



*Sent By Hand Delivery, Certified Mail, and Email (oalj@ftc.gov)*

April 19, 2024

Administrative Law Judge Jay L. Himes  
Federal Trade Commission  
600 Pennsylvania Avenue, NW,  
Suite CC-5610 (Annex C)  
Washington, DC 20580

**Re: Request for Inclusion in Informal Hearing on Proposed Trade Regulation Rule on Unfair or Deceptive Fees – R207011**

Dear Judge Himes:

We write on behalf of the National Apartment Association (“NAA” and the National Multifamily Housing Council (“NMHC”) to request inclusion in next week’s hearing on the Proposed Trade Regulation Rule on Unfair or Deceptive Fees – R207011 (“Proposed Rule”).

On April 17, 2024, NAA and NMHC representatives met with Spencer Jackson-Kaye and several other FTC staff members to discuss NAA’s and NMHC’s desire to participate and offer commentary regarding the Proposed Rule at the hearing. FTC representatives advised NAA and NMHC to present their request directly to Your Honor.

NAA and NMHC represent small, medium, and large for-profit and non-profit owners, operators, developers, property managers, and service providers involved in the provision of rental housing, across all market segments, including conventional, affordable, military, student, and seniors. NAA’s and NMHC’s members are committed to creating thriving communities for residents, employees, and guests, and strongly support efforts to improve housing access, affordability, and the experience of applicants and residents. These members are acutely aware of the impact of housing costs on renters and strive to improve housing affordability every day while committing to working with their residents in the most equitable and transparent manner.

Consistent with these efforts, NAA and NMHC submitted extensive joint comments to the FTC setting forth their members’ concerns on the Proposed Rule (attached here). As noted above, they also had a follow-up meeting with FTC staff (copied here) to discuss those concerns in more detail.

As discussed in that meeting, they would like to respectfully request an allotment of fifteen (15) minutes at the informal hearing scheduled for April 24, 2024, to make oral presentations addressing these concerns, and specifically addressing the FTC’s claims about the prevalence of

unfair or deceptive fees being charged by multi-family housing providers.

With over one-third of American households renting, and over 20 million U.S. households living in apartment homes (buildings with five or more units), NAA and NMHC believe they would add unique value and perspective to the proceedings. The rental housing customer experience is materially different from the other consumer transactions referenced in the Proposed Rule. Specifically, the rental housing transaction fundamentally differs from a typical hotel or live event ticket transaction because the landlord-tenant relationship involves an ongoing contractual relationship, typically at least a year-long commitment. It is also subject to extensive regulation at the state and local level and is uniquely characterized by a series of transactions as opposed to a single-point transaction. As such, the operational realities of the rental housing industry do not align with the proposed rule and its requirements.

NAA and NMHC would also wish to address our concern that the NPRM lacks a sufficient factual underpinning as applied to rental housing because it is not based on any statistically relevant data. The Proposed Rule admits that much of the information relating to rental housing is based upon “individual consumer” and “consumer and policy group” statements regarding purported advertising practices in the industry.

The Proposed Rule then goes on to state in a conclusory way that the “rental-related fees [should be] invalid *per se* because they are exploitative” and that “fees make rental housing even more unaffordable and jeopardize access to future housing and financial stability.” In reality, 93 cents of every rent dollar<sup>1</sup> cover necessary operational expenses, such as property maintenance, insurance, staffing and property taxes, which go back to the local community. Housing providers use fees in rental housing transactions to facilitate necessary business practices and to provide residents with concierge-type services or benefits throughout the lifecycle of the lease term, with many fees covering conditional costs that cannot reasonably be expressed as part of the “total cost of housing” under this rule.

It is virtually impossible to foreseeably predict the total price of a rental unit, inclusive of the maximum total of all fees and any mandatory charges that a renter may pay throughout the lifecycle of the lease, for the purposes of disclosure in an advertisement. However, throughout the entire leasing process, applicants and residents are informed of concierge-type services and benefits that might change their housing costs. This is vastly different than other industries identified in the Proposed Rule, which focus on quick, usually unassisted consumer transactions.

We understand that National Consumer Law Center (“NCLC”) and a “coalition of 39 housing justice advocacy groups” (represented by the National Housing Law Project) will be speaking in support of the Proposed Rule. The FTC has used its discretion to allot time for two organizations that did not include a request to participate in their comments on the Proposed Rule.<sup>2</sup> Accordingly, NAA and NMHC request that the FTC exercise similar discretion, and allot time at the upcoming informal hearing for NAA and NMHC to share their position, data, member experience, and concerns on the Proposed Rule with the agency and the public.

---

<sup>1</sup> <https://www.naahq.org/breaking-down-one-dollar-rent-2023>

<sup>2</sup> See Informal Hearing Notice, fn 24.

Please do not hesitate to contact us to discuss this request.

Sincerely,



Bob Pinnegar  
President and Chief Executive Officer  
National Apartment Association



Sharon Wilson Géo  
President  
National Multifamily Housing Council

cc: Spencer Jackson-Kaye  
Janice Kopec  
Kelsey Simmerson  
Edwin Rodriguez  
Annette Soberats  
Karen Mandel  
William Ducklow  
Serena Viswanathan  
Beth Freeborn  
David Ovadia  
Fabliha Ibnat  
Katherine Chang



*Submitted electronically*

March 27, 2024

Janice Kopec and Spencer Jackson-Kaye  
Division of Advertising Practices  
Bureau of Consumer Protection  
Federal Trade Commission

**Re: National Apartment Association and National Multifamily Housing Council's Request to Participate in the Trade Regulation Rule on Unfair or Deceptive Fees Informal Hearing – R207011.**

On behalf of the nearly 100,000 combined members of the National Apartment Association (“NAA”) and the National Multifamily Housing Council (“NMHC”), **we submit this request to make an oral submission at the Federal Trade Commission (“FTC”) Informal Hearing on April 24, 2024, regarding the Proposed Trade Regulation Rule on Unfair or Deceptive Fees - R20711 (“NPRM”).** We submit this as a joint request and would have one person present at the hearing on behalf of NAA and NMHC.

We are interested parties to this hearing given that our members collectively engage in all aspects of the apartment industry, including ownership, development, management and finance, who help create thriving communities by providing apartment homes for 40 million Americans, contributing \$3.4 trillion annually to the economy.

As expressed in our submitted written comments,<sup>1</sup> NAA and NMHC believe the rental housing customer experience is materially different from the other consumer transactions referenced in the NPRM. Specifically, the rental housing transaction fundamentally differs from a typical hotel or live event ticket transaction because the relationship between housing providers and renters involves an ongoing contractual relationship, typically at least a year-long commitment.

---

<sup>1</sup> Given the reasons stated in our joint comment letter, NAA and NMHC seek relief from the FTC and affirm that the FTC should exempt the rental housing industry from the NPRM. Comments submitted electronically at <https://www.regulations.gov/comment/FTC-2023-0064-3133>.

This relationship is also already subject to extensive regulation at all levels of government, most especially, at the state and local level, and is uniquely characterized by a series of transactions as opposed to a single-point transaction. This is where the proposed rule's requirements become inapposite given the realities of rental housing operations.

NAA and NMHC would also wish to address our concern that the NPRM lacks a sufficient factual underpinning as applied to rental housing because it is not based on any statistically relevant data. The Commission acknowledged as much in the NPRM by stating that much of the information relating to rental housing is based upon "individual consumer" and "consumer and policy group" statements regarding purported advertising practices in the industry.

Moreover, NAA and NMHC remain concerned about the Commission's conclusory assertion that "rental-related fees [should be] invalid *per se* because they are exploitative" and that "fees make rental housing even more unaffordable and jeopardize access to future housing and financial stability." Housing providers charge fees and other charges that are disclosed to residents in a transparent manner in leasing documents and throughout the lifecycle of the tenancy. These fees include remunerations for services, amenities, offerings, and other activities associated with renting and benefits that residents opt into.

For these reasons, we would appreciate the opportunity to present our positions orally at the upcoming April 24, 2024 hearing.

Sincerely,



Bob Pinnegar  
President and Chief Executive Officer  
NAA



Sharon Wilson Géno  
President  
NMHC