

# Guide for States: Cracking Down on Junk Fees to Lower Costs for Consumers

*Resource outlines actions states can take to build on the Biden-Harris Administration's efforts on junk fees and spur private sector action*

## What are “junk fees” and how are states taking them on?

The American economy has become overrun with “junk fees.” Across industries and products, consumers are paying billions of dollars a year in unnecessary, unavoidable, or surprise charges that inflate prices while adding little to no value. These junk fees, which are often not disclosed upfront and only revealed after a consumer has decided to buy something, obscure true prices and dilute the forces of market competition that are the bedrock of the U.S economy.

Competitive markets depend on fair and transparent pricing, where consumers can easily compare prices across products and choose the one that yields the best value. That’s the essence of capitalism. Junk fees make it difficult, if not impossible, for consumers to comparison shop. Junk fees also take advantage of circumstances in which consumers do not have the power to shop around. Companies routinely impose fees on captive consumers—that is, consumers who are already locked into a product or service and have little choice but to pay the fee.

Late last year, President Biden urged federal agencies to do everything they can to crack down on junk fees across the economy, giving families some extra breathing room and making our economy more competitive. Already, agencies have delivered. In February, the Consumer Financial Protection Bureau (CFPB)<sup>1</sup> announced a proposed rule to cut most credit card late fees to no more than \$8, saving consumers an estimated \$9 billion a year. The Federal Communications Commission (FCC)<sup>2</sup> finalized a rule to require cable and internet providers to list fees and services up front with an easy-to-read consumer friendly label. And, the Department of Transportation (DOT) proposed a rule to require airlines and online booking services to show the full price of a plane ticket up front, including baggage and other fees.

A number of businesses have already changed their policies in response to this increased scrutiny on junk fees. After the President called upon Congress to ban family seating fees and DOT launched a dashboard<sup>3</sup> displaying which airlines do and do not charge family seating fees, several major airlines got rid of these fees altogether. In December 2021, the Consumer Financial Protection Bureau released reports<sup>4</sup> on the banking industry’s excessive and unfair reliance on banking junk fees. Since then, fifteen of the twenty largest banks have ended fees for bounced

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<sup>1</sup> [CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov)

<sup>2</sup> [Broadband Consumer Labels | Federal Communications Commission \(fcc.gov\)](https://www.fcc.gov)

<sup>3</sup> [Airline Family Seating Dashboard | US Department of Transportation](https://www.transportation.gov)

<sup>4</sup> [Junk fees | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov)

checks. Bank revenue from overdraft and bounced check fees is down more than \$5 billion<sup>5</sup> annually compared to before the pandemic.

Many state legislators and attorneys general are also taking a strong stance against these fees by enacting legislation and enforcing existing laws to protect consumers. While President Biden and federal agencies are doing what they can to crack down on junk fees, states too can play a critical role. This resource describes the economic harms junk fees cause to consumers and markets and highlights the important steps that states have taken in the fight to clamp down on these exploitative fees.

## How junk fees increase prices and distort competition

Competitive markets provide consumers with choice and value, but consumers can only realize the full benefits of competition if they are able to view the actual price of products for sale and purchase the one that provides the most value. The prevalence of junk fees degrades consumers' ability to comparison shop by confusing consumers about the true price, enticing (or tricking) consumers into paying more than they should, and reducing companies' incentives to compete with high quality or lower costs.

**Confusing prices.** Junk fees make it hard for consumers to know how much something costs. Many consumers shop based on an advertised price—for example, an airfare or hotel price shown on a travel site, or a car price displayed in a TV commercial. When companies sneak in fees at the back end of a transaction or hide them in fine print, it can hinder consumers' ability to determine the total price of a product. Even where junk fees are each disclosed individually, the proliferation of fees makes it harder for consumers to compare the all-in cost of the products for sale.

**Exploiting consumers.** Junk fees can also lure or trick consumers into paying more than they intended by springing fees on them at the back end of the purchasing process or even after the sale. For instance, a consumer may feel they have no choice but to pay a “service fee” tacked onto a ticket price or a “resort fee” added to a hotel bill if they have already decided to purchase the ticket or stay at the hotel based on a lower advertised price. Studies have shown that consumers faced with these hidden or “dripped” fees can pay upward of twenty percent more than they would have had the actual price been disclosed upfront.<sup>6</sup> Companies may also charge fees where a consumer is already using a product and has no choice but to pay the fee in order to continue using the product (or to exit the product). And luring consumers to a store or a website with a misleading price can make them simply give up and pay a higher price than they originally intended.

**Reduced incentives for companies to compete for customers by lowering costs or improving quality.** Companies have come to realize that they can increase their profits by inflating prices with junk fees. Indeed, they may have little choice. In a market with junk fees, companies that attempt to price in a fair and transparent manner will seem more expensive than rivals and will lose market share. When junk fees are permitted, companies have incentives to engage in

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<sup>5</sup> [Banks' overdraft/NSF fee revenue declines significantly compared to pre-pandemic levels | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)

<sup>6</sup> See Tom Blake et al., *Price Salience and Product Choice* 16, 40 Marketing Science 619 (2021)

exploitative innovation – coming up with innovative new junk fees rather than raising the quality or lowering the price of the product they are offering.

## The important role of states in tackling junk fees

In order to fully address the problem of junk fees, initiatives by states are essential. In many cases, states have local and specialized knowledge of junk fees arising within their jurisdictions and affecting their citizens.

### Approaches that states have taken to address junk fees

Junk fees have been an area of focus for many state legislatures and attorneys general. For instance, states have taken actions against: hotel resort fees<sup>7</sup>, debt settlement fees<sup>8</sup>, food delivery service fees<sup>9</sup>, event ticketing fees<sup>10</sup>, rental car fees<sup>11</sup>, car purchase fees<sup>12</sup>, and cable and internet fees.<sup>13</sup> This section highlights three potential approaches for addressing junk fees: enforcement, legislation, and contracting. Although these approaches may be available to some degree in every state, state laws will vary, and state attorneys general are best positioned to judge the effectiveness of these options in their respective states.

**Enforcement.** State attorneys general have addressed many junk fees by enforcing existing federal and state laws prohibiting unfair, deceptive, or abusive practices.

Every state attorney general has the authority to “enforce” certain Federal consumer financial laws, such as the Consumer Financial Protection Bureau’s (CFPB) prohibition on unfair, deceptive, or abusive acts or practices (UDAAPs).<sup>14</sup> Nearly every state has already taken advantage of this prohibition, either in partnership with the CFPB or on their own, to bring enforcement actions and protect their own citizens from unscrupulous consumer financial services companies. Many of these actions have focused on junk fees. For instance, a multistate group of attorneys general recently sued a subprime installment lender for charging consumers millions of dollars for hidden add-on products.<sup>15</sup>

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<sup>7</sup> <https://oag.dc.gov/release/ag-racine-sues-marriott-charging-deceptive-resort>;  
<https://www.attorneygeneral.gov/taking-action/ag-shapiros-action-requires-marriott-to-disclose-resort-fees/>;  
<https://ago.nebraska.gov/news/ag-peterson-sues-hilton-behalf-nebraska-consumers>

<sup>8</sup> <https://www.mass.gov/news/ags-office-reaches-settlement-with-payment-processing-company-over-claims-of-unlawful-fee-practices>

<sup>9</sup> <https://www.washingtonpost.com/dc-md-va/2022/12/30/grubhub-suit-dc-attorney-general-fees/>

<sup>10</sup> <https://www.marylandattorneygeneral.gov/press/2020/061820.pdf>; <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-targeting-unfair-ticketing-practices-live-event-industry>

<sup>11</sup> <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-46-million-settlement-involving-florida-based>; <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/9B8E6D9D013832278525838A0073F068>

<sup>12</sup> <https://www.marylandattorneygeneral.gov/press/2022/041922.pdf>

<sup>13</sup> <https://portal.ct.gov/AG/Press-Releases/2022-Press-Releases/Attorney-General-Tong-Announces-Settlement-With-Frontier-Communications>;

<https://www.atg.wa.gov/news/news-releases/ag-ferguson-charter-pay-255000-thousands-washingtonians-over-hidden-fee>

<sup>14</sup> 12 USC 5552(a).

<sup>15</sup> Complaint for Permanent Injunction and Other Relief, Commonwealth of Pa. v. Mariner Finance LLC, e 2:22-cv-03253 (Aug. 16, 2022).

Many states also have enacted statutes analogous to the CFPB’s prohibition on UDAAPs or the Federal Trade Commission Act’s prohibition on unfair and deceptive acts or practices. Although these statutes vary by jurisdiction, they generally prohibit unfair, deceptive, and/or unconscionable acts or practices, and they typically are enforceable by the state’s attorney general (and in some cases, by the individuals harmed by the unlawful practice). Because many junk fees are likely to be unfair, deceptive, or unconscionable under these state laws, states already have ample authority to attack such practices through enforcement, which (as noted above) many states have already done. Some of these statutes also provide the state attorney general with rulemaking authority to define specific practices that are unfair, deceptive, or unconscionable.

**Legislation.** State legislators have enacted new legislation that would prohibit or otherwise limit specific junk fees.

As noted above, many junk fees may be unfair or deceptive and would thus be prohibited under existing state UDAAP statutes. In some states, moreover, the general UDAAP statute is supplemented by the enumeration of specific acts or practices that are prohibited. For instance, the California legislature is currently considering a bill that would amend the state’s UDAAP statute to prohibit “[a]dvertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes imposed by a government.”<sup>16</sup> These kinds of bills would make explicit what is often already illegal, and make it easier for state attorneys general and private enforcement (i.e., individuals harmed by the unlawful practice) to stop junk fees.

Relatedly, state legislatures have enacted substantive consumer-protection legislation to ban junk fees in particular sectors or industries. For example, under Idaho law, it is unlawful for a residential mortgage lender to impose “any fees or charges prior to a residential mortgage loan closing, or prior to the completion of a loan modification” except for certain enumerated charges, which must be “reasonable and customary as to the type and the amount of the fee charged.”<sup>17</sup>

**Contracting.** States and local government can also act to limit junk fees in contracts they enter into with private third-parties for the provision of public services.

For instance, states may contract with vendors to provide school lunches for students, payroll cards for state employees, and cash assistance to recipients of public benefits. In these circumstances, the vendors hold the consumers in a captive relationship and can leverage their power to charge unreasonable fees that the consumers have no choice but to pay.

Federal regulators found that this problem is particularly acute with correctional facilities. The CFPB issued a report concluding that people in jails and prisons and their loved ones are often required to pay exorbitant fees to access basic services like money transfers, telephone calls, or email, which are typically outsourced by state and local correctional agencies to private firms, some of whom pay commissions to the correctional agencies.<sup>18</sup> The report noted, for example, that an average 15-minute phone call from a jail cost \$5.74 in 2018 (and in one state the average price was as high as \$24.82), well above market rates outside the prison context. In February

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<sup>16</sup> California Senate Bill 478 (Feb. 14, 2023).

<sup>17</sup> Idaho Code § 26-31-210.

<sup>18</sup> See generally Consumer Financial Protection Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace (Jan. 2022).

2023, the Federal Communications Commission (FCC) published a proposed rule that, if finalized, will cap the cost of intrastate calls to and from people in jails and prisons.

States may choose to avoid contracting arrangements in which companies pay the government to secure exclusive access to consumers. States may also choose to provide strong oversight of the vendor to ensure that junk fees are not imposed.