

February 8, 2023

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

Re: Comments on the Federal Trade Commission’s Advanced Notice of Proposed Rulemaking to Address Deceptive or Unfair Fees; Federal Register No. 2022-24326; Unfair or Deceptive Fees ANPR, R207011

Dear Chair Khan:

On behalf of UnidosUS, we respectfully submit these comments in response to the Federal Trade Commission’s (FTC) proposal to commence rulemaking to address certain deceptive or unfair acts or practices relating to fees.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation’s largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the local and national levels.

UnidosUS publishes reports, provides testimony, and advocates on policies that protect consumers, make financial services more inclusive, and improve the financial well-being of low-income people and the Latino community. For example, last year we testified before House’s Subcommittees on Consumer Protection and Financial Institutions in a hearing focused on overdraft to advocate for reducing unnecessary fees that impact working class people and Latinos. Our research and analysis include publications such as *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (2014); *The Future of Banking: Overcoming Barriers to Financial Inclusion for Communities of Color* (2019); and *Latinos Banking and Credit Survey: Arizona, California, Texas* (2022).

The FTC’s Advanced Notice of Proposed Rulemaking (ANPR) notes there are “unfair or deceptive fees that are charged for goods or services that have little or no added value to the consumer,” sometimes known as “junk fees.” The ANPR notes that such fees frustrate, erode trust, and impair comparison shopping, affecting workers, consumers, and small businesses.

Reducing or eliminating unfair or deceptive fees would benefit low-income people and Latinos. Our comment endorses aspects of the consumer advocate’s coalition comment led by the

Consumer Federation of America (called “Coalition Comment Letter”). Our comment also highlights certain fees commonly imposed across a range of financial products and transactions. Additionally, it emphasizes fees associated with deposit accounts, credit cards, and small-dollar loans, which are areas of particular concern for low-income people and Latinos.

Overview of the Advanced Notice of Proposed Rulemaking (ANPR).

The FTC requests input on whether and how it should use its authority under Section 18 of the FTC Act to address deceptive or unfair acts or practices involving junk fees and hidden fees. The FTC proposes addressing the following practices:

- Misrepresenting or failing to disclose clearly and conspicuously in any advertisement or any marketing:
 - the total cost of any good or service for sale
 - the existence of any fees, interest, charges, or other costs that are not reasonably avoidable for any good or service
- Misrepresenting or failing to disclose clearly and conspicuously:
 - whether fees, interest, charges, products, or services are optional or required
 - any material restriction, limitation, or condition concerning any good or service that may result in a mandatory charge in addition to the cost of the good or service or that may diminish the consumer's use of the good or service, including the amount the consumer receives
- Misrepresenting that a consumer owes payments for any product or service the consumer did not agree to purchase
- Billing or charging consumers for fees, interest, goods, services, or programs:
 - without express and informed consent
 - that have little or no added value to the consumer or that consumers would reasonably assume to be included within the overall advertised price
- Misrepresenting or failing to disclose clearly and conspicuously in an advertisement or in marketing the nature or purpose of any fees, interest, charges, or other costs

Overview of the Consumer Federation of America coalition's comment letter.

We specifically endorse the sections in the Consumer Federation of America (CFA) coalition's comment letter that include strong evidence of how junk fees disproportionately harm low-income consumers, consumers of color, and those with limited English proficiency. For instance, it describes such junk fees as overdraft, auto-buying fees, mortgage delinquency-related fees, education tuition and loan fees, and installment loan fees.

A 2021 study by the Financial Health Network shows that Latinos are 1.5 times as likely to overdraft than white consumers, and our survey from last year found that 42% of Latinos were charged an overdraft fee in the past year.¹² Further, our past research finds that Latinos are

more likely to use small-dollar loans like installment loans or payday loans that charge junk fees. Roughly 12 million borrowers use payday loans and are charged as much as \$9 billion yearly in fees.³

A 2014 study conducted by the Center for Responsible Lending found that African Americans and Latinos were sold multiple add-on products, which are considered junk fees, almost twice as often as white consumers.⁴ Thirty percent of African Americans and 27% of Latinos were sold multiple add-ons compared to 16% of whites. In higher education, junk fees are found in loan origination fees, rising fed loan interest rates, and payment of “facilities fees” for services that most students never use.⁵ Limited English Proficiency (LEP) also causes consumers to incur a lot of fees, especially those buried in the fine print. In several cases, auto lenders have been found to make enticing claims about key terms—such as the sales price, monthly payment amount, and down payment amount—in Spanish and other languages but hid additional material terms, like fees, in English.⁶

Examples of unfair practices in pricing.

Drip Pricing is a strategy that baits consumers with a deceptively low advertised price and then tacks on mandatory fees as the consumer proceeds through the transaction, bringing the total cost higher than what was advertised. Some auto dealers expressed support for the concept of a consistent vehicle “offering price” to be used in advertisements, noting that advertised prices often do not include numerous mandatory fees.

Starlink, a new satellite-based internet provider, markets its services with all-in pricing and has advocated for FCC rules that would make all-in pricing disclosure mandatory for every internet service provider. We support an all-in pricing rule that requires disclosure of all unavoidable or mandatory fees or that consumers would reasonably expect to be included in the price of the good or service.

The failure to disclose fees in advertised prices is especially prevalent among auto dealers. For Some fail to clearly disclose mandatory fees in their advertised prices. If a dealer deceptively advertises vehicles at a certain price without disclosing that there are additional mandatory fees, often the consumer can be forced to spend hours at the dealership to learn the actual price of the vehicle. For a recent example, in 2020 and 2021, the Georgia Attorney General brought actions against 23 dealerships for failing to disclose the documentation fee in their advertisements, which increased the cost of the vehicles by several hundred dollars.

Some businesses have been found to withhold disclosure of a fee or to fail to disclose that a fee is optional. In such cases, businesses use a name for a fee to make it look like a mandatory government-imposed tax, sometimes referred such as: “network enhancement fee,” “internet infrastructure fee,” “deregulated administration fee,” or a “technology service fee.”

Multi-state action by the attorneys general against Mariner Finance, a subprime installment lender, provides a comprehensive example of unfairness and deception throughout a company's advertising and sales process that is intended to obscure the true cost of the product it sells. For example, in this case, employees pre-loaded loan paperwork with the add-ons without discussing them with consumers, "offered" the add-ons through high-pressure tactics in every sale, and sometimes lied to consumers about whether a product was required.

Some businesses have been found to sell a product without disclosing that the consumer will need to pay a fee in order to use it without material restrictions or limitations. Auto manufacturers, for example, are increasingly equipping vehicles with certain features like heated seats or remote key starts but requiring consumers to pay for a subscription to access them.

A further example of an unfair and deceptive fee has been found where businesses charge a fee without the expressed and informed consent of the consumer. Consumers interviewed in the Mariner Finance case described how the company included add-on products in their loan without ever mentioning them prior to the closing and stated that they would have declined to purchase these products had they been offered. An FTC study of consumer car buying experience found that consumers did not learn about add-on products and services until the financing process, after they had already spent several hours at the dealership negotiating the price.⁷

We endorse the CFA Coalition Comment Letter's recommendations for "all in" pricing on goods and services.

The coalition's comment letter proposes an "all in" price, which is a price that reflects the full amount that is due at the end of the purchasing process, including any mandatory fees. An all-in pricing rule would require sellers to disclose the "all-in" price at the beginning of the shopping experience and in any advertising for the good or service. We also concur that the FTC could employ a definition akin to the reasonable consumer standard that already governs most false advertising claims. We agree that the FTC should ensure that a final rule identifies and prohibits unfair and deceptive conduct surrounding junk and hidden fees.

The CFA Coalition's comment letter additionally proposes the use of disclosures that are "clear and conspicuous," the definition of which has previously included a requirement that the disclosure "must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears." We agree that the FTC should ensure that a final rule addressing junk fees requires disclosures to include consistent language translation requirements and that the FTC should develop model

fee disclosures in the top languages spoken by people with Low English Proficiency (LEP), and should encourage companies to use them or provide these models as a safe harbor.

Conclusion: The FTC's inquiry into excessive and unnecessary fees is helpful to Latino consumers.

We previously submitted a comment letter to the CFPB about junk fees in the financial system. In that letter, we highlighted the ways that junk fees disproportionately impact Latinos and lower-income people.⁸ In this case, the FTC's goal seems to be to eliminate or reduce the use of deceptive acts, which are especially common in auto-buying and small-dollar lending. Increased attention to these types of practices, and a requirement to clearly disclose these fees in the full price of an item, could help consumers avoid fees by allowing them to see the actual price of a product before they make a purchase and not in the middle or end of a transaction. Further, it would help competition by allowing consumers and businesses alike to understand a product's price and make a decision based on that information.

The CFA Coalition comment letter recommends that the FTC implement a requirement that businesses disclose prices and fees in multiple languages and with clear and simple language that LEP consumers can understand, helping them to avoid fees and become protected from deceptive practices. We endorse their comments insofar as it highlights language barriers and support these recommendations because they can help low-income consumers, Latinos, and people with LEP by protecting them from harmful fees and empowering them with more full and fair information about the products they purchase.

Notes

¹ Arves, Stephen, and Meghan Greene. "Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be," Financial Health Network, September 3, 2021. <https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/>.

² UnidosUS, "New Survey Shows Latinos Are Struggling with High-Debt Burdens, Low Savings Rates, and a Lack of Access to Affordable Bank Products," (Washington, DC: UnidosUS, September 27, 2022), https://unidosus.org/wp-content/uploads/2022/09/unidosus_opportun_latinosbankingandcreditsurvey_memo.pdf.

³ National Council of La Raza. "Payday Lenders are Preying on Latinos," Fact Sheet, *National Council of La Raza*, 2016. http://stopthedebttrap.org/wp-content/uploads/2016/10/SPP-Latinos-Fact-Sheet-NCLR_Final.pdf.

⁴ Delvin Davis, "Non-Negotiable: Negotiation Doesn't Help African Americans and Latinos on Dealer-Financed Car Loans," Center for Responsible Lending, January 2014, <https://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/CRL-Auto-Non-Neg-Report.pdf>.

⁵ Ibid.

⁶ Federal Trade Commission (FTC), *Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color*, (Washington, DC: FTC, October 2021), https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf.

⁷ Carole Reynolds, Stephanie E. Cox, *Buckle Up: Navigating Auto Sales & Financing: Staff Report of the Bureau of Consumer Protection*, (Washington, DC: Federal Trade Commission, July 2020), https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf.

⁸ UnidosUS, Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services; Docket Number CFPB2022-0003 (Washington, DC: UnidosUS, 2022), https://www.unidosus.org/wpcontent/uploads/2022/04/unidosus_junkfeescommentcfpb_41122.pdf.