August 7, 2026

Samuel A.A. Levine
Commissioner
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Response to Proposed Rules Relating to Junk Fees, Reference No. 2026 RG 027

Dear Commissioner Levine,

On behalf of the American Fintech Council (AFC),[1] I appreciate the opportunity to submit this comment letter in response to the New York City Department of Consumer and Worker Protection's (The Department) proposed Rules Relating to Junk Fees, Reference No. 2026 RG 027 (Proposed Rulemaking).[2]

AFC is a standards-based organization and the largest and most diverse trade association representing financial technology companies and innovative banks. On behalf of more than 150 member companies and partners, AFC promotes a transparent, inclusive, and customer-centric financial system by supporting responsible innovation and encouraging sound public policy. AFC's membership includes banks, nonbank lenders, payments companies, earned wage access providers, loan servicers, credit bureaus, personal financial management companies, and technology and infrastructure providers operating throughout the modern financial services ecosystem.

AFC supports the Department's objective of ensuring that consumers receive clear and accurate information regarding the prices they will pay. Upfront price transparency promotes informed decision-making and fair competition. At the same time, an industry-neutral rule of broad application must account for pricing structures in which a fee cannot be converted into an exact dollar amount until a consumer supplies transaction-specific information. It must also operate coherently alongside federal and state disclosure regimes that already prescribe the substance, timing, format, and terminology of financial disclosures. Without targeted clarification, regulated entities may face obligations that are impossible to satisfy at the advertising stage or that require duplicative notices capable of confusing, rather than informing, consumers.

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[1] American Fintech Council's (AFC) membership spans EWA providers, BNPL and other lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.

[2] New York City Department of Consumer and Worker Protection, *Notice of Public Hearing and Opportunity to Comment on Proposed Rules Relating to Junk Fees* (July 2026), https://rules.cityofnewyork.us/wp-content/uploads/2026/07/DCWP-NOH-Rules-Relating-to-Junk-Fees.pdf. The proposed rule was published for public comment with a hearing scheduled for August 7, 2026.

AFC therefore recommends that the Department finalize a framework that: first, permits formula-based disclosure when the exact total price depends on an amount outside the business's control and clearly distinguishes genuinely optional payments from mandatory fees; second, exempts banks and other comprehensively regulated financial entities or, at minimum, establishes a clear compliance safe harbor for transactions, fees, and disclosures governed by applicable federal or state law; and third, provides a reasonable implementation period, together with a limited opportunity to cure good-faith first violations. These refinements would preserve the Proposed Rulemaking's consumer-protection purpose while producing disclosures that are accurate, intelligible, and operationally feasible.

I. AFC Supports Practical Total Price Disclosures that Accommodate Transaction-Specific Percentage Fees and Properly Distinguish Optional Charges

Certain services are priced through a percentage applied to an underlying amount that the business neither sets nor knows when it publishes a general advertisement. A provider may, for example, charge a stated percentage of a consumer's rent payment, loan amount, or other transaction-specific value. Before the consumer identifies that value, the provider can disclose the percentage and the basis to which it applies, but it cannot calculate an exact dollar fee or final total price. Requiring a numerical total at that stage would compel the business either to invent an amount, omit otherwise useful pricing information, or avoid general price advertising altogether. None of those outcomes would advance meaningful transparency.

Subsection (c) should therefore expressly provide that, when a mandatory fee is calculated as a percentage of an amount that is not selected, established, or reasonably knowable by the business at the time of the advertisement, clear and conspicuous disclosure of the percentage and its calculation basis satisfies the total price requirement. The disclosure should identify the relevant base amount in plain terms, such as "2 percent of the rent payment selected by the consumer," and should appear at least as prominently as other pricing information. Once the consumer supplies the information necessary to calculate the charge, the business should disclose the exact dollar fee and final amount before the consumer consents to pay, consistent with subsection (d).

This approach would extend the Proposed Rulemaking's treatment of variable pricing without equating a formula with a fixed price. The examples involving hourly and per-room rates assume that the business controls the stated unit rate and can incorporate all mandatory charges into that rate. Percentage-based fees tied to a consumer-selected amount present a distinct problem because the missing input originates outside the business. A formula-based safe harbor would recognize that distinction while still giving consumers the information needed to estimate and compare costs.

The final rule should also resolve whether a transaction-specific percentage fee must be treated as a mandatory fee under subsection (c) or may be disclosed solely in the pre-consent breakdown under subsection (d). The answer should turn on whether the charge is unavoidable for the advertised service, not whether its precise dollar amount is known at the outset. Accordingly, an unavoidable percentage fee should remain part of the total price disclosure, but the required disclosure should be the applicable formula until the underlying amount becomes known. If the Department instead concludes that such charges belong only in subsection (d), it should say so expressly and provide examples that distinguish mandatory percentage fees from optional or contingent charges.

The need for clear treatment of transaction-specific charges also extends to optional payments, including tips, which may be presented to consumers as part of a transaction. The final rule should make clear that genuinely optional tips and similar voluntary payments are not "mandatory fees and changes" under subsection (a). Where a consumer may decline the payment, including by selecting a zero-dollar amount, and still receive the advertised good or service, the payment should not be treated as part of the mandatory total price because no additional payment is required to complete the transaction. This conclusion should not depend on whether the business presents the consumer with a default or suggested amount, provided that the consumer retains a clear and meaningful ability to decline the payment. Clarifying the treatment of transaction-specific percentage fees, contingent charges, and genuinely optional payments would ensure that each is subject to the disclosure requirements appropriate to its particular character.

II. AFC Supports Exemption for Regulated Financial Entities and Harmonized Disclosure Standards that Prevent Duplicative or Conflicting Consumer Notices

Financial products and services are already governed by extensive federal and state disclosure frameworks. The Truth in Lending Act and Regulation Z, for example, prescribe how creditors disclose finance charges, annual percentage rates, amounts financed, payment schedules, and other transaction terms. Similar requirements arise under the Electronic Fund Transfer Act, the Real Estate Settlement Procedures Act, state lending laws, and other product-specific regimes. Depending on the product and applicable law, these frameworks prescribe particular terminology, calculation methodologies, disclosure timing and presentation, and, in some instances, model or mandatory forms. Those requirements reflect deliberate regulatory judgments about how information should be calculated, described, and presented to consumers. Requiring an additional City disclosure of the same fee in a different format may create two nominally accurate statements that use different labels or computational conventions, leaving consumers to reconcile them without any corresponding informational benefit.

The Department should therefore consider a categorical exemption for banks and other financial entities that are already subject to comprehensive federal or state supervision and consumer disclosure requirements.[3] Financial institutions and regulated financial services providers operate within established statutory and regulatory frameworks governing the disclosure, characterization, timing, and presentation of fees and other consumer costs. These requirements are administered and enforced by federal and state financial regulators with specialized expertise concerning the products and transactions at issue.

Applying an additional, generally applicable City pricing rule to these entities may create overlapping, duplicative, or inconsistent obligations without materially advancing the Department's consumer protection objectives. This concern is particularly acute where federal

[3] California Civil Code § 1770(a)(29)(C) (2026); California Department of Justice, Office of the Attorney General, "SB 478 – Hidden Fees," https://oag.ca.gov/hiddenfees (explaining that the statute does not apply to certain specified transactions and industries already subject to other laws governing pricing).

law already prescribes the manner in which financial institutions must characterize and disclose consumer costs. The Truth in Lending Act and Regulation Z, for example, establish detailed disclosure requirements and expressly preempt state requirements to the extent they are inconsistent with federal law, including where a requirement would compel the use of terminology or disclosure treatment that conflicts with federally prescribed standards. The Electronic Fund Transfer Act and Regulation E similarly establish a federal framework governing electronic fund transfer disclosures and the treatment of inconsistent state requirements. Layering a separate City pricing mandate onto these carefully calibrated federal and state frameworks could also undercut the policy judgments embodied in those laws regarding how, when, and in what terms consumer costs should be disclosed. Imposing an additional City disclosure obligation on transactions already governed by these regimes could therefore require regulated entities to provide duplicative disclosures or to characterize the same fee using different terminology, timing, presentation, or calculation methodologies. Such overlapping requirements risk undermining the uniformity and clarity that the federal disclosure frameworks are designed to provide and may leave consumers with multiple presentations of the same cost that are more difficult, rather than easier, to reconcile. An entity-level exemption would avoid these conflicts while preserving the application of existing federal, state, and local prohibitions against deceptive or misleading representations.

AFC therefore recommends that the final rule excludes banks and other financial entities subject to comprehensive federal or state regulation from section 5-16. At a minimum, the exemption should apply to transactions, products, and services for which the entity is subject to an existing federal or state disclosure or advertising regime. This approach would recognize that financial products are already governed by detailed, product-specific requirements while allowing section 5-16 to operate as a gap-filling standard where no comparable regulatory framework applies.

If the Department declines to exempt regulated financial entities categorically, subsection (b)'s existing preemption language should, at a minimum, be supplemented by a meaningful compliance safe harbor. Subsection (b) excludes the Proposed Rulemaking only "to the extent" regulation is preempted by federal or state law. That language does not adequately address overlap where another law governs the disclosure but does not formally preempt every additional local requirement. The final rule should establish an affirmative compliance safe harbor providing that a fee disclosed in accordance with an applicable federal or state disclosure regime satisfies subsections (c) and (d) with respect to the same fee, provided that the required disclosure is made clearly, accurately, and within the timeframe prescribed by the governing law. Such a provision would avoid redundant disclosures while preserving the Department's authority over fees that fall outside another regulatory framework or that are misrepresented notwithstanding technical compliance elsewhere. A workable safe harbor should focus on substantive equivalence rather than identical wording. Businesses should not be required to redesign federally mandated forms, alter defined terms, or provide duplicative disclosures that depart from an established federal or state disclosure framework. Where the governing regime requires a disclosure only after consumer-specific information becomes available, compliance with that prescribed timing should likewise satisfy the City rule. Conversely, the safe harbor should not protect an omission merely because the underlying product is generally regulated. It should apply only to the particular fee and disclosure obligation actually addressed by another law or regulation.

The Department should further clarify the interaction between subsection (g) and this safe harbor. Although subsection (g) states that the Proposed Rulemaking does not replace or supersede existing City requirements, it does not explain how businesses should reconcile inconsistent prominence, timing, or categorization requirements. A hierarchy provision should direct businesses to comply with the more specific product-based rule where the same fee is covered by both provisions, while preserving section 5-16 as a gap-filling standard for fees not otherwise addressed. This approach would promote consistency across the City's regulatory framework and provide consumers with a single, coherent presentation of price information.

III. AFC Supports a Reasonable Implementation Framework that Enables Good-Faith Compliance and Consistent Enforcement

The Proposed Rulemaking would require substantial changes to advertising, digital interfaces, pricing engines, checkout flows, compliance controls, and recordkeeping systems. For financial technology companies and other businesses operating across multiple channels, implementation would require coordinated legal analysis, product design, engineering, quality assurance, vendor management, employee training, and review of legacy materials.

As such, the Department should provide at least 180 days between publication of the final rule and the commencement of enforcement. A defined implementation period would allow businesses to identify covered fees, map applicable federal and state requirements, revise disclosures, update automated calculations, test consumer interfaces, and establish records sufficient to substantiate the nature and amount of each charge. Comparable price-transparency rulemakings have recognized that regulated entities need meaningful lead time to redesign consumer-facing systems. The Federal Trade Commission, for example, adopted a 120-day period before its Rule on Unfair or Deceptive Fees became effective.[4]

An implementation period is especially important because the certification accompanying the Proposed Rulemaking states that no cure period is practicable. The absence of both prospective lead time and a post-violation opportunity to correct would potentially expose businesses to penalties for inadvertent defects arising from a new and broadly framed disclosure regime. It could also encourage rushed deployment, which increases the risk of calculation errors, inaccessible interfaces, and inconsistent disclosures across channels. A reasonable implementation period would promote more accurate and consistent disclosures by allowing businesses sufficient time to design, test, and implement the required changes before enforcement begins. Prospective implementation in time, however, is not a substitute for a measured enforcement response when an otherwise compliant business makes a good-faith error after the rule takes effect.

The absence of a cure period is particularly concerning where a violation results from a good-faith, non-recurring interpretation of an ambiguous provision rather than an attempt to conceal a fee or mislead consumers. As discussed above, questions may arise regarding the classification

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[4] Federal Trade Commission, "Trade Regulation Rule on Unfair or Deceptive Fees," Federal Register 90, no. 6 (January 10, 2025): 2066–2167, https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees. (The rule became effective 120 days after publication, on May 12, 2025).

of percentage-based fees, the treatment of genuinely optional charges, and the interaction between the Proposed Rulemaking and existing federal or state disclosure regimes. A business acting reasonably and making disclosures consistent with an applicable regulatory framework could nonetheless face escalating penalties without an opportunity to correct the disclosure before a violation is recorded.

At a minimum, the final rule should permit a business to cure a non-willful first violation within 30 days after notice, particularly during the first year of enforcement. Alternatively, the Department should adopt an enforcement discretion policy for first violations involving a good-faith interpretation of an ambiguous provision. Cure or comparable relief should remain unavailable for intentional concealment, repeated misconduct, or a failure to provide restitution where consumers suffered monetary harm. For good-faith interpretive or implementation errors, however, a limited cure process would allow the Department to secure prompt correction while directing enforcement resources toward practices that are deceptive in substance rather than merely imperfect in form.

Furthermore, the Department should accompany the final rule with illustrative guidance addressing percentage-based fees, periodic charges, regulated financial disclosures, multi-step transactions, and the point at which consumer-specific information becomes sufficiently definite to require an exact total. Published examples and a reasonable reliance policy would improve consistency among businesses and enforcement personnel alike. They would also reduce the likelihood that similarly situated entities receive different instructions based on informal interpretations.

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AFC appreciates the Department's commitment to transparent pricing and its consideration of these recommendations. A final rule that appropriately exempts regulated financial entities, accommodates transaction-specific pricing, harmonizes overlapping disclosure regimes, and affords businesses sufficient time to implement new requirements will better equip consumers to understand and compare costs without creating contradictory or technically impossible obligations.

AFC welcomes continued dialogue with the Department and would be pleased to provide any additional information that may assist in finalizing and implementing the Proposed Rulemaking.

Sincerely,

Ian P. Moloney

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American Fintech Council