

Congress of the United States  
U.S. House of Representatives  
Committee on Small Business  
2561 Rayburn House Office Building  
Washington, DC 20515-6515

May 9, 2024

The Honorable Lina M. Khan  
Chair  
U.S. Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580

Dear Chair Kahn:

The House Committee on Small Business writes to discuss the Biden Administration's so called "Junk Fee" rulemakings and their impact on small businesses. The Federal Trade Commission (FTC) has proposed multiple rules related to fees consumers may experience while shopping. These rulemakings will bury small businesses under an ever mountain of regulations—which would substantially strain their operations without providing the intended benefit to consumers. The Committee is concerned that these rules, especially when considered together, pose an undue burden on small businesses at a time when Main Street is already struggling due to over regulation, persistent inflation, and supply chain issues.

Last fall, the FTC issued a rule banning what the Biden Administrations has decided to call "junk fees."<sup>1</sup> In the rule, the FTC characterizes a fee as "hidden" if it is not disclosed well in advance of the completion of the purchase.<sup>2</sup> The sweeping nature of the ban fails to consider the diverse nature of small businesses or any innovation which could occur using unique fee structures, such as dynamic pricing or certain discount offerings.<sup>3</sup> This rule impacts a wide range of industries including travel, hospitality, restaurant services, accommodations, and live events and would have a substantial impact on the pricing decisions of small businesses, disproportionately impacting the ability of small businesses to survive. Unfortunately, it seems the FTC failed to properly consider the costs to small businesses in this rule.

The FTC also issued a rule which would prohibit certain fees in the car-buying process and require additional disclosures from car dealerships.<sup>4</sup> The Committee has previously written to the FTC regarding this rule and its impact on small car dealerships. Currently, this rule is suspended pending the results of litigation, but the Committee has concerns with the FTC's

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<sup>1</sup> Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023) (to be codified at 16 C.F.R. § 464).

<sup>2</sup> *Id.*

<sup>3</sup> Sean Heather, *The FTC's 'Junk Fees' Rule Has Its Own Hidden Costs*, U.S. CHAMBER OF COMMERCE (Feb. 26, 2024).

<sup>4</sup> Combating Auto Retail Scams Trade Regulation Rule, 16 C.F.R. § 463 (Feb. 22, 2024).

claim that this rule will not increase costs for small businesses.<sup>5</sup> It seems unlikely a business will be able to demonstrate they have complied with this rule or show that they have not violated this rule without increasing their operations costs. The Committee does appreciate the efforts the FTC has undertaken to lessen this rule's impact on small dealerships but believes improvements could still be made.

It is important for agencies to correctly evaluate small businesses interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. America's small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than May 23, 2024:

1. The rule seems to lack the detail necessary for small businesses to comply. What specific records should small businesses retain in order to demonstrate compliance with these rules?
2. The estimated number of hours these rules will require annually to comply with. Please include all factors considered in this determination and the weight given to each factor.
3. How should small businesses that use dynamic pricing models advertise their products in a way that comports with the FTC's Trade Regulation on Unfair or Deceptive Fees rule?
4. What impact will this rule have on car dealership sales of items such service contracts?
5. Explain the FTC's expected cost for a small entity to comply with the junk fee rule and how that differs from the compliance cost of larger entities.
6. Please explain how the FTC believes small dealerships will be able to demonstrate compliance with this rule in a manner which does not increase their compliance costs?
7. How are the compliance costs of these rules different for large and small entities?
8. The FTC's junk fee rule specifically states that fees must be disclosed clearly in advance of any transaction, the Consumer Financial Protection Bureau's Nonsufficient Funds Fee Rule indicates that disclosures may not be sufficient to warn a customer of a fee. How do your agencies reconcile your respective viewpoints on the sufficiency of disclosing fees?

To schedule the delivery of responsive documents or ask any related follow-up questions, please contact the Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate "problems of all types of small business" under House Rule X. Thank you in advance for your cooperation with this inquiry.

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<sup>5</sup> See generally *Combating Auto Retail Scams Trade Regulation Rule*, 89 Fed. Reg. 13267 (Feb. 22, 2023) (Order Postponing the Effective Date of Final Rule Pending Judicial Review).

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In God We Trust,



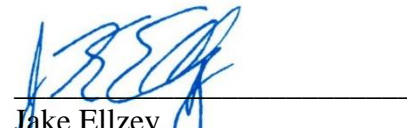
Roger Williams  
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Committee on Small Business



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Beth Van Duyne  
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Jake Ellzey  
Member of Congress  
Committee on Small Business



Aaron Bean  
Member of Congress  
Committee on Small Business

cc: The Honorable Nydia M. Velazquez, Ranking Member  
Committee on Small Business