

February 7, 2024

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave., NW
Washington, DC 20580
Submitted via www.regulations.gov

Re: Unfair and Deceptive Fees Rulemaking- FTC-2023-24234, Federal Register No. 88 FR 77420

Dear Commissioners:

The above referenced Notice of Proposed Rulemaking proposes to exempt auto dealers from an industry-wide rule that would prohibit hidden and deceptive fees. The undersigned groups write to expressly ask the Commission to reconsider this decision and **include auto dealers** in the unfair and deceptive fees rulemaking (“Junk Fees NPRM”). Auto dealers are some of the worst offenders of hidden and deceptive fee practices, and the FTC’s decision to exclude them is not well-founded. The FTC’s announcement of the Combating Auto Retail Scams (CARS) Rule¹ does not form the basis for excluding dealers from the Junk Fees NPRM. First, other industries which the FTC did not propose to exempt would have overlapping but consistent regulatory requirements. Auto dealers should not receive special treatment. Second, the goals of transparent pricing and prohibiting deception are the same in the CARS and Junk Fees rules, and compliance with both is feasible and necessary to wholly combat junk fees in auto sales.

1. The FTC’s determination does not include any rationale for its decision.

The NPRM identifies the existence of the CARS Rulemaking and merely concludes that dealers should not be subject to the Junk Fees Rule as well. Elsewhere, the Commission identifies other trade practices rules that require pricing transparency, such as the Telemarketing Sales Rule, the Restore Online Shoppers Confidence Act, the Funeral Rule, and the Negative Option Rule,² the advertising conduct of other industries (ROSCA, TSR, etc.), but the FTC does not propose to exclude any of those industries. Based on a rule that has not yet been finalized and which has been subject to extraordinary attempts by auto dealers to ensure that it does not become final, the FTC simply states that it does not intend to include auto dealers. This is insufficient and the FTC should reconsider this decision.

2. The Junk Fees NPRM and the CARS Rule are not inconsistent.

Both the Junk Fees NPRM and the CARS Rule target hidden and deceptive conduct regarding fees. Both rules require transparent fee practices, using nearly identical definitions of the required “price” to be disclosed to a consumer. Both rules also include a “trigger” for the pricing disclosure that are based on providing other information about price or the good. Both rules aim to eliminate bait and switch conduct through the pricing disclosures:

¹ 89 FR 590.

² NPRM at 77431.

CARS Offering Price	Junk Fees Total Price
Defined as the full cash price, excluding only government taxes. (§463.2(k))	Definition excludes only optional fees, government taxes and shipping costs. (§ 464.1(g))
Must be disclosed in an advertisement for a specific vehicle, or for any monetary amount or financing term. (§ 463.4(a))	Must be disclosed in any offer, display or advertisement that contains an amount a consumer may pay. (§ 464.2)
Must be provided clearly and conspicuously (§ 463.4)	Must be provided clearly and conspicuously (§ 464.2)

A dealer who is required to provide the Offering Price will be required to provide the Total Price, and a dealer who is required to provide the Total Price will be required to provide the Offering Price. These price transparency requirements are consistent.

Further, the Junk Fees Rule and the CARS Rule both employ requirements to eliminate misleading and deceptive fee practices by ensuring that consumers know and understand what they are electing to purchase:

Express Informed Consent (CARS)	Misleading Fees Prohibition (Junk Fees)
Dealers must obtain “express informed consent” before charging for any item. (§ 463.5(c)).	Businesses must provide information about the “nature and purpose” of any amount a consumer may pay (i.e., which is not included in the Total Price). (§ 464.3).

The CARS Rule requires that dealers obtain express informed consent before charging for any item. The FTC is clear that, in order to obtain “express informed consent,” dealers must clearly and conspicuously disclose (1) what the charge is for, and (2) the amount of the charge, including all fees and costs to be charged. Correspondingly, the Junk Fees NPRM requires disclosure of the “nature and purpose” of any fee not included in the total price and specifies that this requirement means that the business must identify the refundability of the fees and the identity of the good or service.

The only distinction between these two provisions is the Junk Fees NPRM’s requirement to identify the refundability of a fee. Application of this standard to the CARS Rule and to motor vehicle dealers is appropriate. Certainly, consumers who are purchasing an add-on (or paying any other amount excluded from the total price) should be provided with information about whether that purchase is refundable or subject to a cancellation period. Many states require a “cooling off period” for the purchase of add-ons. Similarly, the CFPB’s recent enforcement action against Toyota Motor Credit is indicative of the fact that the ability to cancel an add-on product and obtain a refund is an important issue to car buyers.³

³ https://files.consumerfinance.gov/f/documents/cfpb_toyota-motor-credit-corporation-consent-order_2023-11.pdf

The remainder of the requirements in the CARS Rule are particular to the sale of motor vehicles, and therefore do not conflict with the Junk Fees NPRM.

We strongly urge the Commission to include all motor vehicle dealers in the Junk Fees NPRM. We also do not believe that there are any disputed issues of material fact to be resolved in this rulemaking. To the extent that the FTC does identify such disputed issues, the undersigned would welcome the opportunity to participate in any informal hearing to support the FTC's efforts to ensure that this rule becomes law.

Sincerely,

Consumer Federation of America

National Consumer Law Center, on behalf of its low-income clients

National Association of Consumer Advocates