

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chair**
 Noah Joshua Phillips
 Rohit Chopra
 Christine S. Wilson

In the Matter of

AMAZON.COM, INC., a corporation, and
AMAZON LOGISTICS, INC., a corporation.

DOCKET NO. C-4746

COMPLAINT

The Federal Trade Commission, having reason to believe that Amazon.com, Inc., a corporation, and Amazon Logistics, Inc., a corporation (collectively, “Amazon” or “Respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Amazon.com, Inc. is a Delaware corporation with its principal office or place of business at 410 Terry Avenue North, Seattle, Washington, 98126.
2. Respondent Amazon Logistics, Inc. is a Delaware Corporation with its principal office or place of business at 410 Terry Avenue North, Seattle, Washington, 98126. Amazon Logistics, Inc. is a wholly owned subsidiary of Amazon.com, Inc.
3. Respondents advertise and sell products, using drivers to deliver them.
4. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Respondents’ Business Activities

5. Amazon offers various products, including books, electronics, household goods, apparel, groceries, and other items that consumers purchase online through Amazon websites and smartphone applications.

6. In 2015, Amazon launched Amazon Flex, a service through which consumers can sign up as drivers to deliver products to Amazon customers. Amazon pays drivers for making deliveries, and for some deliveries, allows customers to tip their drivers.
7. Amazon consistently has represented both to Amazon Flex drivers and to customers that it will pass on 100% of tips to drivers. In fact, for a period of over two and a half years, without consumers' permission, Amazon secretly used nearly a third of customer tips to subsidize its own pay to drivers.
8. Amazon continued to divert drivers' tips during this time despite hundreds of driver complaints about the practice, critical media reports, and internal recognition that its conduct was a "reputation tinderbox." Through these practices, Amazon ultimately pocketed over \$61 million in tips meant for drivers.

Amazon Flex

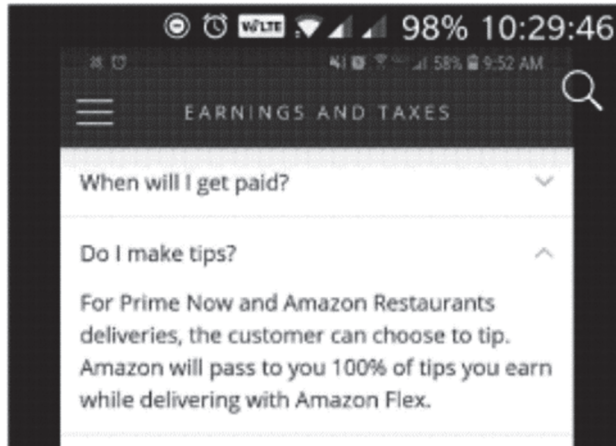
9. In 2015, Amazon launched Amazon Flex, through which it hires drivers (also known as "delivery partners") to deliver products for Amazon. At various times relevant to this complaint, Amazon offered to pay drivers to deliver packages to customers of its various services, including Amazon.com, Prime Now (household items), AmazonFresh (groceries), and Amazon Restaurants (restaurant meals).
10. To qualify to be a driver for Amazon Flex, consumers must be over twenty-one years of age with a car and a valid driver's license. They also must install the Amazon Flex App (the "App") on their smartphones. Among other things, the App includes Amazon's terms of service for drivers and answers to frequently asked questions ("FAQs").
11. According to Amazon's terms of service, Amazon Flex drivers are treated as independent contractors who must pay for their own gas, insurance, vehicle repairs, and other expenses.

Amazon's Representations to Prospective Drivers About Tips and Pay

12. Through widely disseminated advertisements, websites, and the App, Amazon has represented that Amazon Flex drivers will receive 100% of customer tips.
13. For example, the FAQs in the Amazon Flex App answer the question "Will I receive tips?" by promising that drivers will receive 100% of their tips:

For Prime Now, AmazonFresh, and store deliveries, the customer can choose to tip. **You will receive 100% of the tips you earn** while delivering with Amazon Flex.

14. An earlier version of the FAQs promised that Amazon "will pass to you 100% of tips you earn," as shown in the following screenshot from May 2018:



15. Amazon’s recruitment ads also promoted the benefits of tip-eligible deliveries, including quotes from drivers describing tips as one of the “best thing[s]” about “Instant Offers,” one of the delivery options within Amazon Flex:

Instant offers are a great opportunity to earn while on the go.

Have an extra hour between blocks? Tap ‘Available Now.’

The best thing about instant offers?

“Quick money” – Dawit M., Falls Church, Virginia

“It’s fast & easy, and tips are good” – Angel E., San Diego, California

“Short trips and tips” – Randa J., Dallas, Texas

16. When drivers enroll in Amazon Flex, they are required to accept terms of service that make similar representations about driver tips, promising that Amazon will pay drivers “service fees in the amounts indicated in the Amazon Flex app at the time of acceptance” and separately guaranteeing that drivers will receive 100% of their tips. Amazon’s original terms of service for Amazon Flex, for example, promised to “provide [drivers] with any tips you earn” (emphasis added):

Depending on the location in which the Services are provided and the product or business to which the Services relate, Amazon’s customers may be able to provide a tip in connection with the fulfillment of their orders and **Amazon will provide you with any tips you earn.**

Amazon’s current terms of service, effective September 22, 2016, promise that “Amazon will pass through any tips payable to you.”

17. In conjunction with its representations about drivers receiving 100% of customer tips, Amazon also regularly advertises on its website and in recruitment ads on platforms such as Google and Craigslist that Amazon Flex drivers will earn an hourly rate of \$18 to \$25.

18. The following is a typical recruitment ad for Amazon Flex promoting driver earnings of \$18 to \$25 per hour:



Amazon Flex is expanding in your area for a limited time!

Earn \$18-25/hr delivering packages with Amazon.
All you need is a car, an iPhone or Android smartphone, and some free time.
This is a great opportunity to be your own boss: deliver when you want
and make some extra cash.

[✕ GET STARTED NOW](#)

Why Amazon Flex?

Flexible hours: Schedule ahead or pick up any available delivery block of time
Great pay: Make \$18-25/hr
Available work: Delivery opportunities available 7 days a week

To get started:

You must be 21 years old
Have a car and a valid driver's license
Have an iPhone or Android smartphone

19. Amazon's FAQs on its website promoted the benefits of tip-eligible deliveries, noting that drivers could earn up to \$18-\$25 per hour delivering for Amazon, and could "make more" by making deliveries that are eligible for tips:

Earnings

How much will I earn delivering with Amazon Flex?

Delivering with Amazon Flex, you may earn up to \$18 - \$25 an hour. Amazon pays by the delivery block.

How can I make more delivering with Amazon Flex?

Use a large vehicle: You can earn more by driving a larger vehicle, like an SUV or van that can fit more packages, to make you eligible to receive offers for longer delivery routes.

Earn more during our busiest times: During peak delivery times, delivery blocks may be offered at higher rates. A notification will alert you that increased rates are available.

Make deliveries eligible for tips: Customers are given the opportunity to tip you when ordering from Prime Now, AmazonFresh, and Amazon Restaurants.

20. Based on Amazon's representations, drivers expect that they will earn the hourly rate Amazon promised plus 100% of customer tips.

Amazon's Specific Delivery Offers to Amazon Flex Drivers

21. Once hired, Amazon Flex drivers can use the App to view and accept specific delivery gigs, known as "delivery blocks." Each delivery block consists of a certain number of deliveries to be completed within a certain period of time, typically one to four hours. The App's "Offers" screen displays the available delivery blocks, the duration of each block, and the payment offered to the driver for the block.
22. Amazon decides which delivery blocks are eligible for tips. At the outset of the Amazon Flex program, only Prime Now deliveries were eligible for tips, but Amazon expanded its tip-eligible deliveries over time to also include AmazonFresh and Amazon Restaurants.
23. For deliveries that are not tip-eligible, Amazon offers drivers a flat rate.
24. For deliveries that are tip-eligible, Amazon offers drivers a range of payment to complete the delivery block. Amazon typically offers a range of \$18 to \$25 per hour, or multiples thereof, sometimes more in certain areas, and treats the bottom of this pay range as the guaranteed minimum payment the driver will receive for completing the delivery block.
25. For example, below is a representative screenshot of several delivery blocks Amazon offered:

OFFERS

Monday, 4/1 22 offers

4:15 PM - 8:15 PM

4 HR **\$76**

Renton (DSE5) AMZL (1101 SW 16th St)

9:30 AM - 11:30 AM

2 HR **\$38-\$52**

Kent Direct - Fresh (FFI6) Includes tips

5:00 PM - 9:00 PM

4 HR **\$78**

Renton (DSE5) AMZL (1101 SW 16th St)

3:30 PM - 7:00 PM

3 HR 30 MIN **\$73.50**

Everett (DSE4) AMZL (6611 Associated Blvd)

3:30 PM - 7:00 PM

3 HR 30 MIN **\$66.50**

Georgetown (DSE2) AMZL (6705 E Marginal Way South)

4:45 PM - 8:15 PM

3 HR 30 MIN **\$73.50**

REFRESH

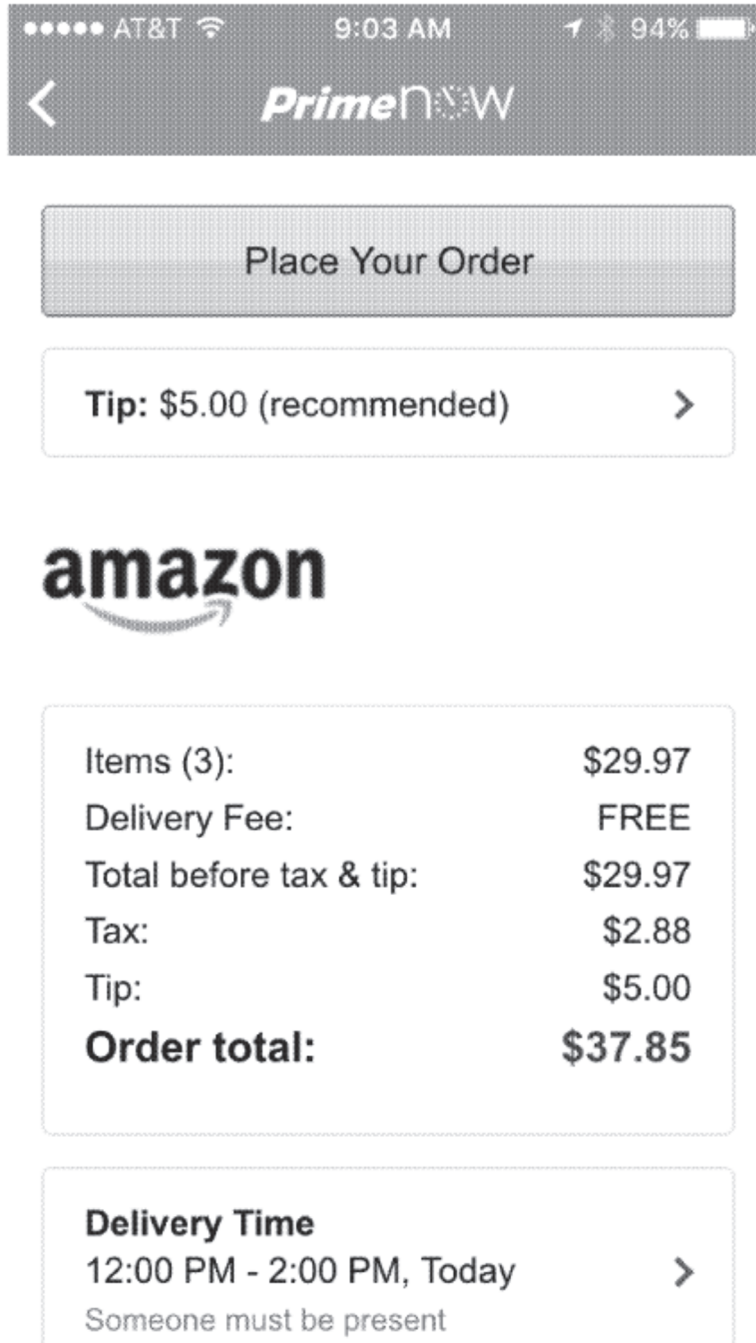
In the above example, only the second delivery block is eligible for tips. The first block offers the driver \$76 for four hours. The second block offers the driver a range of \$38 to \$52 for two hours and, because that block is eligible for tips, displays the phrase “Includes tips” below the range.

Amazon’s Claims to Customers About Tips

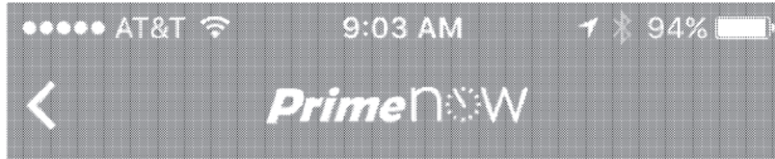
26. Apart from its representations to drivers, Amazon also assures customers who place orders for delivery through the Amazon Flex program that 100% of their tips will be passed on to drivers. When an Amazon customer places an order that is eligible for tips through an Amazon website or mobile application (for example, the Prime Now App),

the customer encounters a screen displaying the order that includes a prepopulated tip for the driver.

27. An example of a screen displaying an order that includes a prepopulated tip for the driver is shown below:

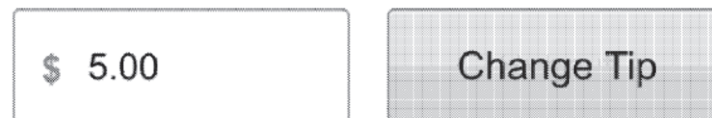


28. When customers click on the recommended tip amount, the next screen explains that “100% of tips are passed on to your courier.” The screen also indicates that “Cash is not accepted upon delivery,” thereby encouraging customers to leave tips through the App:



How much do you want to tip the courier?

- Including a tip is always optional.
- 100% of tips are passed on to your courier.
- Cash is not accepted upon delivery.
- You can change your tip up to 48 hours after delivery.



29. Amazon experimented with different prepopulated tip percentages or amounts to determine which ones generate the highest tips. Amazon referred to this internally as its “Get More Tip\$ Project.”

Amazon Used Customer Tips to Subsidize its Payments to Drivers

30. Contrary to Amazon’s representations to its drivers and customers that it would provide drivers 100% of customer tips, Amazon used tens of millions of dollars in customer tips to subsidize its payments to drivers. Amazon concealed from drivers the amount that customers had tipped for their deliveries.
31. At the outset of the Amazon Flex program, from 2015 through late 2016, Amazon paid drivers at least \$18 per hour plus 100% of customer tips, as represented to drivers at the time of enrollment. During that period, Amazon also displayed to drivers the amount they had been tipped.
32. Beginning in late 2016, however, Amazon made changes to the program to reduce its costs. At that point, Amazon implemented what it called “variable base pay” for Amazon Flex drivers on a rolling basis in various locations across the country. Under the variable base pay approach, for over two and a half years, Amazon secretly reduced its own contribution to drivers’ pay to an algorithmically set, internal “base rate” using data it collected about average tips in the area. The base rate varied by location and sometimes varied within the same market. But this algorithmically set “base rate” often was below the \$18-\$25 per hour range that Amazon had promised at the time of drivers’ enrollment and in specific block offers.

33. Under this approach, rather than provide drivers 100% of tips in addition to the range it offered drivers in a delivery block, Amazon treated the bottom of the range as its guaranteed minimum payment and often used drivers' tips to meet that minimum. For example, for a one-hour block offering \$18-\$25, if Amazon's base rate in the particular location was \$12, and the customer left a \$6 tip for the driver, then Amazon paid the driver only \$12 and used the full customer tip of \$6 to reach its minimum payment of \$18 to the driver. In the App, Amazon then displayed driver earnings as the combined total of its base rate and any customer tip—it did not separately display to drivers the amount of any customer tip.
34. This practice contradicted Amazon's representation to drivers and consumers' expectations that drivers would receive 100% of customer tips on top of their offered pay. Through variable base pay, Amazon harmed both its drivers and its customers. Drivers received less than Amazon promised them for completing delivery blocks, and customers paid over \$61 million in tips meant for drivers that Amazon instead diverted to subsidize its own labor costs.

Amazon's Efforts to Conceal its Unlawful Practices

35. When it instituted variable base pay, Amazon decided not to seek drivers' consent or otherwise notify them that it was changing its compensation practices. Amazon did not inform drivers or the media about the changes. At the same time, Amazon also did not change the earnings claims it had been making to drivers since the inception of the Amazon Flex program, nor did it adjust its promises to customers or drivers that 100% of customer tips would be passed on to drivers.
36. In planning for the transition to variable base pay, Amazon discussed internally how to handle the change to variable base pay with drivers and "what level of detail about earnings to show" drivers. Amazon considered different versions of earnings display screens that showed or concealed the breakdown between Amazon's "base rate" and tips.
37. Ultimately, when it implemented variable base pay, Amazon decided to obscure from drivers that it was reducing their pay, and began reporting their earnings as a single lump sum that hid any distinction between customer tips and pay from Amazon. Based on the information Amazon provided, drivers could not tell whether Amazon had contributed its minimum for the delivery block or a lesser amount, nor could drivers tell the amount of any customer tip.
38. Amazon knew that its new compensation policies would reduce some drivers' earnings. Rather than seek to modify its terms of service with its drivers or inform them of the policy change, Amazon instead chose to conceal the change and to respond only to individual drivers who questioned their reduced compensation. As one Amazon employee explained it, the company "did not want to communicate any pricing changes to [drivers], so we are only 'reacting' to any questions." In fact, Amazon prepared canned responses to questions it anticipated receiving from drivers, including "Is Amazon taking our tips?" and "Why did I only receive the minimum payment?" Amazon's canned responses continued to reiterate that its "earnings commitment to delivery partners has

not changed—delivery partners still earn \$18-25 per hour including 100% of customer tips,” which only obscured that Amazon was diverting drivers’ tips to its own use.

39. Although Amazon continued promising drivers 100% of their tips, some drivers suspected that Amazon was no longer making good on this promise. Following the implementation of variable base pay, Amazon received hundreds of complaints and inquiries from drivers expressing concern about reduced earnings and asking whether Amazon was breaking its promise to pass through 100% of their tips.
40. Many drivers reported to Amazon that they were expecting to receive 100% of their tips in addition to the rate Amazon promised. For example, one driver asked “what happened to drivers receiving 100% of all tips?” Another driver asked for clarification because he “thought [drivers] were paid \$18-\$24/hr plus 100% of the tip,” and asked if drivers were “still getting paid \$18 per hour plus 100% of [their] tips.” Other complaints stated that “amazon [wa]s supposed to pay 18.00 minimum Base pay with 100% tips” and that drivers had “not been getting 100% of the tip.” Drivers also asked Amazon for breakdowns of tips and its own payout for each delivery, including one who said he expected “to make 100% of [his] money tips as amazon promised.” Drivers also questioned Amazon’s representations to customers, including one who pointed out that “amazon states 100% of that tip goes to the driver when in fact it sounds [sic] like the customer is paying the operating [sic] cost of a delivery for amazon and not a tip like they are told.”
41. In May 2018, a driver sent an email to Amazon with the subject line, “My tips not being given to me????” The driver complained that he was “supposed to get 100% of [his] tips,” but had not received a \$5 tip that a customer showed him in the App. The driver stated that he was “shocked” and “just felt cheated as also [his] friend did as a customer.” The driver added that the customer “said he would follow up with Amazon because he also felt cheated saying he did not leave a tip for Amazon that it was for me the driver.” The driver attached to his email a screenshot of Amazon’s FAQs stating that “Amazon will pass to you 100% of tips you earn.”
42. When drivers complained, Amazon sent them the canned email responses it had prepared. These canned emails stated that Amazon was providing drivers “100% of customer tips” and did not explain that Amazon had changed its practices by paying drivers less than promised and making up the difference with their tips.
43. After implementation of variable base pay, Amazon Flex drivers also posted complaints on social media about Amazon reducing their pay or “stealing” their tips. Amazon employees monitored and circulated these complaints internally.
44. Amazon employees also acknowledged internally that Amazon was using customer tips to subsidize its minimum payments to drivers, and that these subsidies were saving Amazon millions of dollars at the drivers’ expense. In August 2018 emails, Amazon employees referred to the issue as “a huge PR risk for Amazon” and warned of “an Amazon reputation tinderbox.”

45. In late 2018 and early 2019, news articles suggested that Amazon was secretly using customer tips to fund guaranteed payments to drivers. On February 5, 2019, a reporter emailed Amazon to ask whether it employed such a practice, explaining, “there’s a concern that it constitutes consumer fraud because the people leaving tips aren’t made aware that the tip will cover a guaranteed minimum payment, or that by leaving a tip, they could be lowering the fraction of that minimum payment that is covered by the company.” Amazon dodged the question, responding that “our pay commitment to delivery partners has not changed since we launched the Amazon Flex program – delivery partners still earn \$18-\$25 per hour, including 100% of tips – and on average drivers earn over \$20/hour.” Simultaneously, however, an Amazon employee acknowledged internally that the reporter was “definitely zero’ing [sic] in on the right question.”
46. Despite taking customer tips to subsidize its own advertised minimum pay in numerous markets, Amazon continued to misrepresent in its terms of service and FAQs that it would pass through 100% of tips to drivers. Amazon also continued to advertise the same pay range of \$18-\$25 on multiple platforms and the opportunity to “make more” through tip-eligible deliveries. And Amazon continued urging customers to “tip the courier” while assuring them that “100% of tips are passed on to your courier.”
47. Amazon continued these practices for over two and a half years despite hundreds of complaints from drivers, critical media reports, and internal recognition that it was misguiding consumers.

Amazon’s Changes After Learning of the FTC’s Investigation

48. Amazon changed its practices only after learning it was under investigation by the FTC. On May 23, 2019, the FTC issued a civil investigative demand (“CID”) to Amazon seeking information and records relating to Amazon Flex, including Amazon’s representation that Amazon Flex drivers receive 100% of their tips. The CID informed Amazon that the FTC was investigating whether Amazon had “deceived consumers regarding compensation of Amazon Flex Drivers, in violation of the FTC Act, 15 U.S.C. § 45, and whether Commission action to obtain monetary relief would be in the public interest.”
49. On August 22, 2019, Amazon announced to its current drivers an “Updated Earnings Experience,” which was similar to the original compensation program that had been in effect from 2015 through late 2016 at the start of the Amazon Flex program. After the August 2019 announcement, Amazon began separately displaying in the App the amount it would pay drivers and the tips for each delivery block. According to Amazon, it now pays drivers the full amount offered in a delivery block and, separately, passes on customer tips. In announcing the change, Amazon stated that, “For deliveries that give customers the option to tip, you always receive 100% of the tips.”

Count I
Deceptive Tipping Claims

50. In numerous instances in connection with the Amazon Flex delivery service, Respondents have represented, directly or indirectly, expressly or by implication, that Amazon would give drivers 100% of customer tips in addition to the pay Amazon offered.
51. In fact, in numerous instances in which Respondents have made this representation, Amazon has not given drivers 100% of customer tips in addition to the pay Amazon offered. Therefore, the representation is false or misleading.

Violations of Section 5

52. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this 9th day of June, 2021, has issued this Complaint against Respondents.

By the Commission.

April J. Tabor
Secretary

SEAL: