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**PROTECTING CONSUMERS SINCE 1975**

February 7, 2024

Via Electronic Submission  
 Federal Trade Commission  
 Office of the Secretary  
 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex J)  
 Washington, DC 20580

**RE: Unfair or Deceptive Fees NPRM, R207011**

Dear Secretary Tabor:

The South Carolina Department of Consumer Affairs (“SCDCA”/“Department”) is pleased to offer comments in response to the Federal Trade Commission (“FTC”/“Commission”) Notice of Proposed Rulemaking in the above referenced matter regarding unfair and deceptive fees.

SCDCA is South Carolina’s consumer protection agency. Established in 1974, SCDCA is responsible for the administration and enforcement of over 120 state and federal laws. A large part of our authority stems from Title 37 of the South Carolina Code of Laws, the Consumer Protection Code (the “Code”). The Code, among other purposes, is meant to further consumer understanding of the terms of credit transactions, foster competition among suppliers of consumer credit, and permit and encourage the development of fair and economically sound credit practices.<sup>1</sup> Further, it requires the Department to undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion and sale of consumer goods and services.<sup>2</sup>

SCDCA supports the Commission’s efforts to collect information from the public and interested stakeholders on the Proposed Rule. We offer the comments below based upon our

<sup>1</sup> S.C. Code Ann. § 37-1-102(c)-(e)(2019).

<sup>2</sup> S.C. Code Ann. § 37-6-117(f) (2019).



experience regulating various industries and collecting and handling consumer complaints for both regulated and unregulated businesses.<sup>3</sup>

### Discussion

The Commission seeks to prohibit unfair and deceptive fee practices based on the comments received in response to its advanced notice of proposed rulemaking. The Department is intimately aware of these practices and shares the Commission's concern regarding their prevalence and impact on consumers. The South Carolina Consumer Protection Code deals with, among other things, whether and how certain charges may be assessed and earned. As such, businesses often request SCDCA opine on the topic of fees.<sup>4</sup>

Based on its experiences with South Carolina consumers, the Department has also previously commented regarding other federal fee related rulemaking proposals. In 2022, the Department submitted comments to the Consumer Financial Protection Bureau ("CFPB"/"Bureau") in response to a request for information regarding Fees Imposed by Providers of Consumer Financial Products or Services.<sup>5</sup> The Department also provided comments in 2022 to the FTC regarding the proposed Motor Vehicle Dealers Trade Regulation

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<sup>3</sup> SCDCA's Consumer Services Division processes and mediates written consumer complaints, seeking to find equitable solutions for the consumer and the business, including refunds, adjustments and credits to consumer accounts.

<sup>4</sup> *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 1.202(7)-7602* (as amended 11/3/78) ("origination fee" in addition to maximum finance charge is an excess charge); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 2.110-8701* (1987) (in consumer credit sales of motor vehicles, bona fide charges for optional extended service contracts may properly be considered part of the amount financed); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.109-8010* (1980) ("origination fee" or "discount points" subject to refund on prepayment); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.201-8402* (1984) (clarification on permissible charges for revolving consumer loan accounts under the Consumer Protection Code); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.202-7613* (1976) (appraisal fee is part of the finance charge and is not a permissible "additional charge"); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.202-8303* (1983) (the Consumer Protection Code does not authorize a "release fee"); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.202-8901* (1989) (A supervised licensed lender may not charge an annual fee in a revolving consumer loan transaction unless the loan agreement constitutes a lender credit card or similar arrangement. To so qualify, the card, the letter of credit or other credit confirmation should be identifiable as a credit card or similar arrangement.); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.210-8109* (1981) (appraisal fee is part of the finance charge subject to rebate upon prepayment in full); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.305-8601* (1986) (failure to file a maximum rate schedule leads to an 18% maximum annual percentage rate); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.404-7510* (1975) (limitations on attorney's fees chargeable to defaulting debtor); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.404-8003* (1983) (limitation on reasonable attorney's fees to 15% of unpaid debt after default does not apply to restricted loans); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.404-8101* (1981) (Consumer Protection Code does not authorize insurance premium service companies to charge attorneys' fees). The preceding administrative interpretations are available for viewing at <https://consumer.sc.gov/business-resources/laws/administrative-interpretations>.

<sup>5</sup> See *Memo Re: Docket No. CFPB-2022-0003 – Fees Imposed by Providers of Consumer Financial Products or Services* (4/11/2022) available at <https://consumer.sc.gov/sites/consumer/files/Documents/Advocacy/CFPB-2022-0003%20-%20SCDCA%20Comment%20Letter.pdf>

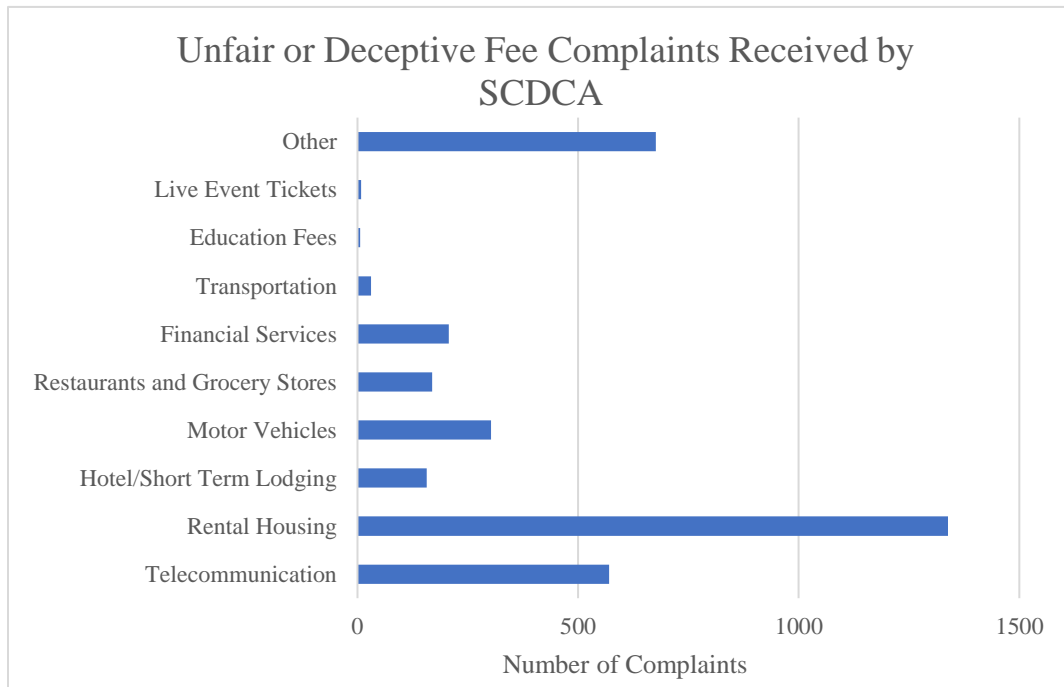


Rule.<sup>6</sup> The comments below incorporate many of the same issues previously raised by the Department.

**Selected Questions for Comment**

***Question 3. Would the proposed rule benefit consumers and competition? What are the relevant sources of data that reflect this?***

The proposed rule would benefit consumers and foster fair competition by curbing deceptive practices related to fees, while promoting transparency and honesty in pricing. The current prevalence of such practices amongst various industries supports the need for regulatory intervention. From January 2017 to mid-December 2023, the Department received 28,775 formal complaints. The Department analyzed its complaint data and found that roughly 12% (3,466) of the complaints pertain to hidden, deceptive, or misleading fees, or involved a purchase price amount different from the advertised amount.<sup>7</sup> The chart below depicts these complaints by the specific industries noted in the Commission’s Notice. The “other” category relates to other industries not incorporated in the proposed rule, some of which include, retail stores, hospitals, veterinarians, and utilities. Three industries accounted for nearly 64% of fee complaints received by SCDCA: Rental Housing - 38.61%, (2) Telecommunications-16.45% and (3) Motor Vehicles- 8.74%.



<sup>6</sup> See South Carolina Dept. of Consumer Affairs, *Memo Re: Motor Vehicle Dealers Trade Regulation Rule Making No. P204800* (9/12/2022) available at [https://consumer.sc.gov/sites/consumer/files/Documents/Advocacy/SCDCA\\_Comments\\_FTC\\_MV\\_Dealers\\_Trade\\_Rule.pdf](https://consumer.sc.gov/sites/consumer/files/Documents/Advocacy/SCDCA_Comments_FTC_MV_Dealers_Trade_Rule.pdf)

<sup>7</sup> Key words and phrases such as, “misleading, false, hidden, quoted price, fee(s), fine(s), deceptive, billing dispute, advertisement, hidden, disclosed, honor, and overcharged,” were used to extrapolate complaints from the original dataset. Not all complaints directly apply to deceptive and unfair fees but do apply to deceptive sales tactics.



Based on the complaints the Department receives regarding unfair or deceptive fees, it is clear the proposed rule would benefit consumers, as well as competition among businesses. As stated in the Department's September 12, 2022, letter regarding the Motor Vehicle Dealers Trade Regulation Rule:

Failing to disclose all required fees-outside of standard official fees-hinders that consumer's ability to shop around for a product/service. One business may seem more attractive to a consumer on its face due to an advertisement, when truly it is not an apples-to-apples comparison if one business advertises an all-in price while the other hides its fees until the consumer is ready to make a commitment to the product/service. The lack of transparency also obstructs competition as businesses would be unaware of the bottom line set by their competitors.<sup>8</sup>

***Question 10. Are the proposed definitions clear? Should any changes be made to any definitions? Are additional definitions needed?***

The Department believes the proposed definitions are clear and sufficient, but suggests including examples specific to the rule to assist businesses with compliance. Throughout the Notice, and in the discussion of definitions in particular, the Commission provides examples to demonstrate the intent of its proposal.<sup>9</sup> Including similar examples in the regulation, where practicable, may make it easier for businesses to comply with the rule without incurring additional legal costs which may be passed on to consumers. Providing examples may also help consumers understand what is required of businesses.

***Question 19. Does the proposed definition of Total Price provide sufficient clarity for industries that "all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service" includes (1) all fees or charges that are not reasonably avoidable and (2) all fees or charges for goods or services that a reasonable consumer would expect to be included with the purchase?***

The proposed definition is clear, however, the additional language set forth in the question provides increased clarity. Such addition could assist businesses with compliance. Providing an example may also assist businesses with compliance.

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<sup>8</sup> See South Carolina Dept. of Consumer Affairs, *Memo Re: Motor Vehicle Dealers Trade Regulation Rule Making No. P204800* (9/12/2022), 3 available at [https://consumer.sc.gov/sites/consumer/files/Documents/Advocacy/SCDCA\\_Comments\\_FTC\\_MV\\_Dealers\\_Trade\\_Rule.pdf](https://consumer.sc.gov/sites/consumer/files/Documents/Advocacy/SCDCA_Comments_FTC_MV_Dealers_Trade_Rule.pdf)

<sup>9</sup> See the discussion of "Ancillary Good or Services" on page 77438, among others. ("An Ancillary Good or Service may be mandatory or optional. For example, if a hotel offers a consumer the option to purchase or decline trip insurance with a room reservation, the insurance would be an optional ancillary service. If a housing rental agreement includes a fee that the consumer cannot reasonably avoid for a trash valet service, it would be a mandatory ancillary service. If a business includes a fee the consumer cannot reasonably avoid to process the payment for any good or service, such payment processing would be a mandatory ancillary service.")



***Question 21. Section 464.2(b) of the proposed rule states, “[i]n any offer, display, or advertisement that contains an amount a consumer may pay, a Business must display the Total Price more prominently than any other Pricing Information.” Is this prohibition clear and understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?***

The Department proposes the FTC expound on the phrase “more prominently than any other Pricing Information.” Section 464.2(a) requires the Total Price be disclosed “Clearly and Conspicuously.” Guidance on how the business can simultaneously comply with the “Clearly and Conspicuously” requirement and the prominence requirement may help with business comprehension and compliance. This could be accomplished via a definition addressing the different mediums by which the offer, display or advertisement may be relayed to a consumer (visual, audio, print, online), like the structure of the “Clearly and Conspicuously” definition. Alternatively, examples of compliance with the requirement of prominent display could be added to Section 464.2(b). For instance, in a visual disclosure presentation of the Total Price in bolded typeface at least two points larger than any other Pricing Information or 14-point font, whichever is larger, satisfies the prominence requirement.

***Question 22. Should the proposed rule address the itemization of fees and charges that make up the “Total Price?” If so, how should the proposed rule address itemization and why?***

As noted above, failing to disclose all required fees—outside of standard official fees—hinders the consumer’s ability to shop around for a product/service and prevents an apples-to-apples comparison of prices. Itemization could better assist a consumer in fully assessing the total price of goods and services, comparison shop among businesses, and potentially negotiate for a better price. It could also have the effect of fostering competition as well as incentivize a business to put overhead fees and charges in the price of the product itself as opposed to separately listing various items.

### **Conclusion**

As noted in our prior comments and reflected by the various fees discussed in the Commission’s notice, history has shown a desire of industries participating in the consumer credit marketplace to assess fees outside of an advertised price or cost. Generally, the Department believes any fees or charges should be disclosed explicitly and uniformly and such disclosure should be presented in a manner to create an informed buyer. The Department also recognizes the need to evaluate the impacts on the various industries as a whole. While the Department does not have the expertise to address industry specific issues, we hope the FTC finds the data we provided beneficial as it decides a path forward.

We commend the Commission for the work and effort put into this process and appreciate the opportunity to comment. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.



Regards,

A handwritten signature in blue ink that reads "Carri Grube Lybarker".

Carri Grube Lybarker, Esq.  
*Administrator/Consumer Advocate*