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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Submitted via [regulations.gov](https://www.regulations.gov)

Re: Amendments to the Funeral Rule ANPR, Project No. P034410

Dear FTC Chair Khan, FTC Commissioners, and FTC Staff:

Thank you for your service and leadership to our nation, and for the opportunity to submit these comments as part of the Advance Notice of Proposed Rulemaking to Amend the Funeral Industry Practices Rule (document citation: 87 FR 66096). If this proposed rulemaking occurs, as we believe it should, we would welcome the opportunity to provide further input to assist all of you in your important tasks.

We submit this letter on behalf of Evermore, a national nonprofit dedicated to improving the lives of bereaved children and families. Evermore was founded to help raise awareness of the consequences of bereavement for society, advance sound research that drives policy and program investments, and advocate on behalf of bereaved families for whom minimal legal protections are available, including in funeral goods and services as the Commission's investigations have found.^{1,2,3}

¹ <https://www.ftc.gov/news-events/news/press-releases/2012/04/ftc-conducts-undercover-inspections-funeral-homes-nine-states-press-funeral-homes-comply-consumer>

² <https://www.ftc.gov/news-events/news/press-releases/2017/02/ftc-undercover-inspections-funeral-homes-nine-states-prompt-compliance-funeral-rule-disclosure>

³ <https://www.ftc.gov/news-events/news/press-releases/2018/04/ftc-undercover-inspections-funeral-homes-11-states-test-prompt-compliance-funeral-rule-disclosure>

Evermore applauds all FTC Commissioners for unanimously ruling to reexamine and update the Funeral Rule. We support comments submitted by the Funeral Consumers Alliance⁴ and the Consumer Federation of America,⁵ but do not believe they go far enough to protect consumers. Originally, the Funeral Rule's focus was on in-person and telephone communications, the primary contact methods used during the 1980s. Dramatic changes in global communications have unfolded over the past four decades since the Rule took effect including the widespread use of the Internet, websites, email, text messaging, videos, and social media, thus making the Funeral Rule's update urgent.

Indeed, the Commission's examination is timely, as millions of people in America have been impacted by both the COVID-19 pandemic and concurrent mortality epidemics. According to the Centers for Disease Control and Prevention (CDC), the United States experienced over 3.4 million deaths in 2021 — 80,000 more than in 2020.⁶ It is important to note that the CDC collects mortality data, but not data on the implications for those who suffer losses as a result of these deaths. However, during the COVID-19 pandemic, experts projected that for every one COVID-19 death approximately nine people would be immediately impacted. If we applied that same algorithm for all deaths (notably not its intended purpose), more than 30 million people in America were directly impacted by our nation's 3.4 million deaths in 2021 alone.⁷

We encourage Commissioners and staff to do the following:

- (1) Design and implement a set of core principles of fairness and transparency against which funeral practices can be assessed as social, economic, and technological conditions evolve, and
- (2) Reconstitute the Funeral Rule Offenders Program (FROP) by moving oversight of the program to the FTC and chartering an advisory committee.

Specifically, we suggest the following.

⁴ https://mcusercontent.com/dde9c6af68c05540fceb4835/files/ac981c25-694b-3bbe-8a0a-0be28d4e1dfc/2022_11_29_FCA_FINAL_submission_to_FTC.01.pdf

⁵ <https://consumerfed.org/wp-content/uploads/2022/12/CFA-Submits-Comments-on-the-Federal-Trade-Commissions-Funeral-Industry-Practices-Rule.pdf>

⁶ <https://www.cdc.gov/nchs/products/databriefs/db456.htm>

⁷ <https://www.pnas.org/doi/pdf/10.1073/pnas.2007476117>

1) Design and implement a set of core principles of fairness and transparency against which funeral practices can be assessed as social, economic, and technological conditions evolve. The FTC should design and implement a set of core principles that focuses on maximizing consumer protection when consumers engage with funeral homes for goods and services that are covered by the Funeral Rule. This test should reinforce and codify the Commission's intent to protect consumers while creating a benchmark for relevant goods and services in perpetuity, particularly as social, economic, and technological conditions evolve.

For example, one principle may be: *Whenever goods or services are covered by the Funeral Rule, every consumer should be informed of their specific rights and the funeral home responsibilities, each time there is any communication in any manner or by any means (whether in-person, over the phone, online, in print, or by any other means of communication).* Any Rule violation or infringement that affects consumers warrants prompt review and possible remediation.

Consistent with the FTC's mission, an extension of these principles may include additional questions, such as:

- (a) Are those practices anticompetitive (e.g., do they promote the preservation of an oligopoly or otherwise improperly reduce competition; if yes, is remediation on behalf of the consumer required)?
- (b) Do those practices enhance consumer choice or public understanding (e.g., do consumers retain choice, and are they clearly and conspicuously notified of choice in the review of those practices)?
- (c) Is consumer choice or public understanding rational and reasonable (e.g., do remediation strategies accomplish consumer protection while not unduly burdening legitimate business activities)?

In addition, the application of such principles remains constant as social, economic, and technological conditions evolve. The rationale for this approach is rooted in five conditions that influence the importance, if not imperative, for strong FTC action to protect grieving consumers. These conditions include:

- (a) *Scale of concurrent mortality epidemics in the United States in recent years.*

Bereavement shares a powerful intersectionality with multiple national public health

emergencies in the United States. These include COVID-19, overdose, homicide, suicide, maternal mortality, traffic fatalities, and the most common causes of death, such as heart disease and cancer. Behind each of these epidemics and all these deaths are real children and families who must navigate burial, cremation, or other forms of decomposition, often under tight budgets and timelines, frequently with little or no advanced warning or ability to prepare.

Perhaps most concerning, our national life expectancy — an index of overall population health — has dropped by more than one full year. This last happened nearly 80 years ago following the United States' entry into World War II. The implications of these statistics are sobering: They not only indicate that many middle-aged people of childbearing and child-rearing years are dying, but that many children and adolescents are losing their parents, grandparents, aunts, uncles, and mentors. Recurring bereavement under tragic circumstances has now become a commonplace fact of life for many US residents. Further, COVID and our other spiking epidemics have set back progress in closing the racial health disparities gap by some 20 years.⁸

(b) Growing disparities in rates of death and the ability to afford the costs of dying.

Experiencing the death of a loved one is an added lens of the racial and economic disadvantage faced by so many millions of Americans today.⁹ Severe economic disruptions have come from the COVID pandemic, the movement of millions of manufacturing jobs abroad, failures to meet minimal wage requirements for ever-escalating costs of living, spikes in the cost of health care, global tensions, and the highest inflation rates in 40 years. We may be at a crossroads where millions find it increasingly difficult to afford the basic costs of living. Yet, neither they nor their families can afford the funeral, burial, and other costs of their dying.

Historically marginalized communities experience higher rates of premature death when compared to the general population. Black Americans are about twice as likely to die prematurely than White Americans, with leading causes of death including unintentional injuries, homicide, heart disease, and cancer.¹⁰ Black women are almost four times as

⁸ <https://www.bmj.com/content/bmj/373/bmj.n1343.full.pdf>

⁹ <https://www.pnas.org/content/114/5/915>

¹⁰ https://www.americashealthrankings.org/explore/annual/measure/YPLL_Disparity/state/ALL

likely to die from pregnancy-related complications than White women, while Black infants die at twice the rate of White infants.¹¹

Americans living in rural areas are at higher risk for premature mortality, fueled in part by the opioid crisis.¹² These populations are also among those who can least afford funeral services.

Black and Hispanic families have substantially less wealth than White families; the median wealth of White families is 6.5 times that of Black families and 5.5 times that of Hispanic families.¹³ Black and Hispanic families often carry too much debt in relation to their income, increasing their financial fragility.¹⁴

These substantial economic challenges are compounded by the Federal Reserve's efforts to tackle inflation by raising interest rates. These anti-inflationary measures, while viewed generally as justified, unfortunately also raise credit card interest rates, which were already well into the double digits. The need for credit coupled with inadequate savings makes it more likely that expensive credit card debt becomes a costly financial tool of last resort. As of December 27, 2022, the average interest rate on credit card debt was a staggering 19.77 percent, and the Federal Reserve has signaled it intends to push rates even higher in 2023.^{15,16}

Unexpected expenses, such as a funeral, can dramatically affect a family's financial solvency and stability, as well as compound existing debts. Nearly half of lower-income families of all races and ethnicities report they already have trouble paying their bills, or that an unexpected \$400 expense would make them unable to pay their bills, just five percent of the average funeral cost.¹⁷ Principally, just as compound interest facilitates increased assets and investments over time, large debts early in life can equally relegate families to economic hardships, strife, and insolvency.

¹¹ <https://www.americanprogress.org/article/eliminating-racial-disparities-maternal-infant-mortality/>

¹² <https://www.americashealthrankings.org/explore/annual/measure/YPLL/state/ALL>

¹³ <https://www.cbo.gov/publication/58533>

¹⁴ https://www.ebri.org/docs/default-source/fast-facts/ff-375-debtbyrace-7jan21.pdf?sfvrsn=39bf3a2f_4

¹⁵ <https://www.creditcards.com/news/rate-report/>

¹⁶ <https://www.bankrate.com/banking/federal-reserve/how-much-will-fed-raise-rates-in-2023/>

¹⁷ <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm>

Across all income levels, 40 percent of Black adults and 35 percent of Hispanic adults report having or being close to having difficulty paying bills.¹⁸ The average cost of a funeral in 2021 was nearly \$8,000.¹⁹ Whether anticipated or unexpected, this is an enormous sum for many families and may force families to take on high-interest debt, sell assets, borrow from friends and family, or solicit “the kindness of strangers” through crowdsourcing (such as GoFundMe) or panhandling. In November 2022, this young man solicited support on a high-volume roadway in Virginia for the funeral of a five-year old girl who died from leukemia.



To that end, it is important for the Commission to understand how government programs have provided support to newly bereaved families who are also experiencing poverty or housing insecurity when funeral arrangements were financially unattainable. New York State buried more than one million people, including more than 75,000 individuals in mass graves, on Hart Island. The island was a penal colony for 150 years until the New York City Council ended penal control in 2021.²⁰ Bereft families were not allowed to visit the island until recently. Ergo, if you were experiencing financial

¹⁸ <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm>

¹⁹ <https://nfda.org/news/statistics>

²⁰ <https://www.hartisland.net/mission>

hardship, the disposition of your loved one's body would be managed by the city, but as a result, you were not able to visit their gravesite until recently. As the wealthiest nation in the world, we can — and must — do better.

While the cost of a funeral is high overall, there are a number of choices that families can make that impact the total cost if they are sufficiently informed before they make a decision. For example, the average cost of a casket at a funeral home is between \$2,500 and \$3,000,²¹ while a casket from an outside vendor may cost only around \$1,000.²² These cost savings are significant, and many families may not be aware that they have choices, such as the one just cited. During the height of their grief, most people are not equipped to research laws about funeral services or inquire about ways to save money, while still taking care of their loved ones in a proper and respectful manner.

Updating the Funeral Rule to require that funeral homes provide information about services and pricing in multiple formats — including online — would fulfill the original goals of the Rule. One of the goals of the Rule was to ensure that consumers have access to sufficient information to permit them to make informed decisions. In 2022, ensuring “access to sufficient information” includes providing online and other electronic access. Making this information available online increases transparency and informed decision-making, and does not take away the ability of some consumers to visit funeral homes, if they choose to do so.

Funeral home directors have expressed concern that an online price list would prevent them from communicating their businesses’ culture, services, or “look and feel.”²³ However, many — if not most — modern businesses maintain a website that both provides information and conveys the culture and feel of the business. Ethical business people in all industries realize that an attractive, helpful website can build their businesses. Requiring funeral homes to provide simple information online would bring industry requirements into the modern age and ensure that grieving individuals can

²¹ <https://nfda.org/news/media-center/nfda-news-releases/id/6182/2021-nfda-general-price-list-study-shows-funeral-costs-not-rising-as-fast-as-rate-of-inflation>

²² <https://www.costco.com/funeral-caskets.html>

²³ Fed. Reg. Vol. 87, No. 211, November 2, 2022, Proposed Rules, footnotes 71

access the same kind of clear information about services and pricing that they can access in nearly every other industry.

(c) *Pace of technological advances.* The FTC has thoughtfully examined and considered the many ways the funeral industry can interact with consumers. However, despite its broad powers, the FTC cannot predict future technological iterations or cultural inflection points. For example, the Funeral Rule was first implemented when the internet was in its infancy and the World Wide Web was not operational until 1989. Arguably, the technological revolution fomented a global transformational shift in access to information among all sectors of society. Such a profound advancement could not have been conceived just two decades ago. As such, the FTC should create a set of principles that will stand the test of future fast-paced technological iterations.

(d) *Nascency of funeral industry regulation.* The Funeral Rule was issued in 1982 and only fully implemented in 1984.²⁴ Some believe, and Evermore agrees, that the funeral industry is oligopolistic and intentionally limits advancements, such as green or eco-friendly burial options, to preserve market dominance. Whether through technological innovation or regulation, antiquated funeral industry practices are destined for reform. Rather than the FTC attempting to keep pace with industry practices, taxpayer dollars are best used by establishing a standard in consumer protection and holding the industry accountable for deviations from the mean.

(e) *The funeral industry experiences record revenue.* According to the Federal Reserve Bank of St. Louis, the funeral industry experienced record revenue in 2021, reaching \$17,129,000,000.²⁵ This record-setting revenue is coupled with concurrent mortality epidemics that disproportionately impact historically marginalized children and families.

²⁴ Portions of the Rule became effective on January 1, 1984, and others became effective on April 30, 1984. 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984). Several funeral providers challenged the Rule, but it was upheld by the Fourth Circuit. *Harry and Bryant Co. v. FTC*, 726 F.2d 993 (4th Cir.), cert. denied, 469 U.S. 820 (1984). The Rule was amended on July 19, 1994 (59 FR 1592 (Jan. 11, 1994)), and the Third Circuit upheld the amended Rule following a challenge. *Pennsylvania Funeral Directors Ass'n, Inc. v. FTC*, 41 F.3d 81, 83 (3d Cir. 1994). On March 14, 2008, the Commission completed a regulatory review and concluded that the Rule was still needed and should be retained. 73 FR 13740 (Mar. 14, 2008).

²⁵ U.S. Census Bureau, Total Revenue for Funeral Homes and Funeral Services, All Establishments, Employer Firms [REVEF81221ALLEST], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/REVEF81221ALLEST>, December 26, 2022.

Upgrading or offering services, such as translation, are within the realm of the industry’s capability. Indeed, such offerings could be bundled into membership services like those offered by the National Funeral Directors Association (NFDA). NFDA offers “nearly 300 legal forms,” more than 90 free marketing and outreach materials, and consumer education materials, including information on embalming, to more than 20,000 members worldwide.²⁶

2) Reconstitute the Funeral Rule Offenders Program (FROP) by moving oversight of the program within the FTC and chartering an advisory committee. Although FROP will not be considered in this review cycle, we believe it is a necessary agent to monitor ongoing practices and the FTC should prioritize a review in the near term. Investigations conducted by the FTC and others have found repeated violations in the execution of the Funeral Rule, ergo industry self-regulation through FROP has not served its purposes.

In 2011, an undercover FTC investigation in nine states found “significant violations” in 23 funeral homes.²⁷ In 2015 and 2016, an undercover FTC investigation in nine states found “failure to disclose pricing information to consumers” in 31 funeral homes.²⁸ In 2017, an undercover FTC investigation in eleven states found “failures to disclose pricing information” in 29 funeral homes.²⁹ Likewise, other investigations have found similar industry practices.³⁰

Collectively, these findings demonstrate that FROP’s attempt to self-regulate its own members has not worked. Given the severe and endemic nature of concurrent mortality crises across the United States, the FTC should reconstitute FROP by moving oversight within the FTC, similar to the FTC’s Scams Against Older Adults Advisory Committee. The Committee should engage other members of the public, key stakeholder organizations (such as FCA, CFA, and the NFDA), and federal government partners, including the Consumer Financial Protection Bureau, and state and local governments.

²⁶ <https://nfda.org/membership>

²⁷ <https://www.ftc.gov/news-events/news/press-releases/2012/04/ftc-conducts-undercover-inspections-funeral-homes-nine-states-press-funeral-homes-comply-consumer>

²⁸ <https://www.ftc.gov/news-events/news/press-releases/2017/02/ftc-undercover-inspections-funeral-homes-nine-states-prompt-compliance-funeral-rule-disclosure>

²⁹ <https://www.ftc.gov/news-events/news/press-releases/2018/04/ftc-undercover-inspections-funeral-homes-11-states-test-prompt-compliance-funeral-rule-disclosure>

³⁰ <https://www.npr.org/2017/02/07/504020003/a-funeral-may-cost-you-thousands-less-just-by-crossing-the-street>

Access to clear, transparent, conspicuous, non-misleading information about funeral goods and services is financially and emotionally imperative for grieving families. The bereavement experience plays a key role in determining whether we, as a nation, can turn the tide on these ongoing public health mortality — and morality — crises toward national recovery and well-being. Through this proposed rulemaking, the FTC has the opportunity to effect long-needed and long-awaited systemic changes to funeral goods and services that have the potential to impact every person living in America at one or more points in their lives. This unique opportunity not only compassionately lightens the burden of bereavement that encumbers so many lives, but it also has the potential to open the marketplace and innovate an industry. The proposals we support can, we believe, be put into effect with costs to the funeral industry that are very modest compared to the huge consumer benefits that can occur.

In closing, we believe the FTC must act on behalf of grieving children and families. Anything short of empowering the everyday American to make an informed financial decision in their dealings with a multi-billion-dollar industry is amoral, unethical, and irresponsible.

Thank you for the opportunity to submit these comments.

A handwritten signature in cursive script that reads "Joyal Mulheron". The signature is written in black ink and has a fluid, connected style.

Joyal Mulheron

Evermore Executive Director