



Comments of

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on the Federal Trade Commission's Funeral Industry Practices Rule

**Regarding Funeral Rule, Advanced Notice of Proposed Rulemaking (ANPR), 16
CFR Part 453, Project No. P034410**

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The Consumer Federation of America (CFA)¹ commends Federal Trade Commission (FTC) commissioners for unanimously voting to propose consideration of a modernization of the Funeral Rule, especially by requiring on-line price disclosure. CFA also commends FTC staff for preparing an Advance Notice of Proposed Rulemaking (ANPR) that reflects a careful reading and consideration of hundreds of public comments, that clearly raises issues relevant to the Funeral Rule's modernization, and that comments sensibly on these issues.

The ANPR has requested public comments on questions related to issues it is considering. CFA has used four criteria to help address these issues:

- Update the existing Rule taking into consideration the information revolution that has occurred over the past several decades: Unlike decades ago, today almost all consumers and funeral providers enjoy online access, communicate online through email and text, and rely heavily on websites to, respectively, obtain and disseminate information. In the future, an increasing number of consumers will likely be purchasing funeral products (goods and/or services) online. The Rule should be modified to reflect these current and likely future marketplace realities.
- Seek to remove significant barriers to price competition: The current requirement that funeral providers are required to provide GPLs only at their place of business is the greatest barrier and would be considerably lowered by requiring online price posting. All purchasers of funeral products, not just those who compared prices, would benefit because of the access this price posting would give to third party consumer information disseminators and educators.
- Remain consistent with the principles of the current Rule, which was carefully developed by FTC staff and whose requirements, as seen in 2020 comments, are largely accepted by the funeral industry: One principle is that funeral providers are required to provide price lists to consumers engaged in "arrangement discussions" with providers about the purchase of funeral goods and services but are not required to respond to many individual requests for information about these products.

¹ Consumer Federation of America is a non-profit association of more than 250 consumer groups that was founded in 1968 to advance the consumer interest through research, education and advocacy.

- Be sensitive to reasonable funeral provider concerns about new regulatory burdens keeping in mind that most of these providers are small businesses, not large companies: These concerns could include changes that require ongoing, not periodic attention by funeral providers. They could include a requirement that funeral providers without websites post price lists online, requiring those providers to create a website or some other major online information source. We are concerned about this issue, in part, because a surfeit of new requirements will be characterized by some as imposing costly regulatory burdens on many small businesses. If the new requirements were limited, relatively easy to comply with, and conferred significant consumer benefits, the power of this argument would be greatly weakened.

CFA believes that two changes to the Funeral Rule would especially benefit consumers now, and to an even greater extent, in the future: Requiring funeral providers to post price lists on their primary online consumer information source (today, websites) and to provide these price lists to customers when discussion of funeral arrangements begins, online as well as in-person.

Requiring Online Price Posting

Our comment will address the what, where, how, who, and when of this posting, then will discuss its consumer benefits and industry costs.

What: CFA believes that all three key price lists – the GPL, CPL, and OBCPL – should be posted. GPLs contain information that is relevant to all purchasers. CPLs and OBCPLs include information relevant to a significant minority of these purchasers, and this information relates to products that can cost thousands of dollars.² It is highly likely that all funeral homes with websites have digitized all three of these price lists, which currently must be provided in-person only to customers at funeral homes.

Where: CFA believes that these price lists should be posted on the funeral provider’s primary online consumer information source. Currently, that source is almost always the provider’s website.³ Yet, in the future that source may be a Facebook page or some new type of online information platform. We do not see a great consumer benefit to requiring the price posting on all of the provider’s online consumer information sources, just the primary one. The primary source may include websites that are maintained by third parties whom funeral providers compensate, such as Legacy.

How: CFA believes that the price lists, to be accessible, must be posted prominently. The main menu of the website’s home page or an appropriate dropdown in the main menu (e.g., under “services”) should include an item referencing “prices” with a link or links to the price lists. The disclosure should not be buried at the bottom of the home

² Londen Insurance Group, “Guide to Casket Prices: How Much Do Caskets Cost?” Lincoln Heritage Funeral Advantage Plan (2022).

³ Jennifer DiCamillo Lares, Kruti Lehenbauer, “Funeral Services: The Silent Oligopoly, An Exploration of the Funeral Industry in the United States,” RAIS Journal for Social Science, v. 3, n. 2 (2019).

page or linked pages, or without notice in a linked page, nor should access require two or more downloads. CFA and the Funeral Consumers Alliance (FCA) found all of these stratagems utilized by some funeral providers in California, which requires price disclosure but not prominently.⁴ To facilitate comparison of prices charged by all funeral homes in local markets, these price lists should include lists in PDF-format.

We are open to requiring a “price button” but, compared to a main menu or related dropdown item, are concerned about lack of uniformity in compliance and greater resistance from the industry.

Who: CFA believes that only those funeral providers with an online consumer information source, almost always now a website, should be required to post prices. Our research suggests that a largely majority of funeral providers without a website operate marginal businesses with a limited number of customers. These businesses are sometimes associated with a local religious or ethnic group, or a small rural community. We would be surprised to learn that as many as ten percent of all funeral customers are served by these funeral providers. For example, among those funeral homes with a Baltimore (MD) address that Google lists, only six of 52 listings do not include a website link. Online photos suggest that these six providers appear to be operating out of their homes. Requiring these marginal providers to post prices online would require them to create websites typically costing several thousand dollars, a significant financial burden for them.⁵

Our research does suggest, though, that smaller funeral homes with websites are as likely as larger ones to list prices online. We surveyed funeral homes in two areas – Austin (TX) and Boise (ID) – in which a significant minority of homes disclosed prices. There was no correlation between the number of recent obits or tributes (proxies for size and activity) and online disclosure.⁶ In fact, in cities with numerous Dignity Memorial funeral homes, the relationship may be inverse. In the hundreds of Dignity Memorial funeral homes researched by CFA and FCA, we have yet to find a home that disclosed prices online. Dignity Memorial homes constitute about ten percent of the sales of U.S. funeral homes and often include the larger and most established ones in local areas.⁷

When: The current Rule requires funeral providers to keep the hard-copy price lists they distribute to customers up-to-date. We do not think it a burden to require the providers to update online price lists at the same time. In fact, for homes that elaborately print price lists, updating online price lists should be easier and less expensive.

⁴ Joshua Slocum, Stephen Brobeck, *The Relationship Between Funeral Price Disclosures and Funeral Prices: A California Case Study* (Funeral Consumers Alliance, Consumer Federation of America, February 2019).

⁵ National Federation of Independent Business, *How much does a website cost? Options for small businesses* (July 10, 2017). This source estimates the cost at \$1,000-\$5,000, and other estimates we have seen are within this range. There are also ongoing maintenance expenses.

⁶ In Austin, for price-listers the median was 12 while for non-price listers the median was 10. In Boise, for price-listers the median was 9.5 while for non-price listers the median was 10.

⁷ Joshua Slocum, *Death with Dignity? A Report on SCI/Dignity Memorial High Prices and Refusal to Disclose Those Prices* (Funeral Consumers Alliance/Consumer Federation of America, March 2017).

Consumer Benefits: These benefits are likely to be considerable, each year helping over two million consumers optimize their purchase of funeral products and potentially saving them billions of dollars.⁸ Furthermore, these benefits will grow over time as more consumers become aware of online price disclosure and as young tech-savvy consumers mature. Today, only about one-fifth of funeral homes with websites post their GPLs.⁹

Many consumers – those who consult the online price lists of several funeral providers and those of the one funeral provider whose products they purchase – will directly benefit from posted price lists. A significant minority of those purchasing funeral products would likely use these lists to compare prices. A recent Ipsos survey of 2,009 representative adult Americans revealed that eleven percent of those 1,116 respondents who had helped plan a funeral, reported visiting more than one funeral home to obtain price lists.¹⁰ The fact that younger adults were more likely than older adults to visit more than one funeral provider – 19 percent of those under 34 years of age compared to only seven percent of those at least 55 years old – suggests that over time the percentage of consumers seeking the price lists of several providers would grow.

These percentages would have been higher if many funeral planners – the ill, the disabled, those without cars, those living out of town, and those pressed for quick decisions about disposition of the bodies of the deceased – had not faced considerable physical obstacles to collecting the price lists.¹¹ For example, according to data from the 2013 Panel Study of Income Dynamics, one-quarter of parents do not have an adult child living within 30 miles of them.

Online access to price lists would also benefit funeral planners who visit only the website of the funeral provider whose services they purchased. Since websites are now the chief source of consumer information about funeral providers and their products, if providers conspicuously posted prices, it is likely that many customers would view those price lists before physically visiting the provider.¹² This viewing would allow these customers to

⁸ Consumers spend about \$20 billion a year on funeral products in 2.4 million funerals. U.S. Funerals Online, the U.S. Funeral Industry Today (2022).

⁹ In a 2022 report (Online Price Posting at More Than 1,000 Funeral Homes in 35 State Capitals), CFA and FCA found that 18 percent of 1,046 funeral homes posted GPLs online. Other surveys, including those undertaken by CFA and FCA, have found that this percentage is in the same general range.

¹⁰ The survey was commissioned by the Consumer Federation of America and conducted online by Ipsos, an international research and marketing firm, in May 2022. The question asked was: If you have ever helped plan a funeral, to the best of your recollection, did you visit funeral homes to collect their price lists? Possible responses were: never helped plan a funeral, visited only one home to obtain their price list, visited 2 or 3 funeral homes to obtain their price lists, visited 4 or 5 homes to obtain their price lists, visited 6 or more funeral homes to obtain their price lists, don't remember seeing a price list at any funeral home.

¹¹ Interviews with bereaved persons reveal how difficult it is for them to personally visit funeral homes to pick up price lists. See for example: James W. Gentry et al., "The vulnerability of those grieving the death of a loved one: Implications for public policy," *Journal of Public Policy and Marketing*, v. 14, n. 1 (Spring 1995).

¹² According to a recent survey on the impact of the pandemic on funeral shopping, "75% of consumers now want pricing online" and "46% of consumers say they will handle funeral arrangements virtually." May 27, 2020 news release from The Foresight Companies.

think more carefully about prices and related questions than they would if simply handed a price list at the beginning of an in-person conversation with a provider. Recent research on financial services has shown that “the presence of an observer negatively affects attention to disclosures” and also that consumers receiving disclosures in mortgage closings are less likely to have questions about these disclosures than consumers who receive the disclosures beforehand.¹³

Not all consumers of funeral products would access posted price lists, yet all would indirectly benefit from posting because for the first time, prices could be easily accessed by third party consumer information disseminators and educators. Today, the task of collecting price lists from all funeral homes in an urban market is daunting. It took CFA two full days to pick up the funeral price lists of some 60 Baltimore (MD) funeral homes when we could have accessed the lists, if posted online, in less than an hour.¹⁴ This great inconvenience is the principal reason that so few price surveys of funeral providers, independent of the industry, have been undertaken.¹⁵ When price lists are available online, as they have been for many California funeral providers, CFA and FCA found it comparatively easy to access and examine these lists.¹⁶

These experts and search engines would give consumers simple access to price comparisons in local markets, including the identification of typical, high, and low prices. There is a broad consensus in scholarly research that these comparisons would tend to lower prices, especially the highest charged.¹⁷ This finding is not surprising. One can imagine that funeral providers who wish to charge exceptionally high prices would be restrained by the possibility that a consumer group, journalist, or search engine would expose their price gouging, causing long-term reputational damage and loss of sales.

Over time, all of these consumer benefits are likely to increase for two reasons: First, a growing number of consumers will learn, often from news and social media, that price lists are easily accessible online. Second, as tech-savvy generations age, a growing

¹³ Alycia Chin, Dustin H. Beckett, “Don’t watch me read: How mere presence and mandatory waiting periods affect consumer attention to disclosures,” *Behavioural Public Policy* (published online by Cambridge University Press, January 28, 2019).

¹⁴ The GPLs were collected in January 2019.

¹⁵ In 2015, CFA and FCA sought to collect price lists from 150 funeral homes throughout the nation but despite phone call and email requests, never received price lists from 24 of the homes. More recently, Checkbook Magazine collected price lists from 49 DC-area funeral homes and reported how difficult this collection was.

¹⁶ Slocum, Brobeck, *Relationship between Funeral Price Disclosures and Funeral Prices*, loc. cit.

¹⁷ “The general consensus among academics and leading businessmen seems to be that increased use of Internet will lower consumers’ search costs and consequently intensify price competition.” Maarten C.W. Jansen, Jose Luis Moraga-Gonzalez, Matthijs R. Wildenbeest, “Consumer Search and Pricing Behavior in Internet Markets” (online 2009), <https://doi.org/10.1017/CB09780511493201.016>. “The results suggest that the decisions consumers make to use the Internet to gather information and to use the negotiating clout of an online buying service have a real effect on the prices paid by these consumers [lowering them].” Florian Zettelmeyer, Fiona Scott Morton, Jorge Silva Russo, “How the Internet Lowers Prices: Evidence from Matched Survey and Auto Transaction Data,” NBER Working Paper No. 11515 (July 2005). “Cost transparency severely impairs a seller’s ability to obtain high margins.” Indrajit Sinha, “Cost Transparency: The Net’s Real Threat to Prices and Brands,” *Harvard Business Review* (March-April 2000).

number of consumers will want and be able to access these online lists. The evidence of significant age differences in use of online product information is overwhelming.¹⁸

For all these reasons, consumers strongly support mandatory online price disclosure. In 2017, CFA commissioned a survey undertaken by Opinion Research Corporation. The landline and cable phone survey of 1,004 representative adult Americans asked the following question about consumer support for mandatory online price posting: “For many years, funeral homes have been required by law to provide accurate information about prices both in person and over the phone. If the funeral home has a website, should it also be required to make this price information available on its website?” Nearly four out of five respondents (79%) agreed with this requirement. Fewer than one in five (18%) disagreed. In May 2022, CFA commissioned an online survey by Ipsos of a representative sample of 2009 adult Americans, that asked a similar question: “For many years, funeral homes have been required to maintain price lists of their services that are given to customers visiting the funeral homes. Should funeral homes with websites also be required to post their price lists on their websites?” Three-quarters of respondents (75%) favored this requirement with only three percent opposing it.

Business Costs: When California required funeral price posting in 2013, some providers complied by redesigning their websites to feature price lists. However, the minimum price-posting requirement we favor would cost much less to implement. It would be surprising to learn that any funeral providers with websites had not digitized their price lists, significantly reducing the cost of updating their prices. CFA would accept providers adding a “prices” dropdown to an appropriate main menu item, such as “service,” with a link to the digitized price lists. Such a change could be made by any consultant who designs websites or even by many tech-savvy funeral home employees. For those funeral homes, probably the majority, who share a website designer and their funeral website template with other homes, the socialized cost should be even less. Moreover, this modest website addition would be a one-time expense. We are not aware that, after 2013 approval of the price-posting requirement, any California funeral provider complained about the cost of compliance.

Requiring the Emailing of Price Lists During Online Funeral Arrangements

The current Rule requires funeral providers to hand out the GPL to customers at the funeral home whenever a discussion of funeral arrangements begins, specifically, when the provider addresses any of the following issues:

- the type of funeral or disposition that can be arranged,
- the specific goods and services offered, or
- the prices of the goods and services.¹⁹

At present, most of these discussions occur in the funeral home. Yet, an increasing number of providers are offering on-line purchase of their services, and these purchases

¹⁸ For example, according to BigCommerce 2020 data reported by Statista, U.S. online shopping frequency by age group declined from 67% for Millennials to 28% for Seniors.

¹⁹ Federal Trade Commission, *Complying With the Funeral Rule* (accessed online at [business.ftc.gov](https://www.business.ftc.gov)), p. 3.

are likely to increase as online shopping expands and, with aging, as an increasing percentage of consumers prefer online purchase of services. Apparently funeral homes are beginning to recognize this future online demand. A recent consumer survey revealed that this demand extends to funeral product purchases.²⁰ In the FTC's recent survey of nearly 200 funeral homes, the agency noted that about 10 percent offered opportunities to purchase goods or services online.²¹

Accordingly, CFA believes that funeral providers should be required to provide price lists to customers discussing funeral arrangements not only in-person but also on-line through email. This new requirement would simply extend an old requirement to reflect a new mode of customer-provider discussion. It should be no more difficult for funeral providers to email price lists at the beginning of an online discussion than to hand them personally to these customers discussing funeral arrangements.

For the many customers who have not reviewed the provider's online price list before discussing arrangements, this extension is critically important for the same reasons the FTC mandated in-person GPL distribution. Customers with a price list are less likely to be subject to deceptive pricing practices and can more informatively select specific funeral goods and services.

Less clear is what funeral providers should be required to communicate about prices to customers making arrangements entirely by phone, in all likelihood a small minority of consumers purchasing funeral goods or services. We suggest that providers be required to verbally inform these customers of the availability of price lists online and also to send the lists by email or by snail mail, whichever option individual customers prefer. We believe that this requirement represents a small inconvenience to funeral providers.

Other Disclosure Issues

CFA believes that other issues raised by the FTC's ANPR are much less important than required online price posting but wishes to comment on several of these issues related to the coverage, content, format, and dissemination of price lists. These comments are informed by our view that current disclosure requirements are necessarily complex – e.g., requiring 16 different prices – so may be even more challenging for some consumers to read and understand if they are made much more complicated.

Coverage

Cemeteries: We agree with FTC staff that the Rule should not be extended to cemeteries. While some consumer benefit would result from this extension, we do not think that the FTC staff should spend time on this complex and controversial issue as part of the proposed rule-making process. After the FTC has proposed a revised rule, it might consider a separate examination of cemetery issues.

²⁰ 2020 news release from The Foresight Companies, loc. cit.

²¹ Federal Trade Commission, *Shopping for Funeral Services Online: An FTC Staff Review of Funeral Provider Websites* (2022).

Content

Third-Party Crematory Fees: As CFA and FCA learned in studying California funeral home price disclosures, a minority of these providers did not include third-party crematory fees in the required disclosures.²² This absence misleads consumers into thinking costs are lower than charged and is unfair to the majority of funeral homes that disclose the charges (tipped playing field). Some funeral homes argue that, since they purchase crematory services from independent companies, full disclosure would require them to revise their price lists when these companies change their prices. We would point out that these funeral homes, who usually have several crematory options, have the ability to negotiate fixed prices with the crematories. Also, as is currently the case, these homes have the ability to disclose a price range that provides them some price leeway. Funeral homes should be required to include third-party crematory prices, or price range, within the price list of any cremation service available for purchase. That would benefit consumers and also the apparent majority of funeral homes that currently do, or probably would, appropriately disclose all crematory costs.

Reduced Basic Service Fee: We agree with FCA that providers should not be allowed to substitute an inclusive package for the basic, and less expensive, option. And we agree that the phrase “except for a graveside service” be removed from the definition of immediate burial and that funeral providers should be prohibited from adding optional ceremonies or services to direct cremation or immediate burial. We also believe that if any new required disclosure on this issue is not simple, it will not be read or understood by most customers.

Embalming Disclosure: Most importantly, funeral homes should not be permitted to give customers the impression that embalming is required by state law when it is not, as is the case in 13 states. The FTC should consider requiring providers, in their embalming disclosure, to require a simple, one-sentence description of the state requirement or lack of the same.

Format

Creating a Standardized Format: Creating a clear, understandable standardized format could benefit consumers and providers. However, as is evident from diverse consumer and industry 2020 comments, this issue has the potential to overwhelm FTC staff and also result in a controversial product. We urge the FTC, apart from any rule-making process, to consider developing a voluntary GPL template in consultation with all stakeholders. We think it would be useful, in the development of a template, that these stakeholders – principally, funeral providers, consumer representatives, and state government representatives -- not only have the opportunity to submit comments but also to discuss their views with other stakeholders.

²² Slocum, Brobeck, Relationship Between Funeral Price Disclosures and Funeral Prices, loc. cit.

Disclosure Placement: In our research on GPLs, CFA and FCA have found it fairly easy to find those prices whose disclosure is mandated (when in fact they are disclosed). While CFA believes that these mandated prices should be placed ahead of non-required price packages, our only strong recommendation is that the mandated statement of right of selection be required to be placed at the beginning of the document before any funeral goods or services are offered or listed. In our research, we have noted that some funeral providers apparently bury this disclosure well into the GPL document.

Font, Color, Size: Since we have found price lists to be legible, we propose no additional requirements related to font, color, or size. We would be open, though, if other commenters and FTC staff saw a documented need, to consider supporting a minimum type size requirement and a requirement that three items – direct cremation, immediate burial, and basic services – be bolded.

Dissemination

CFA believes that if funeral providers conspicuously post their price lists on their website (or other primary consumer information source), they should not be required to post GPL links or notices on other information sources or marketing materials. Nor should these providers be required to respond to individual requests for the price lists or to develop on-line mechanisms that permit these requests. For any consumer seriously interested in purchasing funeral goods or services, it is sufficient that the prices are conspicuously posted on websites and also provided by providers when discussion of funeral arrangements begins. Moreover, as CFA and FCA have experienced when requesting information from funeral homes as consumers, these requests sometimes have generated aggressive marketing including repeated calls to home phones.

Consumers with online access who wish to obtain price lists are likely to first visit provider websites, where they should find the lists. These individuals are not likely to search other information sources for this information. In part, this is because third party consumer information sources will be disseminating information about the online lists and will be urging potential customers to access them on provider websites. Consumers who are not searching for price information are unlikely to gain much if any value from learning that this information is available.

There is a potential in this area to impose burdens on funeral homes, especially small ones, that yield relatively little consumer benefit. As argued earlier, it will be relatively easy for these homes to post price lists online and maintain them.

Requiring funeral homes to provide notification of this online posting in all other information and marketing materials could be redundant and burdensome while not adding a measurable benefit to consumers.

Accommodating Vulnerable Populations

The most vulnerable population engaged in funeral planning likely consists of those consumers who are unable to afford what are relatively expensive funeral products. In

general, this population includes many with less education and ability to comprehend complex disclosures. The most useful measure the FTC can take regarding price disclosures on their behalf is to require conspicuous price posting, including lists in PDF-format, on funeral home websites. This requirement would allow consumer information disseminators and educators to analyze all product prices in a local market and identify the lowest-price funeral products and product providers. This third party activity, as noted earlier, would tend to lower prices and discourage price gouging, providing much value to those who can least afford funeral products.