

United States Senate

WASHINGTON, DC 20510

June 13, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C., 20580

Dear Chair Khan,

We write to express our concern with the broad scope of transactions deemed as “junk fees” under the Commission’s “Trade Regulation on Unfair and Deceptive Fees” Notice of Proposed Rulemaking. Not every fee or surcharge should fall into the category of unfair or deceptive practices. There are well-established and recognized fees in the restaurant context that, with appropriate transparency, serve specific business purposes.

Restaurants are a vital presence on every Main Street in America. The industry is unique in that restaurants represent both the sale of goods (food and beverages) and a suite of services (the way in which a meal is presented, offered, or delivered to a customer). Consumers recognize that the menu price will reflect the cost of the meal itself, but that there may be additional fees associated with providing the additional value of a tailored dining experience with increased convenience.

For instance, most full-service restaurants price their menus under the assumption that the customer will dine on-premises. But many consumers also seek delivery of their favorite meal, and it is not unreasonable or unexpected for a restaurant to apply a delivery fee to the final bill that helps to cover the one-time convenience cost of making the meal ready to leave the dining room. They also recognize that delivery charges are not static and can fluctuate based on a host of factors.

Similarly, a large party that dines in a restaurant expects that a service charge will be applied to the final bill for that enhanced experience because it is disclosed prior to being seated. Large party service fees also ensure waitstaff assigned to parties that exceed normal service needs receive commensurate compensation for work performed. Finally, as different jurisdictions take different approaches to the tip credit, some restaurants have imposed service charges that are directed to the staff.

The FTC proposal mischaracterizes all restaurant fees and surcharges as “junk fees” that must be included within a “total price” for each menu item. Under this plan, operators would have to significantly raise prices, create menus based on dining party size or payment type, and change longstanding business practices that would cause confusion for patrons. While the proposal could impact every type of restaurant, small and independent table service restaurants at the heart of our communities would be most harmed by customer reactions to steep price increases brought on by the estimated \$3.5 billion cost of compliance.

As you consider this proposed rule and its application to restaurants, we urge the Commission to allow restaurants' transparent and well-established business practices to continue as they do today.

Thank you in advance for your attention to this important matter.

Sincerely,



Mike Braun
United States Senator



Roger F. Wicker
United States Senator



Thom Tillis
United States Senator



Kevin Cramer
United States Senator



Katie Boyd Britt
United States Senator



Roger Marshall, M.D.
United States Senator



Markwayne Mullin
United States Senator