Consumer Finance Monitor (Season 6, Episode 48): A Close Look at the Federal Trade Commission's Proposed Rule to Regulate "Junk Fees"

Speakers: Alan Kaplinsky and Stacy Cammarano

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer finance and what they mean for your business, your customers, and the industry. This is a weekly podcast show, brought to you by the Consumer Financial Services Group at the Ballard Spahr law firm. And I'm your host, Alan Kaplinsky. I'm the former practice group leader for 25 years, and now senior counsel of the Consumer Financial Services Group at Ballard Spahr. And I'll be moderating today's program.

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So let me tell you about the topic we're going to talk about today. And it's something we have thoroughly covered on our blog now, I'd say for well over a year. But it's really gotten more hot and heavy in the last several months. The topic is junk fees. As part of the White House's latest round of efforts in targeting so-called junk fees, the FTC has issued a proposed rule, it's called the Rule on Unfair or Deceptive Fees. The proposal that the FTC has made follows the FTC's issuance in October, 2022, of an advanced notice of proposed rulemaking to address junk fees. A term that was used in the advanced notice of proposed rulemaking to refer to unfair or deceptive fees that are charged for goods and services, that have little or no added value to the consumer.

On the very same day, on October 11th, when the FTC issued this proposed rulemaking, the CFPB issued three new items that were directed at the topic of junk fees. Comments on the FTC's proposed rule are due no later than January 8th of next year. And I'm going to let our guest explain what the proposed rule does. And it's actually, it's pretty simple. There are really two basic rules that we'll get into in a bit.

But first, let me introduce our very special guest today. I'm delighted to have Stacy Cammarano with us. Stacy is a staff attorney in the FTC's division of advertising practices, in the Bureau of Consumer Protection. She's the lead attorney on the team working on the FTC's rulemaking on junk fees. Stacy has been practicing law for more than 10 years, during which she's litigated numerous complex civil and class action lawsuits. She previously worked for, before joining the FTC, she worked for the law firm of Cohen Milstein Sellers & Toll, and its Civil Rights & Employment practices group. And before that she was the managing director of the Center for Human Rights and Global Justice at NYU Law School. Stacy graduated from the University of Texas School of Law, and clerk for Judge David Brionies. Hope I pronounced that right. Senior United States District Judge for the Western District of Texas. So Stacy, a very warm welcome to you. Very, very delighted to have you on our program today.

Stacy Cammarano:

Thank you, Alan. Thank you so much for that kind introduction and for inviting me to speak on your show. I do want to say at the outset that I'm here in my personal capacity and these things that I say today are not necessarily representative of the commission or of any individual commissioner.

Alan Kaplinsky:

Okay. Well, let's start off with a real softball question, Stacy. And that is we'll level set here to make sure our audience has the foundation that it will need for some of the things that we'll get into a bit later. What precisely is the FTC's role in dealing with junk fees, and how has it fulfilled that role generally?

Stacy Cammarano:

Yeah. So the FTC at the background works to protect consumers from unfair or deceptive business practices. And also, unfair methods of competition in broad sectors of the economy. So the FTC derives its authority from the FTC Act and a number of other statutes. Using this authority, the Bureau of Consumer Protection, where I work, has worked to protect consumers from junk fees for years. And it's done so through things like investigations, enforcement actions, public workshops, and reports.

I'll name just a couple of examples. There's quite a bit over the years. But one example is in 2019, the FTC filed a lawsuit, FTC v. FleetCor Technologies, alleging that the defendant misrepresented costs of fuel cards when it charged consumers at least hundreds of millions of dollars in unexpected fees. And that case, the court actually granted summary judgment this year on the FTC's claims, among others, that FleetCor, the defendant, falsely represented that customers would not pay transaction fees.

Alan Kaplinsky:

Yeah, I recognized that the FTC has been litigating junk fee-type issues for a long time. What I guess I'm not sure of is whether you called it or whether the commission referred to them as junk fees back then when it was bringing all these enforcement cases. Or is that nomenclature something that's new? It's just a new description.

Stacy Cammarano:

I don't know the first time that the FTC referred to these practices as junk fees, but it has been a practice that the FTC has addressed, whether or not it's used that name, it's addressed it for years.

Alan Kaplinsky:

Right. So can you tell me a little bit about this particular rulemaking that I mentioned during my introduction, and where you are now and how you ended up there?

Stacy Cammarano:

Yeah. So as you mentioned, we issued an advance notice of proposed rulemaking on unfair and deceptive fees last year in the fall of 2022. This is a procedure that's particular to the FTC. And we asked questions to get comments about things like the disclosure of fees, misrepresenting or failing to disclose the total price of goods or services, things like that. And we received more than 12,000 comments from consumers, from consumer groups, and also from industry groups. And so these comments revealed a number of key issues. They revealed that hidden fees are prevalent across industries. Businesses will advertise lower prices initially, and then they add on mandatory fees that inflate prices significantly.

Alan Kaplinsky:

Like a bait and switch.

Stacy Cammarano:

Right. Yes, exactly. That's exactly right. And then they also revealed a different problem of misleading or what we sometimes call bogus fees. And these are really fees where businesses will use vague terms like convenience fees, economic impact fees. I saw a 2023 fee recently. Service fees, processing fees, all sorts of things. So those types of terms, they don't adequately disclose what the fees are for. And then they often also lead consumers to think that they're paying for something other than what they're actually going to receive.

Alan Kaplinsky:

Yeah. So let's drill down just a little bit. I don't know how many pages of the Federal Register are consumed, but when I printed out the rule, it was about a little over 160 pages. But the actual rule is actually not that complicated. And so why don't you tell us what's in the rule? And actually, I think one of the best places to start if you're plowing through the rule, is you go to the end and read the rule, and then you can read all the background information.

Stacy Cammarano:

I think that's a great point. I don't know why the structure of these rulemakings is as it is, but I think the most important thing is the proposed rule at the very end. So the rule does a couple things. And as you said, it is quite simple. The first thing that the rule does is it prohibits hidden fees. So it prohibits businesses from offering, displaying, or advertising an amount a consumer may pay without clearly and conspicuously disclosing the total price. So what that means is that all mandatory charges must be included in the advertisement that a business displays. And the only things that can actually be excluded are shipping charges and government charges. And that's because these are the types of charges that usually depend on information from consumers for the businesses to be able to calculate the cost.

Another thing that this provision does is that the total price must be displayed more prominently than any other pricing information. So you can't have this smaller price listed on the advertisement and then the larger total price in fine print on the bottom, you need to be able to see the total price most prominently.

Alan Kaplinsky:

It is similar, I guess, to the Truth in Lending Act, that it's got to be conspicuous and it's got to stand out. And you said it applies to advertisements. Is it also something that would apply to the contract document itself, or are we only talking about advertisements leading up to the customer entering into the contract?

Stacy Cammarano:

So the language of the proposed rule is offering, displaying or advertising. I will sometimes use the word advertising as shorthand, but it is much more inclusive than that. It would apply to something like a contract.

Alan Kaplinsky:

One of the things that puzzled me a little bit, it's a little bit of a detail, but if you're dealing with consumer credit or consumer finance, under the Truth in Lending Act, you have to, if it's an installment loan or closed-end loan, the annual percentage rate has got to be bolder or more conspicuous than any of the other truth in lending disclosures. And so one of the things I wondered about a little bit is whether it might create some conflict there, in that what would the total price be for a credit transaction? Is it the total of finance charge? Is it the annual percentage rate? And in the event of a conflict, which do you comply with? I'm getting a little into the weeds here. And if you want, we can defer that for a later time. But that would at least, as a consumer finance lawyer, that was one of the things that popped out at me initially.

Stacy Cammarano:

Yeah. I do want to discuss the rest of the rule, but I can address this as well. We did look at how the rule interacted with other regulations, and our rule does not say anything about itemization. So businesses are free to itemize. If they do so, they must display the total price more prominently than any of the individual components. To the extent that that might involve a conflict between another rule, that's an area where we want to hear from people. So the rule is a proposed rule and the public comments are open for 60 days. If there are particular areas where there's some conflict, we invite people to submit--

Alan Kaplinsky:

Yeah. And I guess another area might be, as I'm thinking about the Truth in Savings Act, to the extent that that applies, there, you have to disclose the... What's it called? The APY. The annual percentage yield that's being paid on a savings account or a

CD. And that's got to be more conspicuous than the other truth in savings disclosures. But let's get back to some more general matters, Stacy. And that is, and how does the FTC define junk fees within the proposed rule?

Stacy Cammarano:

That's a good question. And I want to step back a little bit more, because I've already discussed the first provision of the proposed rule, which prohibits hidden fees. But there's a second provision that prohibits misleading fees. So the second provision that prohibits misleading fees would prohibit businesses from misrepresenting the nature or purpose of any amount a consumer may pay. So that basically just means that businesses can't lie about what they're charging consumers for. And the nature or purpose includes refundability of fees and the identity of the good or service for which they're charging the fees.

That provision also says that businesses must disclose the nature and purpose of any amount a consumer may pay that is excluded from the total price. So that means in more simpler terms, anytime there's an add-on charge that's not part of that initial total price, the business has to tell consumers what that charge is for before the consumer agrees to pay it. Those types of fees that are not included in the total price, as I said before, are shipping charges, government charges, and then voluntary optional fees like invitations to tip, voluntary gratuities, or add-on things that a consumer might say later on that they wanted to also purchase.

Alan Kaplinsky:

And I take it, as I read the regulation, I looked at the supplementary information, it doesn't matter whether the company itself is actually going to be charging the fee and keeping the fee. If it's a third party fee that has to be paid, that's got to be reflected in the total price as well. Am I right?

Stacy Cammarano:

That's right. The rule would require anytime a business displays or advertises a charge, it doesn't speak to who is ultimately receiving that money or who's ultimately providing the services.

Alan Kaplinsky:

Yeah. Okay. Is there any requirement that if there is a third party fee like that, that you have to reflect in the total price, that the company mentioned the name of the third party that's actually charging that fee? Or is that up to the company?

Stacy Cammarano:

Yeah, that's not something that's addressed by this particular rule.

Alan Kaplinsky:

Okay. So you mentioned that we're essentially talking about mandatory fees that have got to be included in the total price. I mean, I know what a dictionary definition of mandatory would mean, that is you got to do it. You're required to purchase the additional item or obtain the additional service. Is that what we're talking about here?

Stacy Cammarano:

So we use the language, "All fees that a consumer must pay for good or service." And then we also say, "And that includes all mandatory ancillary goods or services." So other things that are offered as part of the same transaction. And we provide some more guidance in the NPRM on this about what must-pay means. It means all fees or charges that are necessary to render the good or service fit for the purpose for which it's sold. And that includes things that are not reasonably avoidable and things that a reasonable consumer would expect to be included in the purchase.

Alan Kaplinsky:

Then you had mentioned that if there are voluntary fees, add-on products that the consumer is not required to purchase but elects to do it, that doesn't get reflected in the total price. But you still have to disclose that, am I right?

Stacy Cammarano:

That's right. And you have to disclose that before the consumer agrees to pay it.

Alan Kaplinsky:

Right. Just wondering, this is another thing, just a thought popped into my mind. A lot of times we're talking about subscription services, where a person is paying so much per month, okay? And let's say when you sign up, you sign up for a year. You could either, I guess, pay it in advance or you could pay the fee monthly. But then at some point, let's say the company reserves the right to change the fee during the course of the subscription, how do you go about dealing with that?

Stacy Cammarano:

Yeah. I think it would probably depend on the facts of the particular case. The total price would usually be the price of the term of the contract. So that would depend on what happens in the particular case.

Alan Kaplinsky:

So I wonder if you could provide an example or two, Stacy. And it doesn't have to be in the consumer finance area, but what a typical mandatory fee might be for the purchase of a particular product or service.

Stacy Cammarano:

So there are a number of fees that we received comments about. I don't know what would be most typical because there are so many different types of fees. They're really across every industry. But a couple of examples that might be interesting to your listeners, we received some comments about housing rental fees, for example. If a housing rental includes a fee that a consumer cannot reasonably avoid, so it has to be, like I said, a mandatory fee, for something like a trash valet service, that would be a mandatory ancillary service that would need to be included in the rental agreement price.

Alan Kaplinsky:

I see. Okay. Yeah. What you're driving at here is, I take it the whole purpose behind this, is part of it's also to level the playing field. That in the housing rental area, somebody could advertise a really low monthly rental fee, but not realize until some later point, as they're entering into a lease, that there are a few other fees that get charged. Just thinking, in the apartment that my wife and I lease, if you have a dog, and depending on the size of the dog, I think you can charge an extra fee per month. I don't know, I mean, how that would work if the lessee or the proposed lessee says to the landlord, "I have a dog." I assume there's no problem in having a dog in the building. And then the landlord says, "No, but we charge you an extra $25 a month," or something like that. Would that be an example too, in addition to trash valet?

Stacy Cammarano:

In that particular case, if it's a pet fee, those are often optional, because a consumer might not have a pet. So that would be something that wouldn't necessarily need to be disclosed in the advertisement for the rent. But if the consumer has a pet and that is a requirement on the lease, then they would need to disclose that before the consumer signs the lease.

Another example might be a payment processing fee. A lot of companies, whether it's in the rental field or any other sector, will charge an additional fee for somebody just to pay. And if that fee, if there's not a way for the consumer to actually avoid paying that fee, if there's not another method for them to pay, then that would be a mandatory fee as well.

Alan Kaplinsky:

Right. I am just thinking, I'm a lawyer and I am trying to give advice to a client on how to... I'm looking at their ads, I can just see advertising and marketing departments not loving this rule. Because if there are a lot of mandatory fees and optional fees. And I know the lease I entered into was, geez, it must have been about 50 pages to rent a two-bedroom apartment, and there are all kinds of riders to the lease, and there are other services you can subscribe for. You want to join the gym, that is going to cost you a certain amount. It could really clutter up an ad. There'll be a lot of information that's going to go on an ad. I can just see the marketing department screaming at the lawyers, "The whole ad will be all kinds of fees that we charge."

Stacy Cammarano:

I think the simple solution to that is for these businesses to just roll everything into the price. They advertise one price and they don't need to itemize all of the different fees that they used to make that total price.

Alan Kaplinsky:

But that's true. But I thought you said that even if it's a voluntary, even if it's an add-on fee and it's elected, you still have to disclose that, right?

Stacy Cammarano:

That's right. You'd have to disclose that before the consumer agrees to pay that amount. You wouldn't necessarily have to itemize all of your optional fees in your initial advertisement.

Alan Kaplinsky:

You don't have to advertise. So they don't have to be all on that initial ad, is what you're saying. Okay, I misunderstood that. Let's go to some other examples of how the rule would impact particular industries. We talked a little bit about rental housing, talked a little bit about consumer finance. I guess another big area would be ticketing, right? Ticketing for live shows.

Stacy Cammarano:

That's right. And we saw a lot of comments about things like convenience fees, where the initial price of the ticket is very low face value of the ticket, and then there are so many convenience and processing fees that it ends up being just exorbitantly more expensive to actually purchase the ticket. So those types of fees would have to be included in the total price from the very beginning.

Alan Kaplinsky:

And another one that I've noticed a lot are hotels. They'll charge you something called a resort fee, a fee you have to pay, but it's listed separately and it's not when they advertise the room rate for the night, a lot of hotels typically don't include that, but you got to pay it. That's another one, right?

Stacy Cammarano:

Right. Resort fees are a huge problem that we received a lot of comments about as well. The consumers would think that they were going to pay a lower nightly rate, and then they find out at the end, and sometimes not even until they get to the counter at the hotel that they're going to be charged these resort fees. Another problem with resort fees that we saw was that sometimes consumers don't actually receive anything in exchange for the fees. They assume that there's going to be a pool, at least, but the pool is closed, or some sort of amenities that you would associate with a resort.

Alan Kaplinsky:

Right. Yeah, I mean, there is no end to the labels that various companies will put on the name of a fee. Could be they just pull them out of the... I think they must hire somebody whose job is to just come up with additional names for fees, so that they look legitimate and that they don't get questioned by the consumer. So let's go to what the FTC is proposing here fits in to the overall initiative of the White House to curb junk fees. And in more particular, other agencies, like the agency that our listeners focus on a lot is the Consumer Financial Protection Bureau, CFPB. So how does that work? Are you working, are you collaborating with the other agencies? Do you have monthly junk fee meetings where everybody gets together to brainstorm?

Stacy Cammarano:

So the FTC is an independent agency and it has engaged in the rulemaking independently under its own authority. But as you mentioned, we are one of a number of agencies that are addressing junk fees. And it is an effort across the government, but we're doing it independently from the other agencies. You mentioned there are a number of other agencies that are promulgating rules and other sorts of enforcement actions relating to junk fees, and they're doing that within their respective spheres. At the same time as our proposal was announced, there were a number of announcements from other agencies as well.

Alan Kaplinsky:

Yeah. And I think when the White House first launched this initiative, President Biden invited Lina Khan and Rohit Chopra to an event, and they were both there as part of this overall initiative. There is some overlap though, right? Let's talk first maybe about the FTC's jurisdiction. Who will this actually cover? You don't have jurisdiction over banks, right?

Stacy Cammarano:

That's right. So the FTC is unique in that it has jurisdiction over broad sectors of the economy, but we don't have jurisdiction over things like common carriers. So that's like airlines for example, are covered by the Department of Transportation, and they have their own efforts related to junk fees. We don't have jurisdiction over banks, but the CFPB has jurisdiction in that area.

Alan Kaplinsky:

Right. Once you finalize your rule that applies to non-banks, to the extent that it pertains to it's a junk fee related to consumer finance, there's sort of joint jurisdiction, I guess, for lack of a better term. The CFPB could target you for enforcement or the FTC could or both agencies could.

Stacy Cammarano:

That's right. The CFPB does have authority to enforce the FTC's rules.

Alan Kaplinsky:

Okay. You'll be accepting comments until January 8th, I think you said?

Stacy Cammarano:

That's right, January 8th.

Alan Kaplinsky:

Okay. What are the interesting or surprising comments that you received in connection with your advance notice of proposed rulemaking? You said you received well over 10,000 comments. So there's a lot of stuff there.

Stacy Cammarano:

Right. There were quite a few comments, more than 12,000. And I think the most interesting thing about the comments to the ANPR was their sheer breadth. They really showed how prevalent junk fee practices were across industries, and they weren't limited to just one or two areas, which I was quite surprised by. We also received comments from industry organizations that described the harm that they suffered when other businesses had deceptive junk fees. One example of that would be a ticket seller in the secondary ticket, the resale ticket market, said that other sellers had a competitive advantage because they were not including these mandatory fees from the total price when they showed the ticket. And that lured customers in with these low prices, but then they imposed these substantial fees on the backend. And sometimes that was even after the customers provided their payment information. So this group said that they couldn't effectively compete because their competitors were hiding the total price when they were advertising.

Alan Kaplinsky:

Right. I want to ask one other fundamental question, and it's dealt with in the supplementary information to the rule, where you talk about why the FTC decided to issue a rule in this area. You had mentioned for years the FTC has brought enforcement actions dealing with junk fees, could have continued to do that. But you mentioned US Supreme Court opinion that stymied the FTC. What was that all about?

Stacy Cammarano:

Yeah. So you're talking about the Supreme Court case AMG versus FTC. And that really, it overturned 40 years of precedent from the circuit courts of appeal that had uniformly held how the commission could take action under the FTC Act, under section 13(b), to return money to consumers. So this was a way that when businesses took money unlawfully through unfair or deceptive means, the FTC had this avenue to give that money back to consumers in the form of refunds. The Supreme Court found that the FTC could not do that in the AMG case.

Alan Kaplinsky:

And also could not get a restitution for consumers any kind of monetary relief.

Stacy Cammarano:

That's right. That's right.

Alan Kaplinsky:

And civil money penalties as well?

Stacy Cammarano:

That's right.

Alan Kaplinsky:

Yeah. But now, if once you finalize the rule, how will that change things? Is that an alternative? You wouldn't have to worry about that AMG case anymore?

Stacy Cammarano:

There are other paths to secure monetary redress to consumers to get those refunds back essentially. And one of them, the shortest path is through section 19 (a)(1) of the FTC Act, which allows the commission to recover money directly through federal court action or to obtain civil penalties, but only when a rule has been violated. And so this would not do away with AMG, but it would provide a shorter path to monetary redress for consumers.

Alan Kaplinsky:

Yeah. One of the other things that I think is probably worthy of attention, and that is how this rule relates to auto dealers. Which is an industry the FTC has got jurisdiction over. By the way, an industry the CFPB does not have jurisdiction over.

You've issued a proposed rule, not you, but the FTC, dealing with all kinds of practices of auto dealers, including the charging of fees, similar to what we're talking about in this rulemaking. How will the two things work together?

Stacy Cammarano:

The proposed rule in its definition of business, includes an exception for motor vehicle dealers that are subject to a proposed auto rule that you just mentioned, if that rule is finalized. Right now that rule has not yet been finalized, and so it's not in effect. And that exception would not apply if the rule never comes to fruition. However, if it is finalized, then there's currently an exception. That's another thing that we ask questions about in our NPRM. We want comments from the public on whether that exception makes sense, whether it's clear. And if you have any feedback on that, we want to hear it.

Alan Kaplinsky:

Yeah, I saw that. I want to mention that before we finish, that you asked a lot of questions, and there's some I thought were particularly interesting. So the next step, I take it, is to get the comments, which you're going to get by January 8th. And then you and others at the FTC will begin the process of sorting through all the comments, right?

Stacy Cammarano:

That's right. So we've asked for comments on a number of issues, where, really, anyone can submit a comment. That's individual consumers, consumer groups, labor groups, businesses. And we do ask specific questions. People aren't limited to those questions that we ask. But we want feedback on things like, is the proposed rule clear? Are the definitions and the language clear? How will it affect consumers? How might it affect businesses? Will it change how they operate? Will they incur any costs as a result of it? And we want to know things like does the rule need to be narrowed or are there areas of the rule that might need to be strengthened? But mostly, we just want to make sure that the expectations from the proposed rule are clear to businesses, and we definitely want to receive feedback if those expectations are not clear.

So once we receive the comments, we'll start our process of sorting through them. And then it's really up in the air what happens next, because it depends on what the comments say and what we need to do as a result. But that will be the time for the commission to decide whether or not to propose a final rule.

Alan Kaplinsky:

I mean, ultimately, the staff can make a recommendation, but it's up to the FTC itself, which I think you're short two commissioners, right? You have three commissioners right now. President Biden, I think has nominated two additional people to be commissioners. Hopefully, that will get taken care of and they'll be confirmed, so there'll be a full compliment by the time this rule is under active consideration for finalization.

The most interesting comment, at least to me, Stacy, was you asked comments on whether the FTC could just make unlawful the charging of excessive fees. In other words that the FTC could look at a $25 a day resort fee and say, "It's not worth $25 a day for what you're offering. In fact, you shouldn't be charging anything for it, it's part of your hotel the person can use the outdoor swimming pool." And I know you elected, at least so far not to go in that direction, but that is an area that's certainly open for comment, right?

Stacy Cammarano:

Right. And we received a lot of comments from consumers complaining about excessive fees. Not just that the fees were hidden, but that the base price of something was very low, and then the add-on fees doubled or tripled what the total price actually was. And so if people think that there is a way and that the FTC should address excessive fees, we're interested in hearing that as well.

Alan Kaplinsky:

That, I will say, this is just my offhand reaction, that would be a very controversial direction for the FTC to go in, because there'll be judgment calls involved. What's one person's jewel is another person's trash. People feel differently. Some people are willing to pay more than other people are willing to pay for something.

So what, if anything, should businesses be doing right now? I mean, here's one thing that occurred to me as you've been talking about the enforcement record of the FTC in this area that predates the advanced notice of proposed rulemaking. Would it be smart for companies to sort of either come into compliance with what's in the proposed rule, or, even though it's not yet effective, but, still, you could be a target for an enforcement action? So what should businesses be doing right now?

Stacy Cammarano:

I think you've really hit the nail on the head. Although the rule is not final, and we're seeking comment on the proposal, it's already against the law for businesses to hide fees and to lie about what fees are for. So businesses that are engaging in these practices should stop now, rather than wait for the rule to become final. The FTC can still bring enforcement actions against these businesses under section 5 of the FTC Act, even without the proposed rule being finalized. Also, on the other hand, businesses that already do right by their consumers, the sooner their competitors fall into compliance, the sooner they'll be able to compete on a more level playing field. So the rule would require all of the businesses to compete on the merits by offering the actual price or a better quality service, rather than relying on these sort of predatory practices that exploit consumers.

Alan Kaplinsky:

The other thing, I know it's not your area, but I guess some states have begun to enact legislation dealing with junk fees, and it's not only at the federal level that they're getting attention. And as I understand it, and correct me if I'm wrong, that once this rule gets finalized, it won't displace other state laws unless there's an inconsistency between the two, unless you can't comply with both. And in that case, there would be federal preemption, but ordinarily there would not be.

Stacy Cammarano:

That's right.

Alan Kaplinsky:

And I guess I would expect that an increasing number of states will act. And it may not even require regulation. I mean, state attorneys general have authority generally in every state, I believe, under their many FTC laws that prohibit engaging in unfair or deceptive acts of practices. And many of those states have language in it saying that if the FTC thinks something is unfair or deceptive, then, as a matter of state law, it's per se unfair or deceptive. So I guess that's another good reason for companies to try to straighten out their business and their pricing practices now rather than waiting. Because you've got the FTC and you've got other agencies that might have overlapping jurisdiction, and then you've got state attorneys general. So this is an area that I think will end up being a high priority, not only at the federal level, but also at the state level.

Stacy Cammarano:

That's right. Even where we've seen state regulation, a lot of it's remarkably similar to the proposed rule in terms of what it requires of businesses.

Alan Kaplinsky:

Right. Okay. Well, we pretty much come to the end of our program today, Stacy. But before we end, did you have anything else that we neglected to cover, that you think our listeners should be aware of?

Stacy Cammarano:

The only thing I'll say is that we welcome comments on the NPRM. And listeners can submit their comments by visiting ftc.gov and selecting, submit a comment. There's a link there that will direct them to the NPRM.

Alan Kaplinsky:

Right. Okay. Well, Stacy, thank you so much. I really appreciate your being a guest on our show today. You've shed a lot of light on this, what I described as a simple rule, but a simple rule that's got a lot of little nuances and some complexities. And this was extremely helpful. Again, thank you.

Stacy Cammarano:

Thank you for having me.

Alan Kaplinsky:

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