcenter.org

Brian Albrecht, Ph.D.
Chief Economist
International Center for Law & Economics
balbrecht@laweconcenter.org

- **Laura Chadwick**

August 7, 2026

Submitted via email to Rulecomments@dcwp.nyc.gov and via http://rules.cityofnewyork.us

New York City Department of Consumer and Worker Protection
42 Broadway New York, NY 10004

Re: Comments on Proposed Rule, "Rules Regarding Junk Fees," 6 RCNY § 5-16 (Reference Nos. 2026 RG 027 / DCWP-75)

Dear Commissioner:

Travel Tech Association (Travel Tech) submits these comments on the Department's proposed rule adding Section 5-16 to Title 6 of the Rules of the City of New York.

Travel Tech Association is a nonprofit membership organization and the unified voice for the travel technology ecosystem. Travel Tech represents the leading innovators in travel technology, including online travel agencies (OTAs), metasearch engines, short-term rental platforms, Global Distribution Systems, Travel Management Companies, and early-stage travel tech startups. Our members connect millions of consumers to travel options around the world and play a critical role in fostering competition, transparency, and consumer choice in the travel marketplace.

Travel Tech shares the Department's goal of protecting consumers from hidden fees, and our members support clear, all-in pricing. Companies already display total prices in compliance with the Federal Trade Commission's Rule on Unfair or Deceptive Fees (16 C.F.R. Part 464), which took effect on May 12, 2025, and covers short-term lodging and live-event tickets. Adopted in a bipartisan vote, that rule defines the "total price" a business must disclose as "the maximum total of all fees or charges a consumer must pay for any good[s] or service[s] and any mandatory ancillary good or service, except that government charges, shipping charges, and fees or charges for any optional ancillary good or service may be excluded.” The Department’s proposed Section 5-16 defines “total price” in nearly identical terms.

Because the proposed rule so closely tracks the federal standard our members already meet, we first recommend a straightforward way to align the two and avoid a conflicting local requirement, as set out in Section I below. We do not write to defend hidden fees. We write in support of consistency and to highlight two provisions of the proposed rule that, as drafted, would reach far beyond New York City, shift the burden of proof onto businesses in a manner that raises serious fairness concerns, and fall especially hard on the intermediary platforms that display prices set by third parties. We respectfully urge the Department to revise the rule as described below.

I. The Department Should Provide a Safe Harbor for Pricing That Complies with the Federal Standard

Because the Federal Trade Commission’s rule already governs all-in price display for short-term lodging and live-event tickets, and our members already comply with it, the most direct way for the Department to achieve consistent, transparent pricing without creating a conflicting local standard is to deem federally compliant pricing compliant with Section 5-16. A safe harbor of this kind would give New York City consumers the same protection they already receive under the federal rule, while sparing businesses the burden and confusion of maintaining a separate, City-specific display standard for the same transactions. We respectfully recommend that the Department add the following provision to Section 5-16:

“An offer, display, or advertisement for short-term lodging, including temporary sleeping accommodations at a hotel, motel, inn, short-term rental, or vacation rental, or for live-event tickets, that complies with Part 464 of Chapter I of Title 16 of the Code of Federal Regulations shall be deemed in compliance with this section."

II. The Geographic Scope in Section 5-16(b) Reaches Far Beyond New York City and Should Be Narrowed to Transactions with a Genuine City Nexus

Section 5-16(b) applies the rule to "any person who offers, displays or advertises goods or services in New York City, or to a New York City consumer." The phrase "or to a New York City consumer" extends the rule to any business, anywhere in the country or the world, that advertises to a resident of New York City, regardless of whether that business has any physical presence, transactional nexus, or other connection to the City.

For the travel industry, this scope is unworkable. Travel is inherently interstate and international. A national or global travel platform serves users everywhere, and a resident of New York City may search for a hotel in Miami, a rental car in Denver, or a flight to London. Under the proposed language, every one of those advertisements would be subject to a New York City rule, even though the transaction, the supplier, and the good or service have no connection to the City. Businesses cannot reliably identify which of their users are "New York City consumers" when a price is displayed, and they cannot practically maintain a separate New York City price-display standard for those users alone. The realistic effect is that a single City agency's rule would govern pricing displays worldwide. This is precisely with we advocated for a federal rule on this matter.

This scope is broader than the very laws the Department cites as models. California's SB 478, the Massachusetts junk-fee regulations, and Minnesota's price-transparency law apply to businesses doing business within those states. The Department's own longstanding practice, and the statutes it cites as authority, likewise govern sales and advertising within the City. Extending this rule to any advertisement seen by a City resident anywhere is a departure from that practice that also raises constitutional concerns under the dormant Commerce Clause regarding a municipality's regulation of wholly out-of-jurisdiction commerce.

Recommendation: The Department should strike "or to a New York City consumer" or revise Section 5-16(b) to apply only to offers, displays, and advertisements with a genuine New York City nexus, such as transactions for goods or services to be provided or delivered in the City, or advertisements directed at consumers physically located in the City. This would achieve the Department's consumer protection purpose within the City while remaining consistent with the state models the rule cites and with the Department's existing authority.

III. The Recordkeeping Requirement and Adverse Presumption in Section 5-16(f) Shift the Burden of Proof and Fall Unfairly on Platforms Displaying Third-Party Prices

Section 5-16(f)(1) requires any covered person to maintain records "sufficient to establish the basis, including the nature, purpose, amount or refundability" of any fee or charge in a covered advertisement or fee breakdown. Section 5-16(f)(2) then provides that a failure to maintain, retain, or produce such a record relevant to a material fact alleged by the Department "creates a presumption that such fact is true."

This burden-shifting presumption raises two serious concerns:

First, it reverses the ordinary burden of proof. Under Section 5-16(f)(2), the Department may allege a violation, and if a business cannot produce records the Department deems sufficient, the Department's allegation is presumed true. Combined with the absence of any cure period, which the accompanying certification expressly declines to provide, and escalating per-violation penalties, this structure exposes businesses to liability based not on a demonstrated deceptive practice but on a documentation gap. This raises due process concerns. A business acting in good faith should not be presumed to have violated the law because it did not retain a particular record in the form the Department later requests. The recordkeeping obligation itself is also open-ended: "records sufficient to establish the basis" of every fee gives businesses no clear standard for what must be kept or for how long. There is also no provision for a situation where records are destroyed through no fault of the business, such as by a cyberattack.

Second, and of particular concern for our members, the provision falls hardest on intermediary platforms that display prices and fees set by third-party suppliers. When an online travel platform displays a hotel's rate, including a mandatory fee the hotel has set, the platform is passing through pricing established by the supplier. The platform does not set that fee and often has no visibility into its "nature, purpose, amount or refundability," which is information within the hotel's control, not the platform's. Under Section 5-16(f), if the Department alleges that a supplier-set fee was improperly excluded or characterized, and the platform cannot produce records establishing the basis of a fee it did not create, the Department's allegation would be presumed true against the platform. That holds intermediaries responsible for information they cannot access and for pricing decisions they did not make.

Recommendation: The Department should remove the adverse presumption in Section 5-16(f)(2). If the Department retains a recordkeeping requirement, it should (1) define with specificity what records are required and for how long, (2) provide a reasonable cure period before penalties attach, and (3) expressly account for intermediaries by limiting a platform's recordkeeping obligation to the pricing information the platform itself sets or controls, rather than fees established by third-party suppliers.

IV. Conclusion

Travel Tech supports transparent, all-in pricing, and our members already provide it under the federal lodging rule. We urge the Department to narrow the geographic scope of Section 5-16(b) to transactions with a genuine New York City connection, to remove the adverse presumption in Section 5-16(f)(2) and clarify the associated recordkeeping obligation, and to provide a safe harbor deeming federally compliant pricing compliant with the rule. These changes would allow the Department to achieve its consumer-protection goals without imposing an unworkable global standard or an unfair burden of proof on businesses acting in good faith.

We appreciate the opportunity to comment and welcome the chance to serve as a resource to the Department as it finalizes this rule.

Thank you for your consideration.

Sincerely,

Laura Chadwick
President & CEO
Travel Tech Association
http://www.traveltech.org

Comment attachment
8.7.26-NYC-Rules-Regarding-Junk-Fees-Travel-Tech-Comments.pdf

Comment added August 6, 2026 2:50pm

- **Leo Mann**
  I spent thirty years writing the fine print this rule is trying to fix. Terms of service, fee schedules, the “and other charges as applicable” that turns a $29 advertised price into a $47 surprise. I know exactly where the bodies are buried, because I helped bury a few.

So take this as a friendly note from a reformed insider: I'm for this rule. Strongly. But disclosure alone won't do it. The industry's answer to every disclosure mandate is the same — bury the number in a hyperlink, in eight-point type, three screens down, and call it "disclosed." Technically compliant, completely useless.

My attached comment lays out three fixes that close the loopholes I'd have used myself: stop companies from quietly amending fee schedules after you're locked in, capture the fees hiding in documents "incorporated by reference," and require one all-in number shown as loudly as the advertised price — at the moment of decision, not the moment of checkout.

One last thing, free of charge: a right nobody understands protects nobody. This rule is enforced by complaint, which means it only works for New Yorkers who know what to look for. Teaching them that part is the work I do now, and I'd do it for the City for nothing like I do for several other major US cities. Email me.

Respectfully,
Leo Mann — #1 best-selling author of Don't Sign That, Founder of The Contract Literacy Movement (www.contractliteracy.com)

Comment attachment
Junk-Fees-Public-Comment-Leo-Mann.pdf

Comment added August 6, 2026 3:19pm

Leo Mann
#1 best-selling author of *Don't Sign That*
Founder, The Contract Literacy Movement
leo@leomannpublishing.com · contractliteracy.com

August 6, 2026

New York City Department of Consumer and Worker Protection
Office of Legal Affairs — Rule Comments
42 Broadway, New York, NY 10004

Re: Comment in Support, with Recommendations — Proposed "Rules Regarding Junk Fees" (Reference No. 2026 RG 027; DCWP-75)

To the Department of Consumer and Worker Protection:

I write in support of the proposed rule, and to offer three technical recommendations drawn from an unusual vantage point: I spent thirty years as a corporate contract attorney drafting the consumer-facing agreements this rule addresses. I was on the other side of the table. I wrote terms of service, purchase agreements, and fee schedules for major consumer brands. I say that not as a confession but as context, because it lets me tell the Department something the industry will not say during this comment period: the gap between the advertised price and the real price is not an accident of drafting. It is an architecture. It is deliberate, it is well-understood by the people who build it, and it will survive a disclosure mandate unless the rule is drafted with that in mind.

Three recommendations follow.

First, address unilateral amendment of fee schedules. A great many consumer agreements disclose fees by reference to a schedule the company reserves the right to amend "from time to time" at its sole discretion. A rule that requires accurate all-in pricing at the point of sale, but leaves that power untouched, permits a compliant advertised price on Monday and a materially different one after the consumer is bound. I would urge the Department to require that post-agreement fee increases be affirmatively disclosed and, where practical, give the consumer a right to exit without penalty.

Second, close the incorporation-by-reference gap. The most consequential fees frequently do not live in the document the consumer sees. They live in a separate schedule, addendum, or "community rules" document incorporated by reference — legally binding, practically invisible. The rule should make explicit that the required all-in price must capture every mandatory charge imposed by any incorporated document, not merely those printed on the face of the agreement.

Third, and most important: disclosure is not comprehension. The predictable industry response to any disclosure rule is technical compliance — the fee gets disclosed, in a hyperlink, in eight-point type, three screens down. That satisfies the letter of a rule and defeats its purpose entirely. I would urge the Department to specify presentation, not merely presence: a single all-in number, displayed with the same prominence as the advertised price, at the moment of decision rather than at the moment of checkout.

A final observation, offered constructively. Both this rule and the Click-to-Cancel rule are enforced substantially through consumer complaint. That design makes consumer awareness a precondition of enforcement: a New Yorker who does not know the right exists will not invoke it, and a New Yorker who cannot recognize a trap will not report one. Enforcement and education are not alternatives here — the first depends on the second.

That is the work I now do. After leaving practice I wrote Don't Sign That, a plain-English handbook for consumers that became a #1 Amazon best seller, and built it into the Contract Literacy Movement — a six-module curriculum that teaches ordinary people to read what they sign. We deliver it free to libraries, chambers of commerce, unions, and community organizations, and we donate copies of the book at every workshop. If it would be useful to the Department — particularly in the window before the Click-to-Cancel rule takes effect on October 1 — I would welcome the opportunity to provide public-education programming for New Yorkers at no cost to the City. I would be glad to make myself available.

Respectfully submitted,

Leo Mann
#1 best-selling author of Don't Sign That
Founder, The Contract Literacy Movement
leo@leomannpublishing.com · contractliteracy.com

- **Zillow Group**

  Attached please find the written comments of Zillow Group on the DCWP's proposed "junk fee" rules. Thank you.

  Comment attachment
  DCWP-Junk-Fee-Rulemaking-Comment-August-2026.pdf

  Comment added August 6, 2026 4:20pm

August 7, 2026

New York City Department of Consumer and Worker Protection
Attn: Rulecomments@dcwp.nyc.gov

Re: Proposed Rule 6 RCNY § 5-16 — General Fee Disclosures (DCWP Ref. 2026 RG 027)

Dear Commissioner Levine and DCWP Rulemaking Staff:

Zillow Group — including its StreetEasy platform, the leading rental and for-sale listing marketplace serving New York City consumers — respectfully submits the following comments on the Department's proposed Rule 6 RCNY § 5-16 (General Fee Disclosures).

We support the rule's goal. Consumers should not encounter fees at the end of a transaction that were not disclosed upfront. Hidden fees undermine price comparison, erode trust, and fall hardest on renters navigating an already costly housing market. Zillow and StreetEasy have invested substantially in building fee disclosure and "total price" infrastructure for NYC rental listings precisely because we believe transparent, comparable pricing is in consumers' and the market's long-term interest.

The rule as drafted is appropriately broad in intent but is written at a level of generality that could create significant practical ambiguity when applied to rental housing listings — a context that mixes recurring monthly fees, variable charges, upfront one-time costs, and third-party intermediaries in ways that point-of-sale retail does not. Without more prescriptive guidance, the rule risks inconsistent compliance, unlevel enforcement, and — in some cases — disclosure formats that are technically compliant but less informative to consumers than what the market currently provides.

We urge DCWP to finalize the rule with rental-specific guidance addressing the five issues below.

1. Issue prescriptive, rental-specific guidance on how to satisfy the rule

The rule's industry-neutral design is a feature, not a flaw — it ensures broad coverage and consistent standards across sectors. But "industry-neutral" should not mean "one method fits all." Rental housing requires a distinct disclosure framework because it involves fees that are:

- Recurring (monthly rent, utilities, pet fees);
- Upfront and non-recurring (move-in fees, application fees, broker fees, if applicable);
- Conditionally refundable (security deposits);
- Variable and usage-based (electricity, gas billed directly by utility); and
- Structured through multiple intermediaries (landlords, brokers, listing platforms).

Without prescribed methods, each platform and advertiser will interpret the rule differently, producing disclosure formats that cannot be compared by consumers — the opposite of the rule's intent. A compliant disclosure framework for rental listings should, at minimum, distinguish between these fee categories — presenting monthly recurring fees as a total monthly price, itemizing upfront non-recurring fees separately, and clearly labeling conditionally refundable charges and variable costs. We would welcome the opportunity to discuss with DCWP staff how such a framework could be operationalized in guidance.

2. Clarify the treatment of variable, usage-based utility charges

Utilities present the most complex disclosure challenge in rental housing, and consumers have a clear interest in understanding what they will cost. The challenge is that utility charges take materially different forms — fixed and landlord-billed (e.g., water included in rent), variable and landlord-billed, or variable and billed directly by the utility company — and the rule's "mandatory fees" definition could be read to require a fixed dollar amount in all cases. That reading risks producing figures that are less accurate, not more: a single "maximum total" for variable utilities could overstate or understate actual tenant cost in ways that distort rather than inform.

A more consumer-protective approach would require clear disclosure of utility responsibility alongside a meaningful cost reference where one can be reliably stated. Where no such figure is available, a clear indication that costs are variable satisfies the rule's transparency goal without forcing advertisers to publish figures that mislead.

We ask DCWP to confirm through guidance or rule amendment that:

- Only fixed, landlord-billed utility charges constitute mandatory fees required to be included in the total price;
- For variable utilities billed directly by utility companies, disclosure of tenant responsibility — e.g., "Tenant pays: electric, gas (billed directly by utility)" — plus a reliable cost reference where one can be stated, constitutes compliant disclosure; and
- The "maximum total" formulation in the total price definition is clarified to exclude charges for which no fixed amount can be stated because costs are variable and usage-based.

3. Adopt a clear convention for presenting recurring versus upfront fees, including concessions

Section 5-16(c) requires disclosure of the monthly total and any non-recurring mandatory charges. This is a sound framework. The challenge for rentals is that it does not specify how to present these figures in a way that enables meaningful comparison across listings.

Two specific issues arise:

- Security deposits. A security deposit is mandatory and upfront, but it is conditionally refundable, and tenants have structural alternatives (e.g., third-party guarantors). The rule should clarify whether security deposits are included in the upfront total, disclosed separately, or excluded on the basis that they are not a fee or charge.

- Concessions. Landlord concessions — e.g., one month free on a 13-month lease — do not change the monthly cash outlay but materially affect the total cost of occupancy. Industry practice is to present an "effective monthly price" that amortizes the concession over the lease term. This convention is meaningful to consumers comparing listings, but a strict reading of the rule could treat it as non-compliant because the amortized figure differs from the contractual monthly rent. DCWP should confirm that amortized effective monthly pricing inclusive of concessions constitutes compliant disclosure, or provide an alternative convention.

4. Establish a platform safe harbor for third-party fee data

The rule applies to any person who "offers, displays, or advertises" a price. It does not distinguish between the originating advertiser — the landlord or broker who sets and submits fee information — and a listing platform that displays that information on their behalf.

Zillow and StreetEasy are portals. We do not set rental fees; we display fee data submitted by landlords, property managers, and brokers. We invest in tools that prompt and structure accurate fee disclosure, and we have strong incentives to ensure the data on our platforms is reliable. But we cannot independently verify every fee field submitted by thousands of advertisers, and we should not be held liable for misrepresentations by the advertisers who submit that data.

Without a platform safe harbor, the rule creates a structural mismatch: the party with enforcement exposure (the platform) is not the party with control over the underlying data (the advertiser). This does not serve consumers — it creates incentives for platforms to restrict fee display rather than expand it.

We ask DCWP to clarify through guidance or rule amendment that a listing platform is not liable for fee data inaccuracies submitted by third-party advertisers, provided the platform (a) requires advertisers to certify the accuracy of submitted fee data, (b) provides a structured mechanism for fee disclosure, and (c) has not independently misrepresented the fees.

5. Require fee consistency from advertisement through transaction

The rule's disclosure obligations are strongest at the moment of advertisement and at the point of consent. We support both. We also ask DCWP to make explicit what we believe is implicit in the rule's design: that fees disclosed in the advertisement must be honored through the transaction. A consumer who sees a disclosed total price at listing should not encounter different fees when they reach the point of lease execution.

Fee escalation between advertisement and transaction is a core junk fee harm. Explicit consistency language in the rule — or in DCWP guidance — would close this gap and give consumers a clear, enforceable protection.

Closing note: enforcement and market infrastructure

The rule's effectiveness will depend significantly on DCWP's ability to identify and reach noncompliant advertisers, including those who operate without formal registration or a known business identity. We encourage DCWP to consider leveraging existing city infrastructure — including HPD building and landlord registration data — as an enforcement and outreach tool to ensure the rule reaches the full population of rental advertisers, not only those operating through licensed brokers or established platforms.

Conclusion

Zillow and StreetEasy support the Department's effort to eliminate hidden fees in the NYC market. The five clarifications we have identified above — rental-specific prescriptive guidance, utility disclosure standards, a convention for recurring versus upfront fees, a platform safe harbor, and fee consistency requirements — would strengthen the rule's practical effectiveness without limiting its scope or intent.

We welcome the opportunity to discuss any of these comments with DCWP staff and would be glad to provide additional technical detail on Zillow and StreetEasy's current fee disclosure infrastructure.

Respectfully submitted,

Torrey A. Fishman
Senior Government Relations Manager
Zillow Group

- **Laura C. Dismore**
  The attached comment letter is submitted on behalf of Protect Borrowers, a non-profit organization comprising experts, lawyers, and advocates fighting to build an economy where debt doesn’t limit opportunity.

  Comment attachment
  26.8.9-DCWP-Junk-Fees-Comment-Letter-Protect-Borrowers.pdf

  Comment added August 7, 2026 8:48am

August 7, 2026

New York City Department of Consumer and Worker Protection

Re: Proposed Junk Fee Rule

Protect Borrowers submits this comment in support of the Department of Consumer and Worker Protection's (DCWP) proposed new rule that prohibits charging consumers hidden junk fees.[1] Protect Borrowers (formerly Student Borrower Protection Center) is a team of experts, lawyers, and advocates fighting to build an economy where debt doesn't limit opportunity. We investigate financial abuses, take predatory companies to court, and push for policies to protect working people from debt traps. We aim to deliver immediate relief to families while building power and driving systemic change.

New Yorkers are struggling to afford everyday necessities.

Unaffordability of basic goods and services is currently a crisis for the average American consumer. Americans now owe more than $18.5 trillion in total debt - more than at any other point in history.[2] This amount encompasses a broad range of debt, including credit card debt, utility debt, and debt to cover monthly rent.[3] American families are increasingly turning to alternative financing products just to get by, as documented in a September 2025 poll by Protect Borrowers and the Groundwork Collaborative.[4] A follow-up 2026 poll found that four in ten of the people surveyed used alternative financing products, including for essentials like groceries and housing costs.[5] In May 2026, Protect Borrowers and the Century Foundation launched Affordable NYC Now, a collaborative project offering data about - and solutions to - the affordability crisis in New York City. Residents of NYC, particularly those in the outer boroughs, are experiencing skyrocketing auto loan payments, credit card payments, and monthly debt repayment burdens.[6]

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[1] *Notice of Public Hearing and Opportunity to Comment on Proposed Rules,* New York City Department of Consumer and Worker Protection (July 2026), https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf.

[2] *American Families are Trapped in a Cycle of Debt, More Rely on Credit to Cover Rent, Utility Bills, Basic Necessities*, Protect Borrowers (Sept. 9, 2025), https://protectborrowers.org/dfp-groundwork-protectborrowers_debt-poll_sept-2025/; *see also A Loan in Every Cart: How BNPL Lenders Take Advantage of Americans' Financial Desperation and a Case for a BNPL Borrower Bill of Rights*, Protect Borrowers (July 2026), https://protectborrowers.org/wp-content/uploads/2026/07/BNPL-Report.pdf.

[3] *Id*.

[4] *Id*.

[5] *Poll: 4 in 10 Voters Use BNPL, Including on Essentials Like Groceries and Housing*, Protect Borrowers (July 2026), https://protectborrowers.org/resource/buy-now-pay-later-polling-july-2026/.

[6] *Affordable NYC Now*, Protect Borrowers & The Century Foundation (May 2026), https://protectborrowers.org/resource/affordable-nyc-now/.

Now more than ever, New Yorkers simply cannot afford added and unnecessary fees that accomplish nothing but draining their wallets. Protect Borrowers urges DCWP to adopt its proposed rule concerning hidden junk fees and provide New Yorkers with the legal protections that they deserve.

Hidden junk fees impose a huge financial burden on consumers.

Hidden junk fees impose a huge financial burden on New York families, totalling, by some estimates, tens of billions of dollars per year.[7] These fees do not correspond to specific costs incurred by the sellers of goods or services, nor do they correspond to specific benefits received by the purchasers; they are often imposed at the very end of a transaction for no purpose other than to extract as much money as possible from the consumer. It is no accident that these fees are hidden until late in the game: companies imposing junk fees know that a consumer who has made it all the way to the end of a purchase is likely to go through with that purchase even when it costs more than originally anticipated. By tacking on fees at the very end of transactions, sellers and companies maximize the likelihood that consumers, having already made the mental calculation of whether a purchase is worth it, will complete the transactions despite the inflated price. Finally, the last-minute imposition of junk fees deprives New Yorkers of the information they need to make informed decisions and prevents effective comparison shopping, undermining competition in the marketplace.

Hiding the true cost of a product by imposing hidden junk fees is an unlawful practice under New York City and New York State law.

New York City law prohibits engaging in "deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services."[8] Any false or misleading statement that has the tendency or capacity to deceive or mislead consumers is deceptive, and any act or practice that unfairly takes advantage of a consumer's lack of knowledge is unconscionable (provided DCWP promulgate regulations declaring such a practice unconscionable).[9] Under New York state law, "[u]nfair, deceptive, or abusive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" are unlawful.[10] It is well-established under state and federal law that hiding the true price of a product is a deceptive practice.[11] But DCWP's proposed rule provides an

[7] *The Hidden Cost of Junk Fees*, Consumer Financial Protection Bureau (Feb. 2, 2022), https://www.consumerfinance.gov/archive/blog/hidden-cost-junk-fees/.
[8] N.Y.C. Admin. Code § 20-700.
[9] N.Y.C. Admin. Code § 20-701.
[10] N.Y. Gen. Bus. Law § 349.
[11] *Attorney General James and Bipartisan Coalition Urge FTC to Address Deceptive Rental Fees*, Office of the New York Attorney General (Apr. 13, 2026), https://ag.ny.gov/press-release/2026/attorney-general-james-and-bipartisan-coalition-urge-ftc-address-deceptive; *FTC Rule on Unfair or Deceptive Fees to Take Effect on May 12, 2025*, Federal Trade Commission (May 5, 2025),

additional enforcement tool while making it clear to companies selling goods and services to residents of NYC that hidden junk fees will not be tolerated. This is especially important as the junk fees at issue are just one type of a broad range of harmful practices related to price setting, transparency, surveillance, and discounting, many of which are unlawful.[12]

Price transparency in more places gives consumers better control over their money.

Hidden junk fee bans have been successfully enacted in several states, including Massachusetts,[13] California,[14] and Minnesota[15]. As more and more consumer transactions are conducted online, regardless of state and city limits, hidden junk fee bans in any location help protect consumers across the country. The more cities and states that explicitly prohibit junk fees, the more sellers of goods and services are likely to preemptively comply and offer complete price transparency to their consumers (as required by law). As the biggest city in the nation, New York City has the opportunity to lead the way at the municipal level, protecting New York's consumers from hidden junk fees and establishing a model that other cities can follow.

The proposed rule's record retention requirements are critical to ensuring transparency and compliance.

The proposed rule requires sellers of goods and services to maintain records that establish the nature, purpose, and amount of any fee or charge included in the price of the good or service, and sellers would have to make these records available to DCWP upon request.[16] This record retention requirement is important because accountability mechanisms for violations are vital to the proposed rule's success. Misleading, misrepresentative, and opaque fees created the need for the proposed rule in the first place; DCWP must have the ability to obtain records establishing that seemingly-legitimate fees or charges do, in fact, serve a lawful purpose.

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https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-rule-unfair-or-deceptive-fees-take-effect-may-12-2025.

[12] *See*, *e.g.*, Stephanie T. Nguyen & Adam Teitelbaum, *Dissecting the "Discount,"* Division of Field Notes (June 24, 2026), https://divfn.substack.com/p/dissecting-the-discount; Samuel A.A. Levine & Stephanie T. Nguyen, *The Loyalty Trap: How Loyalty Programs Hook Us with Deals, Hack Our Brains, and Hike Our Prices*, Vanderbilt Policy Accelerator (Oct. 2025), https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/10/17195957/The-Loyalty-Trap.pdf; Stephanie T. Nguyen, *Walmart Rollbacks & Fragmented Reference Prices*, Division of Field Notes (June 25, 2026), https://divfn.substack.com/p/walmart-rollbacks-and-fragmented; Stephanie T. Nguyen & Shaoul Sussman, *The Degradation of Prices: Platform Power, the Erosion of Price Comparison, and Rebuilding Comparison Shopping in the Digital Economy*, Seton Hall Law Review (2026), https://scholarship.shu.edu/cgi/viewcontent.cgi?article=3940&context=shlr.

[13] 940 CMR 38.00.

[14] Section 1770(a)(29) of the California Civil Code;

[15] Minn. Stat. Ann. § 325D.44(1a)

[16] *Notice of Public Hearing and Opportunity to Comment on Proposed Rules,* New York City Department of Consumer and Worker Protection (July 2026), https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf.

Conclusion

DCWP has the opportunity to lead the charge on banning hidden junk fees at the municipal level. Requiring sellers to give New Yorkers clear, transparent prices benefits not just consumers - who will have the information they need to make informed choices - but the state of healthy competition in the marketplace. DCWP should seize the moment and adopt its proposed rules concerning hidden junk fees.

If you have any questions about this comment or to discuss the proposed rule further, please contact Laura C. Dismore, Senior Counsel with Protect Borrowers, at laura@protectborrowers.org.

- **Anonymous**
  On behalf of the Chamber of Progress, please find our comments on DCWP's proposed junk fee rules.

  Comment attachment
  NYC_-DCWP-Proposed-Junk-Fee-Rules-Comments.pdf

  Comment added August 7, 2026 9:13am

CHAMBER OF PROGRESS

August 7, 2026

Samuel A. A. Levine
Commissioner, New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Proposed Rule Regarding Junk Fees, 6 RCNY § 5-16 (Reference Nos. 2026 RG 027; DCWP-75)

Dear Commissioner Levine and members of the Department:

On behalf of Chamber of Progress, a tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advancements, we submit these comments on the Department's proposed rule adding a **new section 5-16 to Title 6 of the Rules of the City of New York**.

Chamber of Progress supports strong consumer protection. We share the Department's interest in ensuring that the prices New Yorkers see are accurate and that mandatory fees are disclosed clearly before payment.

However, we are concerned about the rule's broad scope and urge the Department to narrow it, as detailed in Part II. If the Department proceeds with an industry-neutral rule, the recommendations in Parts III through X are intended to make it administrable across the various transactions it would govern. We respectfully urge the Department to:

1. Limit the rule to sectors in which the Department has established a record of widespread drip pricing. Alternatively, if the Department proceeds with an industry-neutral rule, provide a safe harbor for sectors in which consumers already receive a clear, itemized total before authorizing payment;

2. Adopt the Virginia formulation, or the functionally equivalent Connecticut approach, allowing fees that depend on consumer inputs to be disclosed by existence during initial display, with the final amount presented before the consumer authorizes payment;

3. Formally distinguish between merchant-set prices and those for delivery or fulfillment services in the rule text, treating each as a separate total-price obligation, and state explicitly that platforms bear no liability for third-party fees they do not control;

4. Confirm in the rule text, rather than solely in guidance, that optional charges and reasonably avoidable charges are excluded, and that subscription disclosures cover one billing period plus any non-recurring charges;

5. Clarify that the rule does not impede variable or dynamic pricing, promotions, loyalty programs, or bundle discounts, as long as mandatory fees are clearly disclosed before checkout;

6. Include a safe harbor provision, so that a business already following a substantially similar federal, State, or City disclosure rule for a specific charge is considered compliant as to that charge;

7. Limit subdivision (b) to offers, displays, and advertisements explicitly directed at New York City consumers, and state that businesses are not liable if they had no reasonable way to know a consumer was located in the City;

8. Establish a three-year retention period, accept standard business records, limit the scope of data requests, and remove the adverse presumption in subdivision (f)(2); and

9. Clarify that violations are calculated per unique advertisement or offer on a daily basis, provide a cure period for first violations, and set an effective date at least six months after adoption, with detailed interpretive guidance published in advance.

With these changes, the rule would preserve the Department's full authority to reach genuinely deceptive fee practices while remaining administrable for the businesses that already disclose their fees honestly.

I. The core disclosure principle in subdivision (d) is sound

Subdivision (d) requires that, before a consumer consents to pay, a business must disclose the nature, purpose, and amount of any excluded fee and the final amount the consumer must pay. That requirement reflects the disclosure architecture leading platforms use today. Consumers see an itemized breakdown and the total, then affirmatively authorize the total before any charge is processed. They can abandon the transaction at no cost.

This approach is consistent with the Federal Trade Commission (FTC)'s own economic analysis, which concluded that the harm from hidden mandatory fees can be eliminated either by including the fee in the advertised price or by listing the components of the total price separately and prominently disclosing the total price first.[1] We support codifying that standard.

The distinction between the rule's two operative provisions is important to note for our comments. Subdivision (c) outlines what must appear wherever a price is offered, displayed, or advertised, while subdivision (d) outlines what must appear before a consumer consents to pay. For sectors within the rule's properly narrowed scope, we support subdivision (d)'s requirement that the final amount be disclosed before consent. Our objection is to subdivision (c) – specifically to the requirement that a maximum total accompany every price display regardless of whether that total can yet be calculated.

II. The rule's economy-wide scope is not supported by an adequate factual basis

The proposed rule applies the same all-in pricing requirement across industries with materially different transaction structures. The Department's Statement of Basis and Purpose identifies third-party delivery applications, rental housing, hotels and short-term lodging, and live-event tickets together, but it does not establish that hidden-fee practices are equally prevalent across these sectors, or that a single display format is appropriate for each.[2]

The FTC faced this same issue. It originally proposed a broad rule similar to the Department's, but after reviewing public feedback, it limited its final rule to live-event tickets and short-term lodging, choosing not to include restaurants or food delivery services.[3] The reason was not indifference to fee transparency. It was the Commission's recognition that deceptive fee practices are not equally common across all sectors, and that markets differ in whether consumers are committed to a transaction before a total appears. The Department's Statement of Basis and Purpose relies on the Commission's 2023 proposed rule in four separate footnotes, but refers to the final rule only in a list of laws reviewed for potential preemption, and does not address the Commission's decision to narrow it.[4]

The Charter section 1043(d) certification issued by the Mayor's Office of Operations reflects the same tension. It certifies that the rule is written in plain language for the

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[1] Mary W. Sullivan. *Economic Analysis of Hotel Resort Fees*. Federal Trade Commission Bureau of Economics, Jan., 2017. https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf

[2] New York City Department of Consumer and Worker Protection. *Notice of Public Hearing and Opportunity to Comment on Proposed Rules, Statement of Basis and Purpose*. July 8, 2026. https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf

[3] Federal Trade Commission. "Federal Trade Commission Announces Bipartisan Rule Banning Junk Ticket and Hotel Fees." Dec. 17, 2024. https://www.ftc.gov/news-events/news/press-releases/2024/12/federal-trade-commission-announces-bipartisan-rule-banning-junk-ticket-hotel-fees; Federal Trade Commission. *Rule on Unfair or Deceptive Fees*. 16 C.F.R. pt. 464, Jan. 10, 2025. https://www.ecfr.gov/current/title-16/chapter-I/subchapter-D/part-464

[4] New York City Department of Consumer and Worker Protection. *Notice of Public Hearing and Opportunity to Comment on Proposed Rules*. July 8, 2026, nn. 1, 2, 4, 5, 15. https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf

"discrete regulated community or communities" subject to it, and that it minimizes compliance costs for that community.[5]

But an industry-neutral rule reaching everyone who advertises a price in New York City has no discrete regulated community. That tension bears on the rule's scope, on the definitional questions discussed in Part V, and on the need for a cure period discussed in Part X.

The evidence used to justify this broad, city-wide approach is mostly based on national data, not specific to New York City or the diverse industries this rule would cover. The Department relies heavily on a 2019 consumer survey and a 2023 national estimate, neither of which offers a clear picture of the local NYC market or the specific businesses impacted by these new requirements.[6]

The distinction the Commission drew is instructive. In live-event ticketing and short-term lodging, limited inventory, longer transactions, and consumer lock-in commit buyers before they see a total price. Online food and grocery delivery works differently. Delivery fees, service fees, taxes, and optional charges such as tips are itemized before the consumer authorizes payment. The total is displayed before the transaction is completed, and a consumer who does not accept that total can abandon the order at no cost and order elsewhere within minutes. Consumers use these platforms repeatedly, switch between them easily, and purchase subscription products explicitly structured around fee reductions. The market rewards clear fee disclosure, which is why delivery platforms provide it.

We recommend limiting the rule to sectors in which the Department has established a record of widespread drip pricing. Alternatively, if the Department proceeds with an industry-neutral rule, provide a safe harbor for sectors in which, or offer a safe harbor for sectors in which consumers already receive a clear, itemized total before authorizing payment such as food and grocery delivery. In Part VII, we further propose a safe harbor for companies that are already following similar disclosure standards.

III. A delivery transaction's total price often cannot be calculated when individual prices first appear

Subdivision (c) requires disclosure of the total price whenever any price is offered, displayed, or advertised, and subdivision (a) defines total price as the maximum total of all mandatory charges and fees. For a fixed-price item, that definition is workable and appropriate. For services priced on transaction-specific inputs, it is not.

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[5] Francisco X. Navarro. Certification/Analysis Pursuant to Charter Section 1043(d): Rules Regarding Junk Fees. New York City Mayor's Office of Operations, Ref. No. DCWP-75, June 16, 2026.
https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf

[6] Penelope Wang. "Protect Yourself From Hidden Fees." *Consumer Reports*, May 29, 2019.
https://www.consumerreports.org/money/fees-billing/protect-yourself-from-hidden-fees-a1096754265/; CNBC. "Junk Fees Cost Consumers Tens of Billions Annually, According to the White House." Mar. 21, 2023. https://www.cnbc.com/2023/03/21/junk-fees-cost-consumers-tens-of-billions-annually-according-to-the-white-house.html

In food and grocery delivery, the final amount may depend on the items and quantities selected, the delivery address and distance, order size and minimum-order thresholds, delivery time and demand conditions, driver availability, subscription or membership status, and any applicable coupons, promotions, or loyalty benefits. A platform displaying a restaurant's $12 menu item does not yet know the total cost of the consumer's eventual transaction.

Requiring an all-in total at that stage would push businesses toward one of four outcomes, none of which improves transparency:

1. Displaying a worst-case figure that overstates the price for the great majority of orders;
2. Displaying a low figure that understates what most consumers will pay;
3. Displaying a placeholder that conveys little meaningful information; or
4. Declining to display item-level prices at all until the full transaction is known.

We specifically highlight this final scenario because guidance from a similar law has accepted it.[7] Suppressing price display, however, is not a consumer-protective result. Consumers browse menus and store listings precisely in order to compare item prices across merchants and platforms before committing to a cart. A rule that makes item-level price display legally hazardous would remove the information consumers use most, in service of a total that cannot yet be calculated accurately.

Requiring a maximum price at the outset can distort how consumers perceive fees, especially when those fees are flat or threshold-dependent rather than proportional. Consider a $4 carton of milk: if an order falls below a minimum threshold, a consumer might face a $3 small-order fee plus a $2 delivery charge. An all-in display would bring the total to nearly $10, making a low-cost item appear disproportionately expensive. If that same customer increases their order to $35, the small-order fee likely disappears, while the delivery fee remains largely unchanged, sharply reducing the effective cost of delivery as a share of the purchase. Displaying these avoidable, cost-based fees as a flat "maximum" total creates a punitive impression that does not reflect the actual nature of the transaction.

Virginia and Connecticut have already addressed this problem in enacted law. Virginia establishes the category of a "price-variable supplier," a business whose total charges fluctuate due to variables like distance, timing, or consumer choices, and deems them compliant if they disclose the factors determining the final price and warn that costs may vary.[8] Connecticut takes a different approach, focusing on the circumstances of the transaction. It permits a business to omit fees from initial price displays when they cannot be calculated upfront, as long as the fee's existence is noted early and the final

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[7] California Department of Justice, Office of the Attorney General. *SB 478 Frequently Asked Questions*. n.d. https://oag.ca.gov/system/files/attachments/press-docs/SB%20478%20FAQ%20(B).pdf
[8] Commonwealth of Virginia. *Code of Virginia §§ 59.1-607 and 59.1-608(D)*. 2025. https://law.lis.virginia.gov/vacode/title59.1/chapter58/section59.1-608/

amount is provided before checkout.[9] Although they use different drafting strategies — Virginia categorizing the supplier and Connecticut defining the situation — both states ultimately achieve the same standard for meaningful transparency.

We recommend adopting the Virginia formulation, or the functionally equivalent Connecticut approach, which would address this issue by allowing fees dependent on consumer inputs to be disclosed by existence during initial display, with the final amount presented before the consumer authorizes payment. Alternatively, the Department could revise the definition of "total price" to reflect the information available at the time of display, while expressly permitting the use of accurate ranges or good-faith estimates when a final amount cannot yet be determined.

IV. The rule should distinguish merchant prices from platform services

Because delivery platforms in a three-sided marketplace function as intermediaries between consumers, independent merchants, and delivery workers, they often separate merchant-set item prices from their own delivery and service fees. Currently, the proposed rule leaves it unclear if a merchant's advertised price must include these separate service charges. Without clarification, platforms risk being held liable for pricing and fee information provided by third-party merchants — costs that the platforms themselves neither determine nor manage.[10]

Virginia addresses this directly: its statute provides that a supplier offering both a good and a service may display the total price of the good separately from the price or rate charged for the service, and it applies the same price-variable standard to food delivery platforms specifically.[11] California reaches the same conclusion on the narrower question presented here. Its Attorney General's guidance provides that restaurant food prices need not incorporate delivery fees. Because these charges represent a separate service, excluding them from the advertised food price ensures that California's sector-specific delivery laws remain operational and intact.[12]

New York City already has the corresponding sector-specific framework. The City's delivery application requirements govern how platforms present merchant prices and disclose fees.[13] The Department is well positioned to draw the same line.

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[9] Connecticut General Assembly. *Public Act No. 25-44: An Act Concerning Consumer Protection and Safety*. §§ 1–3. June 10, 2025. https://www.cga.ct.gov/2025/act/pa/pdf/2025PA-00044-R00SB-00003-PA.pdf
[10] DoorDash. "How to Manage Pricing Across Different Delivery Platforms." *DoorDash Help Center*, n.d. https://help.doordash.com/en-us/merchants/article/managing-your-pricing-across-different-delivery-platforms
[11] Commonwealth of Virginia. *Code of Virginia § 59.1-608(A): Mandatory Fees or Surcharges; Disclosure Required*. 2025. https://law.lis.virginia.gov/vacode/title59.1/chapter58/section59.1-608/; Commonwealth of Virginia. *Va. Code § 59.1-587: Food Delivery Platform; Agreements Required; Disclosure of Price and Fees*. n.d https://law.lis.virginia.gov/vacode/title59.1/chapter54/section59.1-587/
[12] California Department of Justice, Office of the Attorney General. *SB 478 Frequently Asked Questions*. n.d. https://oag.ca.gov/system/files/attachments/press-docs/SB%20478%20FAQ%20(B).pdf
[13] City of New York. *New York City Administrative Code § 20-563 et seq., Subchapter 36: Third-Party Food Delivery Services*. Effective Jan. 24, 2022. https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-134606; New York City Department of Consumer and Worker Protection. "Requirements for Delivery Apps." n.d. https://www.nyc.gov/site/dca/businesses/Delivery-Apps-Requirements.page

We recommend that the Department formally distinguish between merchant-set prices and those for delivery or fulfillment services in the rule text, treating each as a separate total-price obligation. The rule should explicitly state that platforms bear no liability for third-party fees they do not control, provided these costs are accurately transmitted and identified.

V. "Mandatory fees and charges" requires clarification

While we support the rule's anti-circumvention goals, the second prong of the definition — covering fees "a reasonable person would expect to be included" — lacks a clear, prospective standard for businesses to apply. Because the regulation fails to define this boundary, companies cannot reliably assess whether specific charges fall within its scope at the time of display. This ambiguity is particularly concerning given the potential consequences: a mistaken assessment could be classified as a deceptive and unconscionable trade practice, rather than a simple technical error.

We recommend that the Department confirm three points, and that it do so in the rule text rather than solely in guidance:

- First, confirm that optional charges are excluded, including voluntary gratuities or tips, expedited or priority service, and add-on protection or insurance products.
- Second, confirm that reasonably avoidable charges are excluded, including fees a consumer can avoid by selecting a different fulfillment method or by meeting a disclosed threshold.
- Third, confirm that for subscription products the required disclosure is the total for one billing period plus any non-recurring charges, with express direction on how an introductory rate is to be displayed alongside the post-promotional recurring price.

We also encourage the Department to preserve itemization expressly. Aggregating a merchant's price, a delivery charge, a service charge, and government charges into a single figure can reduce transparency by obscuring what the consumer is paying for and who receives each payment, and it makes comparison shopping across providers more difficult. A rule requiring both a prominent total price and an itemized breakdown before payment delivers both benefits.

VI. Variable pricing and consumer savings programs need express protection

Delivery fees frequently adjust to reflect real-time conditions, such as delivery distance, order volume, and local demand. This variation allocates costs more accurately than a flat fee, and prevents small-order customers from subsidizing larger, more expensive deliveries. Common consumer savings like bundle discounts, coupons, and subscription benefits are often contingent on specific cart contents or individual eligibility determined during the transaction process.

While the proposal does not explicitly ban variable pricing or discounts, its "all-in" requirement creates a significant challenge. Businesses are essentially being asked to commit to a final total before knowing key transaction variables. To minimize regulatory risk, companies might feel pressured to abandon flexible pricing models altogether. We raised this concern during the Commission's 2024 proceeding, noting that rigid display mandates can unintentionally drive businesses to discontinue popular bundle and bulk discounts.[14] These programs lower prices for consumers and increase competition among platforms and merchants, and they warrant explicit protection.

We recommend clarifying that the rule does not impede dynamic pricing, promotions, loyalty programs, or bundle discounts, as long as mandatory fees are clearly disclosed before checkout. Virginia offers a practical model for this: its law explicitly confirms that promotional price reductions and fee waivers are permissible and consistent with transparent disclosure standards.[15]

VII. The rule should include a safe harbor for compliance with comparable requirements

Subdivision (g) acknowledges that this rule exists alongside other price disclosure laws. In reality, a business advertising to New York City consumers may be subject at once to section 5-16, to four sector-specific City rules governing delivery applications, hotels, live-event tickets, and retail sales[16] to the FTC's Rule on Unfair or Deceptive Fees, and to price-transparency statutes in various states.[17] While these frameworks share the common goal of clear, upfront fee disclosure, their specific technical and formatting requirements vary significantly. It is functionally impossible for a national entity to maintain unique display configurations for every jurisdiction on every platform.

Including a safe harbor is a standard, practical approach. Virginia's law provides a clear model by deeming any provider compliant if they already adhere to equivalent federal

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[14] Chamber of Progress. "Comment from Chamber of Progress." Federal Trade Commission, Feb. 7, 2024. https://www.regulations.gov/comment/FTC-2023-0064-3137

[15] Commonwealth of Virginia. *Code of Virginia § 59.1-609(A): Limitations; Exclusions*. 2025. https://law.lis.virginia.gov/vacode/title59.1/chapter58/section59.1-609/

[16] New York City Department of Consumer and Worker Protection. Rules of the City of New York § 5-15: Hotel Fee Disclosures. N.d. https://rules.cityofnewyork.us/wp-content/uploads/2026/01/DCWP-NOA-Limitations-on-Hotel-Fees.pdf; City of New York. *New York City Administrative Code § 20-881: Total Ticket Cost Disclosure*. n.d. https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-217842; City of New York. *New York City Administrative Code § 20-708: Display of Total Selling Price by Tag or Sign*. n.d. https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-35367; City of New York. *New York City Administrative Code § 20-563 et seq.: Third-Party Food Delivery Services*. n.d. https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-134606

[17] State of California. *California Civil Code § 1770(a)(29)*. n.d. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1770; State of Minnesota. *Minnesota Statutes § 325D.44, subd. 1a*. n.d. https://www.revisor.mn.gov/statutes/cite/325D.44; Massachusetts Office of the Attorney General. *940 C.M.R. § 38.00: Unfair and Deceptive Fees*. Mar., 2025.https://www.mass.gov/regulations/940-CMR-3800-unfair-and-deceptive-fees; State of Colorado. *Colorado Revised Statutes § 6-1-737: Requirement to Disclose Certain Pricing Information—Landlords and Tenants—Remedies—Rules—Definitions*. n.d. https://leg.colorado.gov/sites/default/files/2025a_1090_signed.pdf; Commonwealth of Virginia. *Code of Virginia §§ 59.1-587 and 59.1-607–59.1-610*. n.d. https://law.lis.virginia.gov/vacode/title59.1/chapter58/; Connecticut General Assembly. *Public Act No. 25-44: An Act Concerning Consumer Protection and Safety*. June 10, 2025. https://www.cga.ct.gov/2025/act/pa/pdf/2025PA-00044-R00SB-00003-PA.pdf

broadband, cable, or satellite disclosure standards, federal ticket-sales rules, or sector-specific food delivery regulations.[18]

We recommend including a safe harbor provision. If a business already follows a substantially similar federal, State, or City disclosure rule for a specific charge, that charge should be considered compliant. This addition protects the Department's ability to target genuine deception while offering a clear, practical path for businesses. It also resolves potential conflicts — especially where federal rules dictate specific display layouts — where a single digital interface simply cannot satisfy two competing, divergent sets of formatting requirements.

VIII. Applicability should be limited to conduct directed at New York City

Subdivision (b) applies to anyone advertising to a "New York City consumer." Taken literally, this language could sweep in national advertising campaigns not intended for the City or digital content shown to users whose location is unknown. For many online transactions, a consumer's location is not verified until they enter an address — often the same moment the transaction-specific price becomes calculable.

We recommend addressing this by limiting subdivision (b) to offers, displays, and advertisements explicitly directed at New York City consumers. Additionally, the rule should state that businesses are not liable if they had no reasonable way to know a consumer was located in the City at the time of display. This modification focuses the Department's oversight on local consumer protection while preventing the rule from effectively functioning as a national mandate.

IX. The recordkeeping provision is broad and lacks basic limits

The recordkeeping requirements in subdivision (f)(1) are also overly broad, as they lack clear retention timelines, materiality thresholds, or reasonable limits on Department requests. This vagueness places an undue burden on any business that advertises in the City. The adverse presumption in subdivision (f)(2) compounds the problem: it shifts the burden of proof, and could penalize businesses for recordkeeping oversights rather than for deceptive practices.

We recommend establishing a three-year retention period and accepting standard business records as sufficient proof of compliance. Any data requests should be limited in scope, protect trade secrets, and allow companies a fair timeframe to respond. Finally, we strongly recommend removing the presumption in (f)(2); if the Department insists on keeping it, it must be rebuttable by other evidence and applied only after a formal request and a reasonable opportunity for compliance has been provided.

[18] Commonwealth of Virginia. *Code of Virginia § 59.1-608(E)–(I): Mandatory Fees or Surcharges; Disclosure Required*. n.d. https://law.lis.virginia.gov/vacode/title59.1/chapter58/section59.1-608/

X. The rule needs a defined unit of violation, a cure period, and a workable effective date

The current proposal leaves the definition of a single violation ambiguous, which is concerning given how frequently price displays are served across digital platforms. If penalties ranging from $525 to $3,500 are applied per impression or per transaction, the totals could be wholly disproportionate to any consumer harm resulting from a formatting error. **We recommend** clarifying that violations are calculated per unique advertisement or offer on a daily basis, and that uniform displays of the same price point be treated as a single occurrence.

Although the Department's certification suggests a cure period is unworkable,[19] **we recommend** the Department reconsider this stance for initial infractions. The rule's industry-neutral nature places a heavy burden on New York City's small business community, which often lacks the legal staff to navigate complex new mandates. A first-time cure period prioritizes compliance over punishment, helping distinguish unintentional technical errors from the deceptive bait-and-switch tactics that the rule is meant to stop. We would support this protection being revoked in cases where the Department identifies intentional misrepresentations under subdivision (e).

The absence of a delayed effective date ignores the significant technical and logistical hurdles required to update price displays across various digital and physical storefronts. California, Massachusetts, and the FTC each allowed several months between adoption and effectiveness, and Connecticut allowed over a year between enactment of its fee-disclosure provisions and their July 1, 2026 effective date.[20]

We recommend an effective date at least six months after adoption, accompanied by detailed interpretive guidance, specifically regarding variable charges and the "reasonable person" standard, to ensure businesses can comply with confidence.

Conclusion

Chamber of Progress appreciates the opportunity to comment. We share the Department's commitment to honest pricing and the transparent presentation of mandatory charges prior to payment. While we support the rule's underlying objectives, our concerns focus on its practical application. Each modification we propose ensures

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[19] Francisco X. Navarro. *Certification/Analysis Pursuant to Charter Section 1043(d): Rules Regarding Junk Fees*. New York City Mayor's Office of Operations, June 16, 2026. https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf

[20] State of California. *California Civil Code § 1770(a)(29)*. Oct. 7, 2023. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1770; Massachusetts Office of the Attorney General. *940 C.M.R. § 38.00: Unfair and Deceptive Fees*. Mar., 2025. https://www.mass.gov/regulations/940-CMR-3800-unfair-and-deceptive-fees; Federal Trade Commission. *Rule on Unfair or Deceptive Fees*. Jan. 10, 2025. https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees; Connecticut General Assembly. *Public Act No. 25-44: An Act Concerning Consumer Protection and Safety*. June 10, 2025. https://www.cga.ct.gov/2025/act/pa/pdf/2025PA-00044-R00SB-00003-PA.pdf

the Department maintains its full oversight and authority to address genuinely deceptive fee practices.

A single display format applied to every industry, every pricing model, and every business size will fail in the cases it was not written for, and the businesses least able to absorb that cost are the small merchants the rule also reaches. A narrower scope, a workable definition of total price, a clear line between merchant and platform prices, and a safe harbor for businesses already complying elsewhere would deliver the transparency the Department seeks without those consequences. Virginia's 2025 enactment demonstrates that these accommodations are achievable: it already contains the variable-pricing standard, the separation of goods from services, the promotions savings clause, and the deemed-compliance safe harbors we recommend here.

We have raised closely related issues in our comments to the FTC in its parallel proceeding,[21] and we would welcome the opportunity to discuss these recommendations with the Department. We look forward to continued engagement with the Department as it finalizes this rule.

Sincerely,

Jabari Cooper
Director of State and Local Government Relations, Northeast

[21] Chamber of Progress. ***Comments to FTC: Oppose Industry-Wide Fee Rule for Online Food Delivery Services (Project No. P267101)***. May 18, 2026. https://progresschamber.org/wp-content/uploads/2026/05/US-Federal-Other-Resources-Comments-to-FTC_-Oppose-Industry-Wide-Fee-Rule-for-Online-Food-Delivery-Services-Civic-Innovation-Policy_Delivery-Services.pdf

- **Ian P. Moloney**

  Please find comments below

  Comment attachment

  American-Fintech-Council-Response-to-NYC-DCWP-Junk-Fees.pdf

  Comment added August 7, 2026 5:47pm

August 7, 2026

Samuel A.A. Levine
Commissioner
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Response to Proposed Rules Relating to Junk Fees, Reference No. 2026 RG 027

Dear Commissioner Levine,

On behalf of the American Fintech Council (AFC),[1] I appreciate the opportunity to submit this comment letter in response to the New York City Department of Consumer and Worker Protection's (The Department) proposed Rules Relating to Junk Fees, Reference No. 2026 RG 027 (Proposed Rulemaking).[2]

AFC is a standards-based organization and the largest and most diverse trade association representing financial technology companies and innovative banks. On behalf of more than 150 member companies and partners, AFC promotes a transparent, inclusive, and customer-centric financial system by supporting responsible innovation and encouraging sound public policy. AFC's membership includes banks, nonbank lenders, payments companies, earned wage access providers, loan servicers, credit bureaus, personal financial management companies, and technology and infrastructure providers operating throughout the modern financial services ecosystem.

AFC supports the Department's objective of ensuring that consumers receive clear and accurate information regarding the prices they will pay. Upfront price transparency promotes informed decision-making and fair competition. At the same time, an industry-neutral rule of broad application must account for pricing structures in which a fee cannot be converted into an exact dollar amount until a consumer supplies transaction-specific information. It must also operate coherently alongside federal and state disclosure regimes that already prescribe the substance, timing, format, and terminology of financial disclosures. Without targeted clarification, regulated entities may face obligations that are impossible to satisfy at the advertising stage or that require duplicative notices capable of confusing, rather than informing, consumers.

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[1] American Fintech Council's (AFC) membership spans EWA providers, BNPL and other lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.

[2] New York City Department of Consumer and Worker Protection, *Notice of Public Hearing and Opportunity to Comment on Proposed Rules Relating to Junk Fees* (July 2026), https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf. The proposed rule was published for public comment with a hearing scheduled for August 7, 2026.

AFC therefore recommends that the Department finalize a framework that: first, permits formula-based disclosure when the exact total price depends on an amount outside the business's control and clearly distinguishes genuinely optional payments from mandatory fees; second, exempts banks and other comprehensively regulated financial entities or, at minimum, establishes a clear compliance safe harbor for transactions, fees, and disclosures governed by applicable federal or state law; and third, provides a reasonable implementation period, together with a limited opportunity to cure good-faith first violations. These refinements would preserve the Proposed Rulemaking's consumer-protection purpose while producing disclosures that are accurate, intelligible, and operationally feasible.

I. AFC Supports Practical Total Price Disclosures that Accommodate Transaction-Specific Percentage Fees and Properly Distinguish Optional Charges

Certain services are priced through a percentage applied to an underlying amount that the business neither sets nor knows when it publishes a general advertisement. A provider may, for example, charge a stated percentage of a consumer's rent payment, loan amount, or other transaction-specific value. Before the consumer identifies that value, the provider can disclose the percentage and the basis to which it applies, but it cannot calculate an exact dollar fee or final total price. Requiring a numerical total at that stage would compel the business either to invent an amount, omit otherwise useful pricing information, or avoid general price advertising altogether. None of those outcomes would advance meaningful transparency.

Subsection (c) should therefore expressly provide that, when a mandatory fee is calculated as a percentage of an amount that is not selected, established, or reasonably knowable by the business at the time of the advertisement, clear and conspicuous disclosure of the percentage and its calculation basis satisfies the total price requirement. The disclosure should identify the relevant base amount in plain terms, such as "2 percent of the rent payment selected by the consumer," and should appear at least as prominently as other pricing information. Once the consumer supplies the information necessary to calculate the charge, the business should disclose the exact dollar fee and final amount before the consumer consents to pay, consistent with subsection (d).

This approach would extend the Proposed Rulemaking's treatment of variable pricing without equating a formula with a fixed price. The examples involving hourly and per-room rates assume that the business controls the stated unit rate and can incorporate all mandatory charges into that rate. Percentage-based fees tied to a consumer-selected amount present a distinct problem because the missing input originates outside the business. A formula-based safe harbor would recognize that distinction while still giving consumers the information needed to estimate and compare costs.

The final rule should also resolve whether a transaction-specific percentage fee must be treated as a mandatory fee under subsection (c) or may be disclosed solely in the pre-consent breakdown under subsection (d). The answer should turn on whether the charge is unavoidable for the advertised service, not whether its precise dollar amount is known at the outset. Accordingly, an unavoidable percentage fee should remain part of the total price disclosure, but the required disclosure should be the applicable formula until the underlying amount becomes known. If the Department instead concludes that such charges belong only in subsection (d), it should say so expressly and provide examples that distinguish mandatory percentage fees from optional or contingent charges.

The need for clear treatment of transaction-specific charges also extends to optional payments, including tips, which may be presented to consumers as part of a transaction. The final rule should make clear that genuinely optional tips and similar voluntary payments are not "mandatory fees and changes" under subsection (a). Where a consumer may decline the payment, including by selecting a zero-dollar amount, and still receive the advertised good or service, the payment should not be treated as part of the mandatory total price because no additional payment is required to complete the transaction. This conclusion should not depend on whether the business presents the consumer with a default or suggested amount, provided that the consumer retains a clear and meaningful ability to decline the payment. Clarifying the treatment of transaction-specific percentage fees, contingent charges, and genuinely optional payments would ensure that each is subject to the disclosure requirements appropriate to its particular character.

II. AFC Supports Exemption for Regulated Financial Entities and Harmonized Disclosure Standards that Prevent Duplicative or Conflicting Consumer Notices

Financial products and services are already governed by extensive federal and state disclosure frameworks. The Truth in Lending Act and Regulation Z, for example, prescribe how creditors disclose finance charges, annual percentage rates, amounts financed, payment schedules, and other transaction terms. Similar requirements arise under the Electronic Fund Transfer Act, the Real Estate Settlement Procedures Act, state lending laws, and other product-specific regimes. Depending on the product and applicable law, these frameworks prescribe particular terminology, calculation methodologies, disclosure timing and presentation, and, in some instances, model or mandatory forms. Those requirements reflect deliberate regulatory judgments about how information should be calculated, described, and presented to consumers. Requiring an additional City disclosure of the same fee in a different format may create two nominally accurate statements that use different labels or computational conventions, leaving consumers to reconcile them without any corresponding informational benefit.

The Department should therefore consider a categorical exemption for banks and other financial entities that are already subject to comprehensive federal or state supervision and consumer disclosure requirements.[3] Financial institutions and regulated financial services providers operate within established statutory and regulatory frameworks governing the disclosure, characterization, timing, and presentation of fees and other consumer costs. These requirements are administered and enforced by federal and state financial regulators with specialized expertise concerning the products and transactions at issue.

Applying an additional, generally applicable City pricing rule to these entities may create overlapping, duplicative, or inconsistent obligations without materially advancing the Department's consumer protection objectives. This concern is particularly acute where federal

[3] California Civil Code § 1770(a)(29)(C) (2026); California Department of Justice, Office of the Attorney General, "SB 478 – Hidden Fees," https://oag.ca.gov/hiddenfees (explaining that the statute does not apply to certain specified transactions and industries already subject to other laws governing pricing).

law already prescribes the manner in which financial institutions must characterize and disclose consumer costs. The Truth in Lending Act and Regulation Z, for example, establish detailed disclosure requirements and expressly preempt state requirements to the extent they are inconsistent with federal law, including where a requirement would compel the use of terminology or disclosure treatment that conflicts with federally prescribed standards. The Electronic Fund Transfer Act and Regulation E similarly establish a federal framework governing electronic fund transfer disclosures and the treatment of inconsistent state requirements. Layering a separate City pricing mandate onto these carefully calibrated federal and state frameworks could also undercut the policy judgments embodied in those laws regarding how, when, and in what terms consumer costs should be disclosed. Imposing an additional City disclosure obligation on transactions already governed by these regimes could therefore require regulated entities to provide duplicative disclosures or to characterize the same fee using different terminology, timing, presentation, or calculation methodologies. Such overlapping requirements risk undermining the uniformity and clarity that the federal disclosure frameworks are designed to provide and may leave consumers with multiple presentations of the same cost that are more difficult, rather than easier, to reconcile. An entity-level exemption would avoid these conflicts while preserving the application of existing federal, state, and local prohibitions against deceptive or misleading representations.

AFC therefore recommends that the final rule excludes banks and other financial entities subject to comprehensive federal or state regulation from section 5-16. At a minimum, the exemption should apply to transactions, products, and services for which the entity is subject to an existing federal or state disclosure or advertising regime. This approach would recognize that financial products are already governed by detailed, product-specific requirements while allowing section 5-16 to operate as a gap-filling standard where no comparable regulatory framework applies.

If the Department declines to exempt regulated financial entities categorically, subsection (b)'s existing preemption language should, at a minimum, be supplemented by a meaningful compliance safe harbor. Subsection (b) excludes the Proposed Rulemaking only "to the extent" regulation is preempted by federal or state law. That language does not adequately address overlap where another law governs the disclosure but does not formally preempt every additional local requirement. The final rule should establish an affirmative compliance safe harbor providing that a fee disclosed in accordance with an applicable federal or state disclosure regime satisfies subsections (c) and (d) with respect to the same fee, provided that the required disclosure is made clearly, accurately, and within the timeframe prescribed by the governing law. Such a provision would avoid redundant disclosures while preserving the Department's authority over fees that fall outside another regulatory framework or that are misrepresented notwithstanding technical compliance elsewhere. A workable safe harbor should focus on substantive equivalence rather than identical wording. Businesses should not be required to redesign federally mandated forms, alter defined terms, or provide duplicative disclosures that depart from an established federal or state disclosure framework. Where the governing regime requires a disclosure only after consumer-specific information becomes available, compliance with that prescribed timing should likewise satisfy the City rule. Conversely, the safe harbor should not protect an omission merely because the underlying product is generally regulated. It should apply only to the particular fee and disclosure obligation actually addressed by another law or regulation.

The Department should further clarify the interaction between subsection (g) and this safe harbor. Although subsection (g) states that the Proposed Rulemaking does not replace or supersede existing City requirements, it does not explain how businesses should reconcile inconsistent prominence, timing, or categorization requirements. A hierarchy provision should direct businesses to comply with the more specific product-based rule where the same fee is covered by both provisions, while preserving section 5-16 as a gap-filling standard for fees not otherwise addressed. This approach would promote consistency across the City's regulatory framework and provide consumers with a single, coherent presentation of price information.

III. AFC Supports a Reasonable Implementation Framework that Enables Good-Faith Compliance and Consistent Enforcement

The Proposed Rulemaking would require substantial changes to advertising, digital interfaces, pricing engines, checkout flows, compliance controls, and recordkeeping systems. For financial technology companies and other businesses operating across multiple channels, implementation would require coordinated legal analysis, product design, engineering, quality assurance, vendor management, employee training, and review of legacy materials.

As such, the Department should provide at least 180 days between publication of the final rule and the commencement of enforcement. A defined implementation period would allow businesses to identify covered fees, map applicable federal and state requirements, revise disclosures, update automated calculations, test consumer interfaces, and establish records sufficient to substantiate the nature and amount of each charge. Comparable price-transparency rulemakings have recognized that regulated entities need meaningful lead time to redesign consumer-facing systems. The Federal Trade Commission, for example, adopted a 120-day period before its Rule on Unfair or Deceptive Fees became effective.[4]

An implementation period is especially important because the certification accompanying the Proposed Rulemaking states that no cure period is practicable. The absence of both prospective lead time and a post-violation opportunity to correct would potentially expose businesses to penalties for inadvertent defects arising from a new and broadly framed disclosure regime. It could also encourage rushed deployment, which increases the risk of calculation errors, inaccessible interfaces, and inconsistent disclosures across channels. A reasonable implementation period would promote more accurate and consistent disclosures by allowing businesses sufficient time to design, test, and implement the required changes before enforcement begins. Prospective implementation in time, however, is not a substitute for a measured enforcement response when an otherwise compliant business makes a good-faith error after the rule takes effect.

The absence of a cure period is particularly concerning where a violation results from a good-faith, non-recurring interpretation of an ambiguous provision rather than an attempt to conceal a fee or mislead consumers. As discussed above, questions may arise regarding the classification

[4] Federal Trade Commission, "Trade Regulation Rule on Unfair or Deceptive Fees," Federal Register 90, no. 6 (January 10, 2025): 2066–2167, https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees. (The rule became effective 120 days after publication, on May 12, 2025).

of percentage-based fees, the treatment of genuinely optional charges, and the interaction between the Proposed Rulemaking and existing federal or state disclosure regimes. A business acting reasonably and making disclosures consistent with an applicable regulatory framework could nonetheless face escalating penalties without an opportunity to correct the disclosure before a violation is recorded.

At a minimum, the final rule should permit a business to cure a non-willful first violation within 30 days after notice, particularly during the first year of enforcement. Alternatively, the Department should adopt an enforcement discretion policy for first violations involving a good-faith interpretation of an ambiguous provision. Cure or comparable relief should remain unavailable for intentional concealment, repeated misconduct, or a failure to provide restitution where consumers suffered monetary harm. For good-faith interpretive or implementation errors, however, a limited cure process would allow the Department to secure prompt correction while directing enforcement resources toward practices that are deceptive in substance rather than merely imperfect in form.

Furthermore, the Department should accompany the final rule with illustrative guidance addressing percentage-based fees, periodic charges, regulated financial disclosures, multi-step transactions, and the point at which consumer-specific information becomes sufficiently definite to require an exact total. Published examples and a reasonable reliance policy would improve consistency among businesses and enforcement personnel alike. They would also reduce the likelihood that similarly situated entities receive different instructions based on informal interpretations.

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AFC appreciates the Department’s commitment to transparent pricing and its consideration of these recommendations. A final rule that appropriately exempts regulated financial entities, accommodates transaction-specific pricing, harmonizes overlapping disclosure regimes, and affords businesses sufficient time to implement new requirements will better equip consumers to understand and compare costs without creating contradictory or technically impossible obligations.

AFC welcomes continued dialogue with the Department and would be pleased to provide any additional information that may assist in finalizing and implementing the Proposed Rulemaking.

Sincerely,

Ian P. Moloney

Ian P. Moloney
Chief Policy Officer
American Fintech Council

- **Health and Fitness Association**
  See attached.

  Comment attachment
  08.07.26-HFA-Comments-Proposed-Rules-Regarding-Junk-Fees.pdf

  Comment added August 7, 2026 6:46pm

HEALTH & FITNESS ASSOCIATION

August 7, 2026

BY ELECTRONIC SUBMISSION

Samuel A.A. Levine
Commissioner
New York City Department of Consumer and Worker Protection
42 Broadway
New York, New York 10004

Re: Comment Letter on Proposed Rules Regarding Junk Fees, Reference No. 2026 RG 027

The Health & Fitness Association (HFA) respectfully submits these comments regarding the New York City Department of Consumer and Worker Protection's (Department) proposed rules relating to mandatory fee and price disclosures.

HFA is the leading trade association representing the health and fitness industry in the United States. Our membership includes health clubs, fitness centers, studios, franchise systems, and industry suppliers serving millions of consumers each year. HFA's members range from independently owned neighborhood fitness facilities to regional operators, national chains, international brands, franchise systems, and the technology providers that support membership enrollment, billing, and management throughout the industry. Collectively, HFA's members operate hundreds of facilities throughout New York City and thousands more across New York State, the United States, and internationally.

HFA appreciates the Department's commitment to promoting transparent pricing and ensuring consumers understand the financial obligations associated with a membership before becoming contractually obligated. The Association shares that objective. Consumers should receive clear and meaningful information regarding the total price of a membership and any mandatory fees before making a purchasing decision.

Health club memberships, however, differ in important respects from many of the consumer transactions addressed by the proposed rule. Unlike a one-time retail purchase, a health club membership is a contractual relationship that is often serviced over time. Through the New York Health Club Services Act, the Legislature has established detailed requirements governing contracts for services, mandatory disclosures, cancellation rights, refund obligations, payment practices, and numerous other consumer protections specific to health club memberships.[1]

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[1] N.Y. Gen. Bus. Law §§ 620-631 (Health Club Services Act), available at: https://www.nysenate.gov/legislation/laws/GBS/A26

These comments are therefore not intended to oppose the Department's consumer protection objectives. Rather, they are intended to assist the Department in ensuring that the final rule complements New York's existing statutory framework, recognizes the operational realities of modern membership businesses, and provides practical standards capable of consistent implementation. HFA believes consumer protection is best advanced through regulations that are clear, coordinated, and harmonized with existing law, enabling businesses to provide consumers with consistent and meaningful disclosures throughout the enrollment process.

As discussed below, HFA respectfully encourages the Department to harmonize the final rule with the Health Club Services Act, preserve the distinction between pricing disclosures and contractual disclosures, apply a single and consistent disclosure standard, recognize the realities of centralized technology platforms and enterprise operations, and clarify several provisions that would benefit both consumers and regulated businesses. HFA believes these recommendations will strengthen the final rule while advancing the Department's objective of meaningful price transparency.

I. Harmonizing the Proposed Rule with New York's Existing Consumer Protection Framework

The Department's proposed rule seeks to improve consumer price transparency by establishing disclosure requirements applicable across a broad range of consumer transactions. HFA supports that objective. As the Department considers the final rule, however, the Association respectfully encourages it to recognize that health club memberships already operate within a statutory consumer protection framework in New York. The final rule should therefore be harmonized with that existing framework to ensure consumers receive clear and consistent protections while avoiding unnecessary overlap or uncertainty.

Unlike many industries affected by the proposed rule, health club memberships are governed by a statute specifically enacted to regulate the formation and administration of contracts for services offered by a health club. The New York Health Club Services Act establishes detailed requirements governing contracts, mandatory disclosures, cancellation rights, refund obligations, payment practices, and numerous other consumer protections applicable exclusively to contracts for services offered by health clubs.

Health clubs that offer automatic renewal or continuous service agreements are also subject to New York General Business Law § 527-a. That law requires clear and conspicuous disclosure of the material terms of an automatic renewal or continuous service offer. Specifically, the statute requires disclosure of a description of the product or service subject to renewal, the amount of the costs that will be charged, the frequency of the charges, the deadline by which the consumer must act to prevent further charges, and the available cancellation mechanisms.[2]

The proposed rule does not follow this existing statutory disclosure framework. Section 527-a organizes the disclosure of pricing and other material terms around the point at which a business requests consent or billing information for an automatic renewal or continuous service offer. The

[2] New York General Business Law § 527-a(1)(a), available at: https://www.nysenate.gov/legislation/laws/GBS/527-A.

proposed rule would instead impose total-price requirements whenever a price is offered, displayed, or advertised, together with a separate transaction-level disclosure before the consumer consents to pay. These differing standards concerning the content, timing, and presentation of disclosures could require businesses to provide overlapping information at multiple points under separate compliance frameworks. The final rule should therefore expressly address its interaction with § 527-a and ensure that businesses complying with the State's required disclosure of material terms are not subjected to duplicative or potentially inconsistent disclosure requirements.

The Legislature's adoption of industry-specific legislation reflects an important policy determination. A health club membership is fundamentally different from a one-time retail purchase because it creates an ongoing relationship between the consumer and the business. The Legislature recognized that distinction by establishing a comprehensive statutory framework to address aspects of the entire membership relationship, from enrollment through cancellation. Health club operators have consequently developed their agreements, enrollment procedures, employee training, and compliance programs around those statutory requirements.

Because the Legislature has already prescribed extensive consumer protections applicable to health club memberships, HFA respectfully submits that the Department should seek to ensure the final rule complements, rather than duplicates or creates uncertainty regarding, those existing statutory requirements. Consumers benefit when disclosure obligations are coordinated and consistent, allowing businesses to provide clear information through a single, integrated compliance framework.

The Department has previously recognized the importance of this approach. During the recent rulemaking implementing New York City's subscription cancellation requirements, the Department carefully considered comments addressing the interaction between municipal regulations and existing state law and adopted a final rule that avoided unnecessary conflict between those regulatory frameworks.[3] HFA appreciated the Department's thoughtful consideration of those issues and respectfully encourages the Department to apply the same principle in this rulemaking.

Regulatory consistency is particularly important where businesses operate throughout New York State under standardized enrollment, contracting and cancellation processes. Consumers likewise benefit from receiving substantially similar disclosures regardless of where within New York they purchase or use health club services. A harmonized regulatory framework promotes consumer understanding, improves compliance, and reduces the potential for inconsistent disclosure obligations governing substantially identical transactions.

Accordingly, HFA respectfully encourages the Department to finalize the proposed rule in a manner that harmonizes with the Health Club Services Act and preserves the comprehensive consumer protection framework already governing health clubs throughout the entire state of New York. By building upon that existing framework, the Department can further its consumer protection objectives while promoting consistent implementation and meaningful price transparency.

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[3] New York City Department of Consumer and Worker Protection, Final Rule Relating to Subscription Cancellations (2026), available at: https://rules.cityofnewyork.us/rule/cancellation-of-subscriptions/

II. Recognizing the Consumer Journey and the Role of Contractual Disclosures

The Department's proposed rule appropriately seeks to ensure that consumers understand the financial obligations associated with a transaction before becoming contractually obligated. HFA supports that objective. Consumers should clearly understand the amount they will pay, the existence of mandatory fees, when those fees will be assessed, and whether those fees are refundable before agreeing to purchase a health club membership.

The proposal, however, extends beyond disclosure of pricing information by requiring businesses to disclose not only the existence and amount of mandatory fees, but also the "nature" and "purpose" of those fees. While HFA supports meaningful consumer disclosure, the Association respectfully submits that the proposal does not sufficiently distinguish between information necessary to communicate the material financial terms of a transaction and information more appropriately conveyed through the contractual documents governing the ongoing membership relationship.

Health club memberships are not purchased through a single communication or pricing display. Rather, consumers move through a series of interactions before becoming contractually obligated. A prospective member may first encounter pricing through advertising, social media, or an internet search before visiting a website or mobile application, reviewing membership options, potentially speaking with club staff, completing the enrollment process, and ultimately executing a written membership agreement. Throughout that process, consumers may receive other documents applicable to the membership relationship, such as club usage policies.

Each of these communications serves a different purpose. Pricing displays are intended to communicate the financial terms of the transaction and enable consumers to compare membership options. The membership agreement and related documents establish the legal relationship between the parties and explain the ongoing rights, responsibilities, and operation of the membership after enrollment. Those distinctions should be reflected in the final rule.

Accordingly, HFA respectfully submits that information concerning the amount of a mandatory fee, the timing of the fee, and whether the fee is mandatory is appropriately communicated through pricing disclosures during the enrollment process. More detailed explanations concerning the contractual function or operational purpose of a recurring fee are often better suited to an agreement, club policies, or other documents governing the ongoing membership relationship.

This distinction is particularly important with respect to annual enhancement or facility improvement fees. Throughout the health and fitness industry, these fees commonly support ongoing investments in equipment replacement, facility modernization, technology improvements, expanded amenities, accessibility initiatives, safety enhancements, and other capital expenditures that improve the member experience over time. While the amount and timing of these fees can be communicated through pricing disclosures, explaining their operational purpose frequently requires substantially more context than can reasonably be conveyed within an initial pricing display.

Moreover, these investments are commonly planned and managed over multiple years and across multiple facilities. Capital planning is typically performed at the enterprise level, with investments prioritized based upon equipment lifecycle, member demand, operational needs, and long-term planning. As a result, accurately describing the purpose of an enhancement fee often requires broader context regarding how an operator manages long-term investments throughout its club network. That explanation is better suited to contractual documents governing the membership relationship than to an initial pricing display.

The Association is not aware of another state regulatory framework governing health club memberships that requires businesses to describe the operational nature and purpose of fees in an initial pricing disclosure in the manner contemplated by the proposed rule. Several states, including California, Colorado, Connecticut, Massachusetts, and Minnesota, have adopted pricing transparency requirements applicable to recurring consumer transactions.[4] Although those laws differ in their implementation, they generally focus on ensuring consumers understand the total financial obligation associated with a transaction while allowing flexibility regarding how recurring fees are explained throughout the broader consumer relationship. Maintaining general consistency with these emerging state frameworks will also reduce unnecessary fragmentation in consumer disclosures while allowing businesses operating across multiple jurisdictions to implement reasonably uniform compliance systems.

HFA respectfully submits that the Department's consumer protection objectives can be fully achieved without prescribing where every category of information must appear during the consumer journey. The final rule should require businesses to clearly disclose the amount and timing of mandatory fees (such as whether they are one-time, or recur on monthly basis) before a consumer becomes contractually obligated to purchase, while preserving reasonable flexibility to communicate more detailed explanations regarding the nature or purpose of those fees through the membership agreement or other governing documents.

This approach promotes consumer understanding by ensuring that pricing information remains focused on the consumer's financial obligation while allowing contractual documents to explain the ongoing operation of the membership relationship. Effective consumer protection should evaluate the enrollment process as a whole rather than assume every contractual term governing a recurring membership must be communicated through the initial pricing display.

Accordingly, HFA respectfully encourages the Department to preserve flexibility regarding where businesses communicate the operational purpose of recurring fees while ensuring consumers

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[4] See, e.g., California SB 478 (Cal. Civ. Code § 1770(a)(29)); Colorado HB 25-1090; Connecticut Public Act No. 25-44 (2025); Massachusetts Attorney General, 940 CMR 38.00 (Unfair and Deceptive Fees); and Minn. Stat. § 325D.44. These laws generally require businesses to provide consumers with meaningful disclosure of the total price or mandatory charges while taking differing approaches to implementation and enforcement.
California: https://oag.ca.gov/hiddenfees
Colorado: https://leg.colorado.gov/bill_files/40562/download
Connecticut: https://www.cga.ct.gov/2025/act/pa/pdf/2025PA-00044-R00SB-00003-PA.pdf
Massachusetts: https://www.mass.gov/regulations/940-CMR-3800-unfair-and-deceptive-fees
Minnesota: https://www.revisor.mn.gov/statutes/cite/325D.44

continue to receive clear, accurate, and meaningful pricing information before entering into a membership agreement.

III. Applying One Consistent Standard for Consumer Disclosures

HFA respectfully submits that the proposed rule would benefit from the application of a single, consistent disclosure standard throughout the regulation.

As drafted, the proposal requires certain information to be presented in a "clear and conspicuous"[5] manner while separately requiring the total price to be displayed with "equal prominence" to other pricing information. Although both standards are intended to promote consumer understanding, the proposal does not explain whether they establish separate standards or how businesses should reconcile the two requirements where they may lead to different presentation methods.

The use of two separate disclosure standards governing substantially similar information creates unnecessary uncertainty. A business may reasonably conclude that a disclosure is clear and conspicuous to a consumer, yet remain uncertain whether the same disclosure also satisfies an independent requirement that pricing information be displayed with "equal prominence." The proposal provides no guidance regarding whether equal prominence refers to font size, placement, typography, spacing, color, visual hierarchy, or some combination of those elements.

This uncertainty was consistently identified by HFA members responding to the Association's request for feedback. Operators questioned whether "equal prominence" requires pricing information to appear in the same font size, on the same line, within the same screen, or simply during the same stage of the enrollment process. These are materially different standards, particularly for websites, mobile applications, and digital enrollment platforms. In the absence of additional clarification, the proposal risks shifting the focus from whether consumers actually understand pricing information to whether businesses have satisfied subjective design expectations.

This concern is particularly significant because the proposal applies across a wide range of communication formats, including websites, mobile applications, digital advertising, enrollment platforms, and in-person sales materials. Each format presents information differently and relies upon visual hierarchy, typography, spacing, and layout to improve readability and guide consumers through the enrollment process. Those design principles are intended to enhance consumer understanding, not diminish it.

HFA respectfully submits that the Department's consumer protection objectives are better served by maintaining a single disclosure standard focused on whether consumers receive meaningful notice of mandatory fees before becoming contractually obligated. The well-established "clear and conspicuous" standard provides sufficient flexibility to accommodate a wide variety of communication formats while ensuring that disclosures remain readily noticeable and understandable to consumers.

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[5] See Federal Trade Commission Disclosures: How to Make Effective Disclosures in Digital Advertising (2013), available at: https://www.ftc.gov/business-guidance/resources/com-disclosures-how-make-effective-disclosures-digital-advertising

A uniform disclosure standard is also better suited to evolving methods of commerce. Consumers increasingly interact with businesses through mobile devices, wearable technology, voice-assisted platforms, and other emerging technologies that do not always lend themselves to identical prescribed presentation formats. The "clear and conspicuous" standard enables businesses to adapt disclosures to new technologies while preserving the Department's objective of meaningful consumer transparency.

Accordingly, HFA respectfully encourages the Department to rely upon a single disclosure standard throughout the final rule. Applying one consistent standard will reduce ambiguity, promote more uniform implementation across communication platforms, and better enable businesses to provide consumers with clear and understandable pricing information before entering into a contract for services.

IV. Clarifying the Relationship Between Sections 5-16(c) and 5-16(d)(1)

HFA respectfully submits that the proposed rule would benefit from clarification regarding the relationship between Sections 5-16(c) and 5-16(d)(1). As currently drafted, those provisions appear to establish overlapping disclosure requirements without clearly identifying the circumstances under which each applies.

Section 5-16(c) appears to require that all mandatory fees and charges be included within the advertised total price presented to consumers. Section 5-16(d)(1), however, separately requires businesses to disclose the nature, purpose, and amount of any fee or charge imposed on the transaction that has been excluded from the total price. The proposal does not explain how these provisions are intended to operate together.

This creates uncertainty regarding which categories of fees are subject to Section 5-16(d)(1). If a fee is mandatory, Section 5-16(c) appears to require its inclusion within the total price. The proposal does not identify the circumstances under which a mandatory fee may properly be excluded from the total price while remaining subject to the additional disclosure requirements contained in Section 5-16(d)(1). Nor does it indicate whether the provision is intended to apply to optional charges, periodic charges, government-imposed charges, shipping charges, or another category of fees excluded from the total price.

This uncertainty is particularly significant because Section 5-16(d)(1) also requires disclosure of the "nature" and "purpose" of the excluded fee. Businesses cannot confidently determine what information must be disclosed under that provision without first understanding which categories of fees the Department intends the subsection to govern.

Clarification of this relationship will improve the internal consistency of the final rule and provide regulated businesses with greater certainty regarding their disclosure obligations before implementation. HFA respectfully encourages the Department to clarify the intended interaction between Sections 5-16(c) and 5-16(d)(1), including the categories of fees and charges subject to each provision.

V. Recognizing Modern Membership Operations and Enterprise Technology

The proposed rule applies broadly across industries and business models. HFA respectfully encourages the Department to consider how the rule will operate in practice for businesses that serve consumers across multiple locations, jurisdictions, and technology platforms. Modern health club memberships are no longer sold exclusively through a single club location or locally managed website. Rather, they are supported through integrated enrollment, billing, and customer management systems designed to provide consumers with a consistent purchasing experience regardless of where they choose to join.

Many HFA members operate multiple facilities throughout New York State, across the United States, and internationally. Others operate through franchise systems in which websites, mobile applications, enrollment platforms, billing systems, advertising, and membership agreements are centrally developed and managed on behalf of independently owned facilities. As a result, consumer-facing systems are generally designed and maintained on an enterprise-wide basis rather than customized for individual municipalities.

The issue presented by the proposal is not whether businesses are willing to provide additional disclosures. Rather, it is whether those disclosures can be implemented through integrated technology platforms without requiring fundamentally different enrollment experiences based solely upon municipal boundaries. HFA respectfully submits that preserving reasonable implementation flexibility will better promote consistent consumer disclosures across all enrollment channels.

This issue extends beyond modifications to a website or membership agreement. Changes to consumer pricing disclosures frequently require coordinated updates to enterprise technology systems supporting enrollment, billing, customer relationship management, mobile applications, payment processing, digital marketing, and franchise operations. These changes are typically implemented across enterprise platforms rather than on a jurisdiction-by-jurisdiction basis. As a result, requirements unique to a single municipality often necessitate enterprise-wide technology modifications or the creation of separate compliance processes for a single jurisdiction.

The resulting compliance obligations are not distributed evenly among regulated businesses. A single-location operator serving only New York City may be able to tailor its enrollment materials specifically for that market. By contrast, regional, national, and international operators frequently rely upon standardized technology platforms that support consumers across numerous jurisdictions simultaneously. Consumer protection objectives should not inadvertently produce materially different compliance obligations based solely upon the geographic footprint or organizational structure of the regulated business.

Consumers also benefit from consistency. Businesses should be able to communicate substantially identical pricing information through substantially consistent enrollment systems whenever possible, and consumers should receive comparable disclosures regardless of whether they purchase a membership in New York City, in Nassau or Suffolk County on Long Island, or elsewhere within New

York State. A harmonized approach promotes consumer understanding while enabling businesses to implement uniform compliance programs across integrated technology platforms.

The Association recognizes the Department's important role in protecting consumers while acknowledging that modern commerce increasingly relies upon centralized technology systems serving consumers across multiple jurisdictions. The Department therefore has an opportunity to implement a rule that advances meaningful price transparency while recognizing the realities of contemporary membership operations. Preserving reasonable implementation flexibility will enable businesses to provide consumers with clear, accurate, and consistent pricing information without unnecessarily fragmenting the enrollment experience based solely upon municipal boundaries.

Accordingly, HFA respectfully encourages the Department to implement the final rule in a manner that recognizes centralized technology systems, enterprise-wide enrollment platforms, and franchise operations while maintaining consistency with the existing statewide framework governing health club memberships.

VI. Clarifying Recordkeeping Expectations Under the Final Rule

HFA appreciates the Department's interest in ensuring that businesses maintain records sufficient to demonstrate compliance with the final rule. Reasonable recordkeeping requirements support effective enforcement, encourage consistent compliance, and provide businesses with a clear understanding of their obligations. The Association respectfully submits, however, that the proposed recordkeeping provisions would benefit from additional clarification regarding the nature and scope of the records businesses are expected to maintain.

As drafted, the proposal requires businesses to maintain records substantiating the nature, purpose, amount, and refundability of mandatory fees. While the amount of a fee, the timing of its assessment, and its refundability are generally capable of objective documentation, the proposal is less clear regarding the records necessary to substantiate the "nature" and "purpose" of a recurring fee. Businesses may therefore reach different conclusions regarding what documentation is sufficient to demonstrate compliance.

For example, a health club assessing an annual enhancement fee may describe the fee within its membership agreement, maintain written policies explaining the fee, provide explanatory language in member materials, and maintain accounting records reflecting the assessment of the fee. Those materials collectively establish the contractual function and stated purpose of the fee. The proposal, however, does not indicate whether those ordinary business records would satisfy the Department's expectations or whether businesses would instead be expected to maintain additional documentation demonstrating how fee revenue was ultimately utilized.

This distinction is particularly important for businesses operating multiple facilities. Capital investments are commonly planned and administered on an enterprise-wide basis rather than allocated to individual locations. Equipment replacement, facility modernization, technology upgrades, accessibility improvements, safety initiatives, and other capital projects are prioritized across a portfolio of clubs based on operational needs, equipment lifecycle, member demand, and long-term planning. Funds supporting those investments are generally managed through ordinary corporate accounting practices rather than segregated on a facility-by-facility basis.

Accordingly, HFA respectfully encourages the Department to confirm that businesses may satisfy the proposed recordkeeping requirements through records maintained in the ordinary course of business. Membership agreements, fee schedules, written policies, accounting records, capital planning documents, and similar records should be recognized as sufficient where they reasonably substantiate the amount, timing, refundability, and stated purpose of a recurring fee. The final rule should also confirm that businesses are not required to segregate fee revenue, trace individual fee payments to particular expenditures, or maintain accounting records beyond those ordinarily maintained in the normal course of business.

The Association also notes that records concerning the administration or purpose of recurring fees may contain proprietary business information relating to capital planning, investment priorities, budgeting, equipment replacement schedules, technology strategy, and other competitively sensitive operational decisions. Any recordkeeping requirement should therefore remain limited to information reasonably necessary to demonstrate compliance and should not inadvertently require disclosure of confidential business information beyond what is necessary to accomplish the rule's consumer protection objectives.

Finally, the Association recognizes the Department's authority to request records relevant to an investigation. At the same time, the final rule should preserve the procedural protections ordinarily associated with administrative investigations by providing businesses with a reasonable opportunity to identify, collect, supplement, and explain responsive records before an adverse inference is drawn from an alleged failure to maintain or produce documentation.

VII. Advancing Consumer Protection Through Consistent and Practical Implementation

Throughout these comments, HFA has sought to provide recommendations that strengthen the proposed rule while recognizing the comprehensive statutory framework already governing health club memberships in New York and the operational realities of modern membership businesses. The Association respectfully submits that these objectives are complementary rather than competing. Consumer protection is best advanced through regulatory standards that are clear, consistent, and capable of uniform implementation.

The recommendations outlined in these comments are intended to further that objective. Harmonizing the final rule with the Health Club Services Act will preserve the Legislature's comprehensive consumer protection framework while reducing uncertainty regarding the interaction between municipal and state law. Recognizing the distinction between pricing disclosures and contractual disclosures will allow consumers to receive clear pricing information before purchasing a contract for services with a health club while continuing to receive comprehensive explanations of their contractual rights and obligations through the documents specifically designed to govern the membership relationship.

Likewise, applying a single disclosure standard throughout the rule and clarifying the relationship between Sections 5-16(c) and 5-16(d)(1) will provide businesses with greater certainty regarding their disclosure obligations while improving consistency in administration and enforcement. Confirming that ordinary business records satisfy the proposed recordkeeping requirements will further promote voluntary compliance without compromising the Department's enforcement objectives.

The Association also respectfully encourages the Department to continue its longstanding practice of engaging with regulated industries throughout implementation of new consumer protection requirements. HFA and its members value the opportunity to work collaboratively with the Department to develop practical compliance solutions that reflect the realities of recurring membership businesses while ensuring consumers receive clear and meaningful pricing information.

HFA appreciates the Department's thoughtful consideration of these comments and respectfully submits that the recommendations outlined above will strengthen the final rule by promoting consumer understanding, encouraging consistent compliance, and maintaining harmony between municipal regulations and New York's existing statutory framework governing health club memberships.

VII. Conclusion

HFA appreciates the opportunity to provide these comments and commends the Department for its continued efforts to promote transparent pricing and meaningful consumer disclosures. The Association shares the Department's objective of ensuring that consumers understand the financial obligations associated with a health club membership before becoming contractually obligated.

The recommendations set forth in these comments are intended to strengthen the proposed rule by harmonizing it with New York's existing statutory framework governing health club contracts, recognizing the distinction between pricing disclosures and contractual disclosures, applying a single and consistent disclosure standard, clarifying the relationship between proposed Sections 5-16(c) and 5-16(d)(1), recognizing the realities of modern health club operations, and confirming that businesses may satisfy the rule's recordkeeping requirements through records maintained in the ordinary course of business.

HFA respectfully submits that these recommendations do not diminish consumer protections. Rather, they promote greater consumer understanding by encouraging clear, consistent, and practical disclosures that reflect both the comprehensive protections already established under New York law and the realities of how recurring membership businesses operate today. A harmonized regulatory framework will improve implementation, encourage voluntary compliance, and provide consumers with a more consistent enrollment experience throughout New York.

The Association appreciates the Department's thoughtful consideration of these comments and welcomes the opportunity to continue working collaboratively as the rulemaking proceeds.

Respectfully submitted,

Mike Goscinski
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Health & Fitness Association