

Comments of the International Center for Law & Economics

*FTC Unfair or Deceptive Rental Housing Fee Practices ANPRM,
Project No. R207011*

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I. Introduction and Background

The International Center for Law & Economics (ICLE) is a nonprofit, nonpartisan research center that applies economic analysis to legal and regulatory questions. These comments respond to the Commission’s Advance Notice of Proposed Rulemaking on rental housing fee practices (ANPRM), published March 13.¹ The ANPRM asks whether a Magnuson-Moss Act trade regulation rule under Section 18 of the FTC Act should govern fee practices across the rental housing lifecycle, from application through move-out.

The ANPRM rests primarily on two enforcement actions. In December 2025, Greystar agreed to a \$24 million settlement over allegations that it excluded mandatory fees from advertised rents.² Invitation Homes was ordered to pay \$48 million in consumer redress based on similar allegations involving smart-home and utility-management charges.³ The ANPRM quotes Chairman Andrew Ferguson’s statement that “the Commission’s work on this case has revealed that the problem involving misleading pricing representations in America’s rental markets is not limited to Greystar” and directed staff to begin developing a rule.⁴

The ANPRM identifies a real consumer-protection concern. The conduct alleged in the Greystar and Invitation Homes matters—advertising rents that excluded mandatory charges disclosed only after tenants invested time, money, and prior lease commitments—fits within established Section 5 deception doctrine. The Commission addressed that conduct through case-by-case enforcement, obtaining behavioral consent orders and substantial monetary relief.

That record does not justify a sector-wide Magnuson-Moss rule. The practices at issue are already actionable under Section 5. The Commission can continue to address similar conduct through targeted enforcement, providing both *ex ante* and *ex post* deterrence while building a more robust evidentiary record. It can also issue clear business guidance on deceptive fee-advertising practices and coordinate with state attorneys general—as in the Colorado/Greystar action—to supplement

¹ Rule on Unfair or Deceptive Rental Housing Fee Practices, 91 Fed. Reg. 12,325 (Mar. 13, 2026) (advance notice of proposed rulemaking) [hereinafter ANPRM], <https://www.govinfo.gov/content/pkg/FR-2026-03-13/pdf/2026-04907.pdf>.

² Press Release, Fed. Trade Comm’n, *Greystar Agrees to Pay \$24 Million and Stop Deceptive Advertising Practices as a Result of FTC and Colorado Lawsuit Alleging the Firm Deceived Consumers About Rent Prices* (Dec. 2, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/12/greystar-agrees-pay-24-million-stop-deceptive-advertising-practices-result-ftc-colorado-lawsuit>; see also Press Release, Fed. Trade Comm’n, *FTC and Colorado Take Action Against Greystar, Nation’s Largest Multifamily Rental Property Manager, for Deceiving Consumers About Rent Prices* (Jan. 16, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-state-colorado-take-action-against-greystar-nations-largest-multi-family-rental-property-manager> (alleging fees including “valet trash,” package handling, utilities, utility-billing, “verification” fees for non-Greystar renters’ insurance, and media/smart home packages).

³ Press Release, Fed. Trade Comm’n, *FTC Takes Action Against Invitation Homes for Deceiving Renters, Charging Junk Fees, Withholding Security Deposits, and Employing Unfair Eviction Practices* (Sept. 24, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-takes-action-against-invitation-homes-deceiving-renters-charging-junk-fees-withholding-security>.

⁴ ANPRM, *supra* note 1, at 12,328 (citing Andrew N. Ferguson, Fed. Trade Comm’n, *Concurring Statement of Chairman Andrew N. Ferguson: FTC v. Greystar Real Estate Partners* (Dec. 2, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/2025.12.02-greystar-chairman-ferguson-statement.pdf).

monetary remedies where *AMG Capital* limits federal recovery. A nationwide rule covering every landlord is not a proportionate response to misconduct alleged at two companies and is not, at present, an efficient use of Commission resources.

Even if rulemaking were warranted, the Commission has not developed the record the Magnuson-Moss process requires. Section 57a(d) requires the Commission to establish the prevalence of the targeted practices, explain how they are unfair or deceptive, and assess the rule's economic effects on small businesses and consumers. The current record—two enforcement actions and warning letters to software vendors—does not satisfy that standard across an industry that includes approximately 17 million landlords.⁵

The comments that follow address three points. First, Section II explains why existing Section 5 deception enforcement is sufficient to address the conduct identified in the ANPRM. Second, Section III explains why the current record does not meet Magnuson-Moss requirements. Third, Sections IV through VII identify key design considerations that would determine whether any rule improves or harms consumer welfare, including the distinction between drip pricing and itemization, the interaction with rent-stabilization laws, the disproportionate burden on small landlords, and the need for a rigorous economic analysis.

II. Section 5 Deception Enforcement Is Sufficient

The conduct described in the ANPRM—advertising base rent while omitting mandatory charges disclosed only after prospective tenants pay application fees and commit to a unit—fits comfortably within established deception doctrine under Section 5 of the FTC Act.⁶

The FTC's 1983 Policy Statement on Deception defines a deceptive practice as one involving a representation or omission likely to mislead a reasonable consumer in a material way.⁷ Advertising a price that excludes charges every tenant must pay to occupy the unit is a material omission. A reasonable consumer would rely on the advertised price in deciding whether to incur the time and expense of applying for a unit. When that price understates the true cost of renting, the omission misleads consumers and distorts their decision-making. These practices also raise search costs and can weaken price competition in rental housing markets.

The Commission has already demonstrated that it can address this conduct through case-by-case enforcement. In *Greystar* and *Invitation Homes*, the FTC obtained orders requiring the companies to advertise total rent inclusive of mandatory fees, provide clear disclosures about fee amounts and

⁵ The Commission claims it conducted “research” on the issues raised in the ANPRM but cites only a joint FTC-CFPB request for information on tenant screening. See ANPRM, *supra* note 1, at 12,327 n.19 (citing Joint FTC-CFPB Tenant Screening Request for Information, Docket ID FTC-2023-0024, <https://www.regulations.gov/docket/FTC-2023-0024>). The agencies report receiving more than 600 comments, but cite no formal study, report, or systematic data analysis.

⁶ 15 U.S.C. § 45(a).

⁷ Fed. Trade Comm'n, *FTC Policy Statement on Deception*, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

purposes, and reform related practices.⁸ Invitation Homes also agreed to stop unfair security-deposit deductions.⁹ These orders impose ongoing behavioral obligations on the two largest operators in their respective segments and directly govern how they present prices to consumers. The Commission also secured substantial monetary redress in both matters.

These remedies align with the nature of the violation. Deceptive advertising warrants injunctive relief that requires truthful, nonmisleading price disclosures. The Commission did not need a sector-wide trade regulation rule to bring these cases, and it does not need one to address similar conduct by other operators. The existing enforcement record also provides clear signals to the market about the Commission's interpretation of Section 5 and the consequences of noncompliance.

Against that backdrop, the case for rulemaking rests on two premises: that *AMG Capital* has created an enforcement gap by limiting monetary remedies, and that civil-penalty authority is necessary to deter similar conduct across the market. Neither premise holds. Section II.A explains why *AMG Capital* does not justify sector-wide rulemaking, and Section II.B shows that existing enforcement already provides meaningful deterrence.

A. *AMG Capital* Does Not Justify Sector-Wide Rulemaking

The Commission cites *AMG Capital* in the ANPRM as limiting its remedial authority.¹⁰ In *AMG Cap. Mgmt., LLC v. FTC*, the Supreme Court held that Section 13(b) of the FTC Act does not authorize courts to award equitable monetary relief, including consumer refunds, in enforcement actions brought under that provision. The Commission can no longer obtain large-scale monetary redress by attaching disgorgement claims to Section 13(b) injunctions.

The Court emphasized that the FTC may still obtain monetary relief under Section 19, subject to statutory limits. Congress authorized federal district courts to grant “such relief as the court finds necessary to redress injury to consumers,” including “the refund of money or return of property.” (15 U.S.C. § 57b(b)). Congress also limited that authority. As relevant here, the Commission may seek such relief only against parties who have engaged in unfair or deceptive acts or practices “with respect to which the Commission has issued a final cease and desist order which is applicable to such person.” (15 U.S.C. § 57b(a)(2)).¹¹

In other words, the Court rejected efforts to obtain monetary relief in the first instance under Section 13(b) to bypass the administrative process required to issue a final cease-and-desist order.

⁸ Proposed Stipulated Order, *FTC v. Greystar Real Estate Partners, LLC*, No. 1:25-cv-00165-CNS (D. Colo. Jan. 23, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/Greystar-Order_0.pdf [hereinafter *Greystar*].

⁹ Stipulated Order, *FTC v. Invitation Homes Inc.*, No. 1:24-cv-04280-SEG (N.D. Ga. Sept. 27, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2023170invitationhomesorderenteredbycourt.pdf.

¹⁰ *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021).

¹¹ *Id.* at 1346.

The ANPRM also notes that Gramm-Leach-Bliley Act violations “may be subject to civil penalties of up to \$[53,088] per violation pursuant to section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A), and may be required to pay refunds to consumers or provide other relief pursuant to section 19(a)(1), 15 U.S.C. 57b(a)(1).”¹²

While *AMG Capital* constrains the FTC’s enforcement authority, a sector-wide rule covering every landlord in the country is not a proportionate response. Three alternatives address the asserted enforcement gap more directly.

First, behavioral consent orders remain fully available. *AMG Capital* limits monetary relief but does not impair the Commission’s ability to seek injunctions requiring behavioral changes or to negotiate consent orders that restructure pricing practices. The Greystar and Invitation Homes settlements—both negotiated after *AMG Capital*—show that the Commission can obtain meaningful behavioral relief through case-by-case enforcement. In deceptive advertising cases, requiring truthful pricing practices is the primary remedy that protects future consumers. This case-by-case approach also aligns with the statutory pathway for monetary redress under Section 19, which depends on prior administrative orders.

Second, state attorney general co-enforcement can provide monetary relief. The Colorado attorney general co-filed the Greystar complaint and secured \$1 million in costs and fees under state law authority unaffected by *AMG Capital*.¹³ State UDAP statutes in most jurisdictions provide monetary remedies independent of federal constraints. Coordinated federal-state enforcement—like the Greystar action—offers a practical path to monetary redress without rulemaking. This approach combines federal and state resources and allows enforcers to pursue the full range of remedies available under both bodies of law.

Third, business guidance and consumer education can deter misconduct without rulemaking. The Commission can issue business advisories and guidance documents explaining which fee-related practices it considers deceptive or unfair under Section 5. Targeted guidance on rental housing fee disclosures—clarifying, *e.g.*, that mandatory charges must appear in advertised rent, that fees cannot first appear after a nonrefundable application payment, or that misrepresenting the nature or refundability of charges violates Section 5—would put housing providers on clear notice of enforcement risk. The FTC’s December 2025 warning letters to 13 property management software vendors illustrate a more targeted version of this approach. Those letters identified specific practices of concern and signaled potential enforcement risk to both recipients and the broader industry.¹⁴

¹² ANPRM, *supra* note 1, at 12,327.

¹³ *Greystar*, *supra* note 8.

¹⁴ Press Release, Fed. Trade Comm’n, *FTC Sends Warning Letters to 13 Property Management Software Providers Nationwide* (Dec. 9, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-sends-warning-letters-13-property-management-software-providers-nationwide> [hereinafter *FTC Warning Letters*].

Formal guidance would extend that notice nationwide and create a clear record against which future enforcement actions can be evaluated.

The Commission also has civil-penalty authority for Magnuson-Moss rule violations, currently up to \$53,088 per violation, pending the next inflation adjustment.¹⁵ But creating that authority through a sector-wide rule that applies to every landlord, based on alleged practices involving two companies under specific facts, is not a proportionate response to the current record. The Commission's existing tools—targeted enforcement, coordinated state action, and clear guidance—can address the conduct identified in the ANPRM.

B. Existing Enforcement Already Provides Deterrence

The Commission's implicit deterrence argument rests on the premise that, without civil-penalty authority, other landlords face insufficient consequences for adopting the practices alleged in the Greystar and Invitation Homes matters.¹⁶

The enforcement record does not support that claim.

High-profile settlements with the two largest operators in their respective segments—the nation's largest residential property manager and the nation's largest single-family rental company—send a clear signal to professional housing providers that the Commission will pursue this conduct. Both actions received substantial coverage in real estate industry trade publications, amplifying their deterrent effect.

The Commission also extended that signal to the technology layer that can facilitate fee obfuscation through its warning letters to property-management software vendors. By targeting both market participants and the tools that enable the conduct, the FTC has already reached the relevant actors.

General deterrence operates through visible enforcement. That mechanism is already in place and does not require extending civil-penalty authority across the entire landlord population to be effective.

III. The Record Does Not Meet Magnuson-Moss Requirements

If the Commission concludes that enforcement and guidance are insufficient—and that deceptive fee practices are prevalent enough to justify a sector-wide rule—it must first satisfy the statutory requirements imposed by the Magnuson-Moss process before issuing any NPRM.

¹⁵ Press Release, Fed. Trade Comm'n, *FTC Publishes Inflation-Adjusted Civil Penalty Amounts for 2025* (Feb. 11, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-publishes-inflation-adjusted-civil-penalty-amounts-2025>. Civil penalties apply to certain rule violations under Sections 5(m) and 19.

¹⁶ ANPRM, *supra* note 1, at 12,327 (“The Commission believes a rule addressing unfair or deceptive rental housing fee practices could help reduce the level of unlawful activity in this area, serving as a deterrent against these practices because such a rule would allow for civil penalties to be sought against violators.”).

Section 18(d) of the FTC Act requires that a final rule’s Statement of Basis and Purpose address three elements: (1) the prevalence of the acts or practices the rule targets, (2) the manner and context in which those practices are unfair or deceptive, and (3) the rule’s economic effects, including its impact on small businesses and consumers.¹⁷ These are substantive requirements, not procedural formalities.

Judicial review of those requirements has become more exacting. In *Loper Bright Enters. v. Raimondo*, the Supreme Court eliminated automatic deference to agency interpretations of ambiguous statutory provisions.¹⁸ Courts will apply independent scrutiny to whether the Commission has satisfied each element.

The current record does not meet that standard. The Commission relies on two enforcement settlements involving two operators that together represent a small share of the overall rental market. By contrast, the U.S. Census Bureau’s 2024 American Community Survey reports approximately 46 million renter-occupied units.¹⁹ The rule would apply across a highly heterogeneous market that includes institutional REITs managing large portfolios and individual landlords renting a single property. The Commission has not established the prevalence of deceptive fee practices across that full population.

The ANPRM appropriately seeks to develop that record. But the Commission should acknowledge that the existing evidence cannot support an NPRM. It should commit to completing the required analysis before proceeding, including a rigorous assessment of economic effects on small landlords and a supply-side analysis of how a rule could affect housing availability.

IV. Rule Design Should Target Drip Pricing, Not Itemization

These comments accept the Commission’s framing of the core harm: a landlord advertises a base rent that omits mandatory charges, discloses those charges only after the tenant has paid a nonrefundable application fee and committed to a unit, and thereby extracts payment the tenant would not have made with full information at the comparison-shopping stage. That conduct is a textbook deceptive practice under existing Section 5 authority.

The harder design question is how a rule should address price presentation—specifically, whether it should require landlords to aggregate all charges into a single “total rent” figure or permit disclosure through clearly labeled line items.

The ANPRM asks when “advertised rents start to itemize or unbundle each different type of mandatory fee or charge” and cites Howard Beales and Todd Zywicki’s observation that “unnecessarily unbundling prices into multiple parts might provide no consumer benefit and instead

¹⁷ 15 U.S.C. § 57a(d).

¹⁸ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

¹⁹ U.S. Census Bureau, 2024 *American Community Survey*, Table DP04, cited in ANPRM, *supra* note 1, at 12,326 n.8.

might be designed to confuse consumers into paying a higher price.”²⁰ This concern goes to price presentation—whether to show one number or multiple components—not to whether services are bundled or offered on an à la carte basis. The Commission should distinguish among three separate questions with different policy implications.

First, drip pricing is the core harm. Advertising a low base rent and revealing mandatory charges only after a tenant has invested time and money in a specific unit distorts comparison shopping. Xavier Gabaix and David Laibson show that even in competitive markets, firms have incentives to hide mandatory add-on prices when some consumers focus on headline prices.²¹ A firm that advertises a lower headline price forces competitors to follow, regardless of full-information pricing. The Greystar and Invitation Homes cases fit this model.

Second, transparent upfront itemization is not deceptive. A landlord who advertises “\$1,200 base rent + \$150 administrative fee + \$100 technology fee = \$1,450 total monthly cost” provides complete and timely information. That practice is not drip pricing. Requiring landlords to collapse line items into a single undifferentiated figure would reduce information without improving transparency.

Third, service differentiation raises a distinct issue. When services such as parking, pet accommodations, or optional internet packages are genuinely optional, separate pricing allows tenants to pay only for what they use. A tenant without a car should not pay for parking embedded in rent. The relevant question is not whether charges are itemized, but whether they are mandatory. Mandatory charges should appear in the advertised total; optional services can remain separately listed without undermining transparency.

A rule that targets drip pricing is legally and economically sound. A rule that eliminates upfront itemization or treats all fee structures as presumptively deceptive would reduce the information available to consumers. The critical distinction is between when prices are disclosed and how they are presented. Any rule should focus on the timing of disclosure, not the number of line items.

V. Key Design Considerations for Any Rule

The following subsections address key design choices any rule would need to resolve. ICLE offers these observations if, after completing the analysis required by Section 57a(d), the Commission determines that rulemaking is warranted.

These issues will determine whether a rule improves comparison shopping and transparency or instead creates unintended costs and distortions that harm renters. Section V.A addresses how a single “total rent” requirement can misstate costs and proposes a two-part disclosure framework.

²⁰ ANPRM, *supra* note 1, at 12,327 (Question 7a); Howard Beales & Todd J. Zywicki, *Junkyard Dogs: The Law and Economics of “Junk” Fees*, CPI ANTITRUST CHRON. (Apr. 2023), at 3, George Mason L. & Econ. Rsch. Paper No. 23-10, cited in ANPRM, *supra* note 1, at 12,326 nn.6, 13.

²¹ Xavier Gabaix & David Laibson, *Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets*, 121 Q.J. ECON. 505 (2006).

Section V.B examines how fee restrictions interact with rent-stabilization laws and affect housing supply. Section V.C evaluates the disproportionate compliance burden on small landlords. Section V.D considers the interaction between a federal rule and existing state law.

A. A Single ‘Total Rent’ Figure Can Misstate Costs

The ANPRM’s clearest regulatory signal is a requirement that any advertised rental price include a “total rent” figure covering all mandatory fees and charges. The comparison-shopping objective is sound. The proposed instrument has a structural flaw.

A single “total rent” figure accurately reflects costs only if a tenant’s circumstances match the assumptions embedded in that number. Many charges do not apply universally. Parking fees apply only to tenants with vehicles. Pet fees apply only to tenants with animals. Charges under ratio utility billing systems vary with usage and cannot be calculated precisely at the time of advertising. Late fees apply only if a tenant misses a payment deadline.

Requiring all such charges to be included in a single figure will often overstate actual costs. For many fee categories, a majority of tenants will not incur the charge. A prospective tenant with a \$1,500 monthly budget may disregard a unit advertised at \$1,700 because the figure includes parking or pet fees she would never pay. The result is not greater transparency, but distorted comparison shopping.

Available evidence reinforces this concern. National Apartment Association research indicates that fee-transparency mandates often fail to account for the structure of housing costs and the rationale for specific charges.²² The NAA’s tracking reveals the regulatory landscape already varies across 18 states and the District of Columbia, with requirements ranging from total-price advertising to disclosure of only specific fees.

Colorado’s approach illustrates a more tailored solution. HB 25-1090 requires disclosure of a “total price” that includes mandatory fees while excluding charges for optional services, such as parking or pet fees, when those services are not required for all tenants.²³ This distinction prevents inflated advertised prices that could deter prospective tenants from units they can afford.

A two-part disclosure framework better achieves the Commission’s goal. First, require a clearly labeled “Total Mandatory Monthly Charge”—base rent plus all fees every tenant must pay to occupy the unit, regardless of individual circumstances. This figure is comparable across units because it reflects unavoidable costs. Second, require a disclosed schedule of contingent charges, listing amounts and triggering conditions, available before any nonrefundable fee is paid.

This approach provides complete information at the comparison-shopping stage, eliminates drip pricing by requiring early disclosure of all mandatory charges, and avoids producing a single figure

²² Emily Howard, *Fee Transparency Mandates by the Numbers*, NAT’L APARTMENT ASS’N (Dec. 9, 2025), <https://naahq.org/news/fee-transparency-mandates-numbers>.

²³ H.B. 25-1090, 75th Gen. Assemb., 1st Reg. Sess. (Colo. 2025), https://leg.colorado.gov/bill_files/40562/download.

that misstates costs for typical tenants. The ANPRM's questions on mandatory versus contingent fees (Questions 24 and 25) and on itemization (Question 64) support this design.

B. Fee Restrictions May Reduce Supply in Rent-Stabilized Markets

The ANPRM does not address how federal fee regulation would interact with state and local rent-stabilization laws, commonly known as rent control. This omission is significant. It bears directly on whether a rule would help or harm the lowest-income renters it is intended to protect.

When regulations restrict or prohibit fee categories, landlords will seek to recover lost revenue. In markets without rent control, the most direct response is to increase base rent. In that setting, a rule primarily changes how housing costs are labeled—less in fees, more in rent—without necessarily reducing total costs. Any benefit to tenants depends on whether that relabeling improves budgeting and comparison shopping.

In rent-stabilized markets, landlords often cannot adjust base rent to offset lost fee revenue. Annual increases are typically capped by statute or ordinance. A landlord charging \$1,700 per month with a 3% cap cannot raise rent by \$100 to replace \$100 in restricted fees without violating the law. The remaining adjustment options are limited: reduce service quality, defer maintenance, or exit the long-term rental market through conversion, sale, or redevelopment.

Rent regulation in the United States remains geographically concentrated but significant. More than 300 municipalities have adopted some form of rent control or stabilization.²⁴ Three states—Oregon, California, and Washington—have implemented statewide measures.²⁵ These policies tend to operate in high-cost markets where cost-burdened renters are most concentrated.

Rebecca Diamond, Tim McQuade, and Franklin Qian provide empirical evidence on how revenue constraints affect housing supply.²⁶ Studying San Francisco's 1994 rent-control expansion, they find that affected landlords reduced rental supply by 15% relative to uncontrolled properties through condominium conversions, sales to owner-occupants, and redevelopment. The resulting supply contraction increased citywide rents by an estimated 5.1%, offsetting much of the policy's intended benefit.

Rent control and fee restrictions are distinct legal tools, but both can bind landlord revenue. When they do, they create similar incentives. Supply responses—conversion, exit, and deferred maintenance—reflect the gap between operating income and costs, not the form of the constraint. A

²⁴ Nat'l Apartment Ass'n, *Rent Control: Policy Issue*, <https://naahq.org/advocacy/policy/issues/rent-control> (last visited Mar. 27, 2026).

²⁵ Dominic Butchko, *Washington Joins California and Oregon in Enacting Statewide Rent Control*, CONDUIT ST. (May 12, 2025), <https://conduitstreet.mdcounties.org/2025/05/12/washington-joins-california-and-oregon-in-enacting-statewide-rent-control>.

²⁶ Rebecca Diamond, Tim McQuade & Franklin Qian, *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, 109 AM. ECON. REV. 3365 (2019).

federal fee restriction that reduces net operating income in rent-stabilized markets would likely produce the same responses documented in the literature.

Older, rent-regulated housing stock is most exposed to these dynamics and disproportionately houses low-income renters. The Commission has not analyzed this risk. It should do so before proposing any rule.

C. Compliance Costs Disproportionately Burden Small Landlords

The FTC's enforcement record centers on the two largest operators in their respective segments. Both rely on sophisticated technology platforms, employ dedicated compliance teams, and operate at a scale that makes federal compliance costs manageable on a per-unit basis. The broader rental housing market looks very different.

According to the U.S. Census Bureau's Rental Housing Finance Survey, nearly two-thirds of rental properties are owned by individuals, and 45% of investors own only a single property.²⁷ Approximately 97% of rental buildings have four or fewer units. Only 21% of small rental properties are professionally managed, compared to 50% of properties with 50 or more units. Urban Institute researchers find that "very small" (1-2 units) and "small" (3-9 units) landlords are more likely than institutional operators to supply affordable housing, less likely to evict tenants, and more likely to serve tenants of color.²⁸

A federal disclosure rule that requires real-time fee consistency across multiple listing platforms would impose fixed compliance costs that do not scale with portfolio size. Determining which fees qualify as "mandatory," integrating with multiple platforms that use different technical standards, maintaining consistency as fees change, and tracking compliance with a federal rule that may diverge from state law all create fixed burdens—whether a landlord manages one unit or 1,000 units.

Large operators can spread these costs across a broad portfolio, producing a low per-unit burden. Small landlords cannot. A landlord renting two houses through a free listing service would face the same baseline compliance obligations, resulting in a per-unit cost that may exceed any plausible consumer benefit for those tenants.

The Commission's December 2025 warning letters to 13 property-management software vendors suggest an effort to address compliance through platform design.²⁹ If major platforms incorporate standardized fee-disclosure fields, compliance could become a simple data-entry task rather than a technical integration problem. That approach has merit. But the same letters confirm that the current infrastructure does not yet support seamless, real-time aggregation of fee information. A rule

²⁷ U.S. Census Bureau & U.S. Dep't of Hous. & Urb. Dev., *2024 Rental Housing Finance Survey: Ownership and Management*, https://www.census.gov/data-tools/demo/rhfs/#/?TABLE_CODE=2 (last visited Mar. 27, 2026).

²⁸ Fay Walker & Owen Noble, *Ensuring Safe and Affordable Housing Stock Starts with Understanding Who Owns Rental Units*, URBAN INST.: URBAN WIRE (Sept. 6, 2022), <https://www.urban.org/urban-wire/ensuring-safe-and-affordable-housing-stock-starts-understanding-who-owns-rental-units>.

²⁹ *FTC Warning Letters*, *supra* note 14.

that assumes otherwise would require landlords to rely on manual processes the Commission has already acknowledged are not yet automated.

Harvard University's Joint Center for Housing Studies reports that the supply of units affordable to low-income households has been declining for decades due to demolition, conversion, and rent increases.³⁰ Imposing meaningful compliance costs on small-property owners—without corresponding accommodations—would accelerate that trend in the segment where small landlords are most prevalent.

The Commission should address these distributional effects before proceeding. Any proposed rule should include small-entity safe harbors at the NPRM stage, not as an afterthought during the subsequent comment period.

D. A Federal Rule Risks Conflict with Existing State Law

Landlord-tenant law has long been an area of state authority. States and localities regulate security deposits, late fees, application fees, habitability standards, and lease disclosures. Since 2021, at least 14 states and the District of Columbia have enacted fee-transparency requirements.³¹ Colorado's HB 25-1090, Oregon's disclosure statute, and Minnesota's total-price requirement reflect jurisdiction-specific judgments about how to balance pricing flexibility and tenant protection.

The Commission recognized this landscape in 2024–2025 when it excluded long-term residential rentals from the Unfair or Deceptive Fees Rule. That decision relied in part on industry comments noting that existing state and local laws already govern rental fee advertising.³² Those conditions have not changed. The ANPRM does not identify new evidence that would justify reversing course. The only developments it cites are two enforcement actions against large operators—conduct the Commission addressed through existing Section 5 authority.

A federal rule that defines “mandatory fee,” “total rent,” or “clear and conspicuous disclosure” differently from state law would create overlapping and potentially conflicting obligations. The ANPRM acknowledges that state laws could “intersect” with a federal rule.³³ In practice, that means landlords may face multiple regimes with different definitions, enforcement mechanisms, and litigation risks. A landlord in Colorado, for example, must already comply with HB 25-1090's “total price” requirement. A federal rule with a different scope of included fees would impose a second, potentially inconsistent standard. The resulting compliance costs will be passed through in higher rents.

³⁰ Joint Ctr. for Hous. Stud. of Harvard Univ., *America's Rental Housing 2024* (2024), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf.

³¹ See ANPRM, *supra* note 1, at 12,328 nn.24–25 (collecting state statutes).

³² See Jay Harris, *FTC Launches Anticipated Rulemaking on Rental Housing Fee Practices*, HUDSON COOK (Mar. 13, 2026), <https://www.hudsoncook.com/article/ftc-launches-anticipated-rulemaking-on-rental-housing-fee-practices>.

³³ ANPRM, *supra* note 1, at 12,335 (Question 71).

Before issuing any NPRM, the Commission should clarify how a federal rule would interact with state law. It should specify whether the rule would preempt conflicting requirements, establish a federal floor that states may exceed, or operate alongside divergent state standards. It should also assess the incremental compliance costs created by overlapping regulation.

VI. A Rigorous Economic Analysis Is Required Before Rulemaking

Section 57a(d) of the FTC Act requires a final rule's Statement of Basis and Purpose to assess the rule's economic effects on small businesses and consumers. The ANPRM also cites Executive Orders 12866 and 14215, which require agencies—including independent agencies now subject to Office of Information and Regulatory Affairs review—to identify projected costs and benefits and select approaches whose benefits justify their costs.

These requirements are often satisfied through a Preliminary Regulatory Analysis issued alongside an NPRM. But conducting that analysis after committing to a regulatory approach is not equivalent to using it to inform the decision whether to regulate or how to design the rule. Where the central risk is that a rule could harm the same population it aims to protect—through supply contraction in the affordable housing segment—the analysis should guide the rule's design, not ratify it.

A complete analysis should address five categories of effects.

Consumer benefits from improved transparency. The ANPRM cites data showing that more than 50% of renters are cost-burdened, meaning they spend at least 30% of income on rent.³⁴ Those conditions primarily reflect a supply-demand imbalance driven by zoning restrictions, permitting delays, and rising construction costs—not fee opacity. Improved disclosure can reduce search costs and prevent overpayment in some cases. Those benefits should be measured directly and not conflated with the broader affordability problem, which fee transparency alone cannot resolve.

Compliance costs by provider type. The analysis should distinguish between large institutional operators and small independent landlords. Compliance costs—legal review, platform integration, and ongoing monitoring—are largely fixed. They do not scale proportionally with portfolio size. Using average per-unit estimates will understate burdens on small landlords and overstate them for large operators.

Supply-side effects. If fee restrictions reduce net operating income—either directly or through interaction with rent-stabilization laws—some units will exit the long-term rental market. Diamond *et al.*'s findings on San Francisco's rent-control expansion provide a relevant benchmark for how landlords respond to revenue constraints. Even a partial replication of those effects, concentrated in the affordable segment, could increase rents enough to offset fee-related savings.

Distributional effects. The relevant question is not the impact on the average renter, but on cost-burdened renters. As noted above, Harvard's Joint Center for Housing Studies finds that the supply

³⁴ ANPRM, *supra* note 1, at 12,326 n.2.

of low-rent units has declined for decades due to upgrading, demolition, and rent increases.³⁵ Any supply reduction tied to fee regulation will disproportionately affect that segment. A cost-benefit analysis that counts transparency gains for cost-burdened renters without accounting for supply losses affecting the same group will overstate net benefits.

Quality effects. Many fees fund specific services, including pest control, utility administration, package handling, and maintenance. Reducing fee revenue without offsetting adjustments will reduce service levels or shift costs elsewhere in the operating budget. The Commission should estimate the likely magnitude of these quality effects, drawing on evidence from the rent-control literature.

A rigorous analysis across these dimensions is necessary to determine whether a rule would improve consumer welfare or impose offsetting costs that undermine its stated objectives.

VII. Design Principles to Minimize Rulemaking Risks

If the Commission determines, after completing the required analysis, that a trade regulation rule is warranted, five design principles would reduce the risks identified in these comments.

Define “mandatory fee” precisely. The rule should define a mandatory fee as one that every tenant must pay to occupy the unit, regardless of personal circumstances or choices. Fees tied to optional services—such as parking, pet accommodations, optional internet packages, or additional storage—should not qualify. Fees embedded in the property’s operating structure that apply to all tenants should qualify. A clear definition will create a workable compliance standard and preserve optional service offerings while ensuring that unavoidable charges appear in the advertised price.

Require a two-part disclosure. The Commission should require (1) clear and prominent disclosure of the Total Mandatory Monthly Charge—base rent plus all fees that meet the definition of mandatory—at the point of first advertisement, and (2) a disclosed schedule of optional or contingent charges, including amounts and triggering conditions, available before any nonrefundable fee is paid. This approach addresses drip pricing without forcing a single aggregated figure that overstates costs for many tenants.

Focus on timing, not just format. In both enforcement actions, the harm arose because mandatory fees were disclosed only after tenants paid application fees and committed to a unit. The rule should require disclosure of all mandatory fees before any nonrefundable payment or financial commitment. Timing of disclosure is at least as important as format.

Adopt platform-based compliance standards. Rather than requiring each landlord to maintain real-time consistency across listing platforms, the Commission should establish compliance standards

³⁵ Joint Ctr. for Hous. Stud. of Harvard Univ., *supra* note 30.

for listing platforms and property-management software vendors. Assigning technical obligations to entities with existing infrastructure will reduce compliance burdens, particularly for small landlords.

Design small-entity safe harbors before the NPRM stage. Landlords with five or fewer units who provide good-faith disclosure using a standardized template—issued by the Commission or implemented through compliant platforms—should be deemed in compliance. This approach preserves consumer protection while limiting supply-side risks in the affordable segment. The Commission’s Question 70 asks about exemptions for small providers. The Commission should treat those exemptions as a prerequisite to any NPRM, not a detail to resolve afterward.

VIII. Conclusion

The Commission’s actions against Greystar and Invitation Homes addressed documented consumer harm through the appropriate tool: targeted Section 5 deception enforcement. Those cases produced behavioral consent orders requiring truthful pricing practices, along with substantial monetary redress. That approach should continue. The Commission should issue clear business guidance on fee-advertising practices it considers deceptive, pursue additional enforcement actions where similar conduct arises, and coordinate with state attorneys general to expand monetary remedies where *AMG Capital* limits federal recovery.

A sector-wide Magnuson-Moss rule is not a proportionate response to misconduct documented at two companies. The Commission has not yet developed the record Section 57a(d) requires, including evidence of prevalence across the full landlord population and a rigorous analysis of economic effects on small businesses and consumers. That record should be established before the Commission commits to a regulatory approach, not developed after issuing an NPRM.

If the Commission ultimately determines that rulemaking is warranted, the rule should be narrowly tailored. It should define “mandatory fees” as charges every tenant must pay to occupy a unit, regardless of personal circumstances. It should adopt a two-part disclosure framework that presents mandatory baseline charges prominently at first advertisement and provides a clear itemization of optional and contingent charges before any nonrefundable fee is collected, rather than relying on a single aggregated “total rent” figure. It should include a cost-benefit analysis that addresses supply-side effects, distributional impacts on cost-burdened renters, and interactions with rent-stabilization laws before issuing any NPRM. It should incorporate small-entity safe harbors calibrated to actual compliance costs as a precondition for proceeding. And it should clarify how federal requirements would interact with existing state fee-transparency laws, including whether they would preempt, supplement, or coexist with them.

The Commission can protect renters from deceptive fee practices through targeted enforcement of existing authority. A sector-wide rule would impose compliance costs on millions of landlords, with the greatest burden falling on small-property owners who supply affordable housing. Those costs risk harming the very renters the Commission seeks to protect.