



# ■ THE FTC IS AMBUSHING RESTAURANT OPERATORS

In October 2023, the Federal Trade Commission (FTC) ambushed restaurants by naming them as a target industry in the “Unfair or Deceptive Fees” proposed rule, despite not including the industry in a request for comment on surcharges.

The FTC’s proposed rule would force restaurant operators to change longstanding business practices by eliminating service fees and surcharges. Instead, the rule would require operators to post total prices for a service or good that reflect all costs, except shipping and government charges.



If this rule is adopted as written, restaurant operators will be forced to be less transparent with their customers while rewriting their compensation models, increasing their menu prices, and overhauling established business practices.

**PROJECTED COMPLIANCE COSTS FOR RESTAURANT OPERATORS EXCEED \$3.5 BILLION.**

## What’s so bad about the proposed rule?

The FTC would force restaurant operators to:

- 1. Remove any separate fees or surcharges—including service fees and large group surcharges.**
- 2. Overhaul menus so that the listed price is the total price a customer must pay.**
- 3. Eliminate the use of surcharges for dynamic costs such as credit card processing or delivery fees.**

It would also create a new wave of **litigation and federal fines for noncompliance.**

## What does this mean?

### HIGHER MENU PRICES

The FTC directs restaurant operators to **change established business practices by raising their menu prices** rather than adding any fees or surcharges.

The FTC’s proposed rule also directs operators to **create separate menus for large parties where service fees are incorporated into food prices**, setting them up for questions from consumers about why the same dish costs less for a smaller party.

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**GO DEEPER** *The FTC doesn't take the realities of the restaurant industry into consideration. Its estimated compliance cost—\$3.5 billion—would equal a cost of \$4,818.27 per operator for menus alone. Small independent operators run on a 3-5% margin and make an average of \$45,000/year. The cost of making this change would be approximately 10% of their total income.*

## WAGE CUTS FOR EMPLOYEES

The FTC proposal would **ban restaurant operators from using service charges and force them to increase menu prices to cover the cost.** This change would take away the operator's choice in determining the best compensation model for their business. **Higher menu prices often lead to a drop in traffic, resulting in fewer hours and less jobs for servers.**

For operators who have replaced tipping with a service fee, the FTC directs them to return to a tipping model to eliminate the fee.

## LESS TRANSPARENCY FOR CUSTOMERS


Diners like to know what they are paying for, but by eliminating the use of fees and surcharges, the FTC is **preventing diners from seeing the costs that are impacting the operation of the restaurant,** like credit card processing fees, which are outside the operator's control.

**GO DEEPER** *For some restaurant operators, it's easy to include credit card swipe fees into their menu prices. However, independent and small business restaurant operators—who operate on tight margins and are most impacted by rising credit card swipe fees—would struggle to incorporate that cost into menu pricing because it's a percentage of each transaction, not a fixed cost.*

## Who will be most impacted by this FTC overreach?

 **Independent restaurant operators, which make up 65% of U.S. restaurants,** will struggle to afford to comply.

 **Restaurant workers** will see fewer customers and less income.

 **Unbanked consumers** will pay higher prices that incorporate swipe fees, even though they pay in cash.

**GO DEEPER** *The questions the FTC asks in its proposed rule make clear that the rule's impacts on restaurants were not fully understood or quantified. While it calls restaurants out as one of the three "example" industries, the FTC clearly doesn't understand that the industry has more than 70 segments that will be impacted differently by their mandates. The rule is unworkable as written.*

**The National Restaurant Association and its state restaurant association partners oppose this proposed rule and will lead industry efforts against it.**