

Notice Regarding the National Apartment Association and National Multifamily Housing Council's Requests Relating to the Informal Hearing in Project No. R207011, the Trade Regulation Rule on Unfair or Deceptive Fees

On March 27, 2024, the Commission received a request to make an oral presentation during the informal hearing scheduled for April 24, 2024, in the above-referenced matter. This request does not address why the requesters failed to submit their request before the end of the comment period.¹ On April 19, 2024, the requesters sent a second request to participate in the informal hearing to the Presiding Officer, Administrative Law Judge Jay L. Himes.² This second request acknowledges meeting with FTC staff, but again does not explain why the request to present orally at the informal hearing was submitted after the end of the comment period.³ Both of these requests are denied for the reasons stated below.

Pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a, the Commission published the notice of proposed rulemaking (NPRM) concerning the Trade Regulation Rule on Unfair or Deceptive Fees on November 9, 2023, with a sixty-day comment period that ended on January 8, 2024.⁴ The NPRM informed interested persons that they must submit any requests to present views orally by the conclusion of the notice and comment period, no later than January 8, 2024.⁵ On January 2, 2024, the Commission extended the NPRM's comment period another thirty days to February 7, 2024.⁶ The Commission received eight requests to present orally or participate at an informal hearing and nine additional requests to participate in a hearing if one were held (although those requesters did not request a hearing themselves).⁷

On March 27, 2024, the Commission published an initial and final notice of informal hearing, which scheduled the informal hearing for April 24, 2024.⁸ In this notice, the Commission explained its informal hearing procedures as set out in 16 C.F.R. § 1.11(e).⁹ The

¹ Letter from the National Apartment Association and National Multifamily Housing Council: National Apartment Association and National Multifamily Housing Council's Request to Participate in the Hearing on Trade Regulation Rule on Unfair or Deceptive Fees Informal Hearing – R20711 (Mar. 27, 2024) (“first letter”). In response to the requesters' first letter, FTC staff sent an email to the requesters acknowledging this request and stating that the Commission will consider the information contained in their earlier submission as part of its review of the comments submitted in response to the Notice of Proposed Rulemaking. The email also explained that this request did not comply with 16 C.F.R. § 1.11(e) because the Commission received it after the February 7, 2024, comment deadline. Finally, staff offered to meet with the requesters to get a better understanding of their concerns. Email from FTC Staff to National Apartment Association re: Request related to the FTC Informal Hearing on the Proposed Trade Regulation Rule on Unfair or Deceptive Fees (Apr. 4, 2024).

² Letter from the National Apartment Association and National Multifamily Housing Council Request for Inclusion in Informal Hearing on Proposed Trade Regulation Rule on Unfair or Deceptive Fees – R207011 (Apr. 19, 2024).

³

⁴ Fed. Trade Comm'n, Notice of Proposed Rulemaking to Promulgate a Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023).

⁵ at 77420.

⁶ Fed. Trade Comm'n, Notice of Proposed Rulemaking to Promulgate a Trade Regulation Rule on Unfair or Deceptive Fees; extension of comment period, 89 Fed. Reg. 38 (Jan. 2, 2024).

⁷ Fed. Trade Comm'n, Initial and Final Notice of Informal Hearing on the Trade Regulation Rule on Unfair or Deceptive Fees, 89 Fed. Reg. 21216 (Mar. 27, 2024).

⁸ at 21216.

⁹

Commission also denied another entity’s request to present orally at the informal hearing. The Commission noted that the other entity’s request was received “on February 23, 2024, more than two weeks after the close of the comment period, requesting an opportunity to make an oral presentation. Because any such requests must be submitted no later than the close of the comment period, 16 C.F.R. [5 (h r)-7 (e)4 (que)4 (s)-14 Teqm00447[(us)-1 (t)-2 ()4 (nt) [5 5 (h 5 (h 5 (4T)0.002 (on. B)-3 (e)4 (c)4 (a)4 (us(h)-4 (e)TJ(o m)-2 (y t)-2 (e))4 (ker)3 (a)4 (C)ioB411008190 12 78 7088.84 Tr

