

Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

November 26, 2025

In Re: Petition for Rulemaking Concerning Negative Option Plans

Via email to: electronicfilings@ftc.gov

PETITION FOR RENEWED CLICK TO CANCEL RULEMAKING

Consumer Federation of America (CFA) and the American Economic Liberties Project (AELP) hereby respectfully petition the Federal Trade Commission (“FTC”) to renew its trade regulation rulemaking concerning the use of negative option plans, pursuant to 16 C.F.R. § 1.9 and 5 U.S.C. § 553(e). The FTC underwent a comprehensive, multi-year rulemaking to update its 1973 Negative Option Rule, starting with an Advance Notice of Proposed Rulemaking (ANPRM) in 2019,¹ followed by a Notice of Proposed Rulemaking (NPRM) in 2023,² and a Final Rule in 2024.³ This rule became known as the “Click to Cancel” rule, but it was vacated by the United States Court of Appeals for the Eighth Circuit on July 8, 2025. *Custom Commc’ns v. FTC*, 142 F.4th 1060 (8th Cir. 2025).

The American public continues to need robust protection against unfair and deceptive “subscription traps” – the ubiquitous subscription practices that hook consumers into purchasing products or services with recurring charges and that are nearly impossible to cancel. Although the court vacated the Click to Cancel rule, it did so based on purported procedural deficiencies in the FTC rulemaking process but expressly did not address the substance of the Click to Cancel rule. See *Custom Commc’ns*, 142 F.4th at 1074 (“[W]e certainly do not endorse the use of unfair and deceptive practices in negative option marketing[.]”).

Petitioners’ request is straightforward: we respectfully request that the FTC restart this rulemaking and adopt the language in the Click to Cancel NPRM issued on April 24, 2023. See FTC, *Negative Option Rule*, 88 Fed. Reg. 24,716 (Apr. 24, 2023) (hereinafter “Click to Cancel rule”). That language is set forth in Section III below.

I. INTEREST OF PETITIONERS.

CFA is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. CFA advocates for the interests of consumers in Congress, before federal law enforcement and regulatory agencies, and across the country in state legislatures on a wide range of issues, including

¹ 84 Fed. Reg. 52,393.

² 88 Fed. Reg. 24,716.

³ 89 Fed. Reg. 90,476.

subscription practices by sellers. CFA was an active participant in the FTC's rulemaking to amend the Click to Cancel rule by filing comments at the ANPRM and NPRM stages; filing letters with the Administrative Law Judge overseeing the matter in multiple informal hearings; and joining an amicus brief of national consumer advocacy groups in support of the FTC in the *Custom Communications* litigation. AELP also participated in the rulemaking by filing comments.

CFA and AELP have worked with various stakeholders to support the Click to Cancel rule throughout the rulemaking process, and both organizations have advocated for states to pass or update their laws to reflect the core provisions of the Click to Cancel rule. CFA and AELP have created a campaign called End Subscription Traps (<https://endsubscriptiontraps.com/>) to broadly spread information about the Click to Cancel rule and how states can successfully adopt parallel protections. Together, CFA and AELP see significant value for consumers and their interests if the FTC restarts its negative option rulemaking.

II. FACTUAL AND LEGAL BASIS.

Petitioners have fully supported the FTC's commonsense effort to protect American consumers from widespread, well-documented abuses involving negative option contracts—subscription models under which consumers continue to be charged until they affirmatively cancel. The Click to Cancel rule falls comfortably within the FTC's authority to regulate across industries, and is a thoughtful, reasonable, and carefully designed response to an urgent and growing problem.

What drives the rule is the reality that consumers are being harmed every day by predatory subscription practices that impose billions of dollars in unauthorized charges, create needless frustration, and erode trust in the marketplace.

Negative option contracts remain pervasive in the consumer market, and amid a nationwide affordability crisis, they are squeezing Americans' pocketbooks everyday. The subscription economy reached a size of \$593 billion in 2024,⁴ and nearly half of consumers have reported enrolling in at least one negative option subscription.⁵ While subscription services may offer convenience, too many businesses exploit these models by deliberately complicating cancellations, which leads to ongoing unwanted charges. The average consumer spends about \$133 more per month on subscription services than they realize—a staggering 2.5 times what they believe they are spending.⁶

Companies may make cancellations needlessly difficult through aggressive sales tactics, restrictive cancellation windows, and cumbersome paperwork.⁷ Consumers attempting to cancel

⁴ *Global Subscription Economy Market 2024–2028*, Juniper Research (Apr. 2024), available at <https://www.juniperresearch.com/research/fintech-payments/ecommerce/subscription-economy-market-report/>.

⁵ Tony Chen, et al., *Thinking Inside the Subscription Box: New Research on E-Commerce Consumers*, McKinsey (Feb. 9, 2018), <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/thinking-inside-the-subscription-box-new-research-on-ecommerce-consumers>.

⁶ *Subscription Service Statistics and Costs*, C+R Research (updated July 26, 2024), <https://www.crrresearch.com/blog/subscription-service-statistics-and-costs>.

⁷ See, e.g., Jennifer Abel, *ADT Security Loves Customers Too Much to Let Them Leave*, Consumer Affairs (Sept. 13, 2013), <https://www.consumeraffairs.com/news/adt-security-loves-cutomers-too-much-to-let-them-leave-091313.htm> (reporting on ADT Security Systems' cumbersome and often inconsistent cancellation procedures); see also Better Business Bureau, *ADT Security Services* (last visited Mar. 16,

subscription memberships are often subjected to deliberate delays that result in additional months of unwanted charges. The FTC's enforcement actions demonstrate how rampant these abuses are, with cases spanning a wide range of subscription-based industries. See, e.g., *FTC v. Age of Learning, Inc. (ABCmouse)*, No. 2:20-cv-07996 (C.D. Cal. 2020) (online children's education company billing users without authorization due to obscure membership cancellation process); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017) (online lingerie retailer obstructing subscription cancellations with long customer service wait times and restrictive conditions such as prohibiting cancellations during "payment vacations" or while orders were in transit). Even in the short time since the rule was vacated, the FTC has brought two enforcement actions, demonstrating that the problem is ongoing. See *FTC v. Fitness International, LLC*, No. 8:25-cv-01841 (C.D. Cal. 2025) (nationwide gym franchise L.A. Fitness sued for employing "opaque, complicated, and demanding" cancellation requirements); *FTC v. Chegg, Inc.*, No. 5:25-cv-07827 (N.D. Cal. 2025) (educational technology provider will pay \$7.5 million for the use of cumbersome, hard-to-use cancellation procedures that often resulted in continued billing despite cancellation).

Abusive subscription services are not hypothetical; they inflict substantial real-world harm, particularly on seniors and other vulnerable consumers. For example, pharmaceutical and medical monitoring subscription services, which are often marketed to older people, frequently employ cancellation procedures requiring digital literacy or online interactions that many seniors may find challenging.⁸ As the FTC's enforcement record shows, seniors all too often find themselves trapped in costly subscriptions for healthcare or medical monitoring services they no longer want or need. See, e.g., *U.S. v. Cerebral, Inc.*, No. 1:24-cv-21376 (S.D. Fla. 2024) (telehealth firm requiring customers to navigate a complex, multi-step cancellation process that could take several days); *FTC v. Lifewatch Inc.*, No. 1:15-cv-05781 (N.D. Ill. 2015) (telemarketing scheme tricking seniors into signing up for medical alert systems with monthly monitoring fees and steep penalties for cancellation).

Deceptive "free trial" schemes further exploit consumers, converting free, term-limited service periods into recurring negative-option subscriptions without adequate notice or meaningful opportunity to cancel.⁹ According to the Better Business Bureau, resolved FTC cases reported nearly \$1.4 billion in documented consumer losses from these scams alone as of 2020.¹⁰ Nearly half of consumers report forgetting to cancel a free trial before subscription payments begin.¹¹ Worse yet, some companies actively deceive consumers with "free" products or trials without clearly disclosing that failure to cancel will result in automatic payments. See *FTC v. AAFE*

2025) (demonstrating that consumers still regularly file complaints about ADT's cancellation policies as of March 2025).

⁸ See, e.g., Amazon, *RxPass* (last visited Nov. 21, 2025), <https://pharmacy.amazon.com/rxpass> (monthly prescription service where users must enroll, manage prescriptions, and cancel them through their Amazon account online, posing barriers for seniors with limited digital literacy); Express Scripts, *How it Works* (last visited Mar. 16, 2025), <https://www.express-scripts.com/pharmacy/how-it-works> (online pharmacy service that encourages customers to set up automatic refills and autopay).

⁹ See Better Business Bureau, *Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements* (Dec. 12, 2018), <https://www.bbb.org/article/investigations/18929-subscription-traps-and-deceptive-free-trials-scam-millions-with-misleading-ads-and-fake-celebrity-endorsements>.

¹⁰ Better Business Bureau, *BBB Investigation Update: Free Trial Offer Scams* (Apr. 21, 2020), <https://www.bbb.org/article/news-releases/22040-bbb-update-free-trial-offer-scams>.

¹¹ Nick Wolny, 'Subscription Creep' is Real. Consumers Are Paying Over \$1,000 Each Year, *CNET Survey Finds*, CNET (Oct. 17, 2024), <https://www.cnet.com/personal-finance/subscription-creep-is-real-consumers-are-paying-over-1000-each-year-cnet-survey-finds>.

Products Corp., No. 3:17-cv-00575 (S.D. Cal. 2017) (online marketers luring consumers with “free” and “risk-free” trials for cooking gadgets, golf equipment, and other products and services, without clearly disclosing that customers would be charged additional fees if they did not cancel their “free” trials or return their “free” products).

Compounding these harms are manipulative “dark patterns”—deceptive online design strategies intended to confuse or mislead consumers into continuing payments. Recent FTC cases against major companies like Amazon and Adobe underscore how widespread these tactics are, with companies deliberately complicating cancellation processes to retain unwilling subscribers. See *FTC v. Amazon.com, Inc.*, No. 2:23-cv-00923 (W.D. Wash. 2023) (alleging Amazon Prime’s cancellation process was designed to be complex and discouraging, requiring consumers to navigate multiple pages and repeated retention offers before successfully unsubscribing); *FTC v. Adobe Inc.*, No. 5:24-cv-03630 (N.D. Cal. 2024) (alleging Adobe deliberately designed its online cancellation process to be convoluted and retention-focused, bombarding consumers with misleading hyperlinks, pop-ups, and mandatory feedback screens over multiple pages).

Congress explicitly authorized the FTC to respond to these types of widespread consumer harms through Magnuson-Moss rulemaking. See 15 U.S.C. § 57a. The Click to Cancel rule directly addresses deceptive cancellation practices by requiring that subscription services make cancellation as easy as signing up. The Rule does not impose sweeping new obligations but instead aligns with existing federal consumer protection laws, such as the Restore Online Shoppers’ Confidence Act (ROSCA), 15 U.S.C. §§ 8401–8405. It is carefully calibrated to minimize burdens on legitimate commerce while providing substantial consumer safeguards.

The FTC’s Click to Cancel rule was also overwhelmingly popular with consumers. In response to the NPRM, the FTC received over 16,000 comments, and polling indicated support from upwards of 80% of voters across party lines.¹² States continue to pass some iteration of a ban on unfair and deceptive negative option contracts, but they vary in their efficacy and reach.

As the FTC pointed out in its NPRM and Final Rule, the existing federal law governing negative option plans does not provide sellers or consumers with a consistent legal framework across products. ROSCA only applies to internet sales and excludes continuity plans, automatic renewals, and free trial conversions. Similarly, the Telemarketing Sales Rule (16 C.F.R. pt. 310) prohibits deceptive telemarketing regarding negative option offers, but it only applies to negative option offers made over the telephone. The existing regulatory framework (including the FTC Act’s ban on unfair and deceptive conduct) does not adequately specify how to avoid unfair and deceptive negative option practices. ROSCA merely requires “simple mechanisms” for the consumer to be able to stop their subscription, but that has not proven to be an effective deterrent.

¹² Anika Dandekar & Marissa Farmer, *The FTC’s Recent Actions and Proposals Command Wide, Bipartisan Support*, Data for Progress (Aug. 15, 2024), <https://www.dataforprogress.org/blog/2024/8/15/the-ftcs-recent-actions-and-proposals-command-wide-bipartisan-support>.

III. ACTION REQUESTED.

Petitioners' request is straightforward: we request that the FTC restart its Negative Option rulemaking based on the Click to Cancel rule as proposed on April 24, 2023. 88 Fed. Reg. 24,716. Below is the text of that proposed rule which we petition the FTC to adopt:

§ 425.1

Scope.

This Rule contains requirements related to any form of negative option plan in any media, including, but not limited to, the internet, telephone, in-print, and in-person transactions.

§ 425.2

Definitions.

(a) *Billing information* means any data that enables any person to access a customer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(b) *Charge, charged, or charging* means any attempt to collect money or other consideration from a consumer, including but not limited to causing Billing Information to be submitted for payment, including against the consumer's credit card, debit card, bank account, telephone bill, or other account.

(c) *Clear and conspicuous* means that a required disclosure is easily noticeable (*i.e.*, difficult to miss) and easily understandable by ordinary consumers, including in all of the following ways:

(1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

(2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

(4) In any communication using an interactive electronic medium, such as the internet, phone app, or software, the disclosure must be unavoidable. A disclosure is not clear and conspicuous if a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.

(5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

(6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

(7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

(8) When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes members of that group.

(d) *Negative option feature* is a provision of a contract under which the consumer's silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the negative option seller as acceptance or continuing acceptance of the offer, including, but not limited to:

(1) an automatic renewal;

(2) a continuity plan;

(3) a free-to-pay conversion or fee-to-pay conversion; or

(4) a pre-notification negative option plan.

(e) *Negative option seller* means the person selling, offering, promoting, charging for, or otherwise marketing goods or services with a negative option feature.

(f) *Save* means an attempt by a seller to present any additional offers, modifications to the existing agreement, reasons to retain the existing offer, or similar information when a consumer attempts to cancel a negative option feature.

§ 425.3

Misrepresentations.

In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act

or practice in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”) for any negative option seller to misrepresent, expressly or by implication, any material fact related to the transaction, such as the negative option feature, or any material fact related to the underlying good or service.

§ 425.4

Important information.

(a) *Disclosures.* In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for a negative option seller to fail to disclose to a consumer, prior to obtaining the consumer's billing information, any material term related to the underlying good or service that is necessary to prevent deception, regardless of whether that term directly relates to the negative option feature, and including but not limited to:

- (1) That consumers will be charged for the good or service, or that those charges will increase after any applicable trial period ends, and, if applicable, that the charges will be on a recurring basis, unless the consumer timely takes steps to prevent or stop such charges;
- (2) The deadline (by date or frequency) by which the consumer must act in order to stop all charges;
- (3) The amount (or range of costs) the consumer will be charged and, if applicable, the frequency of such charges a consumer will incur unless the consumer takes timely steps to prevent or stop those charges;
- (4) The date (or dates) each charge will be submitted for payment; and
- (5) The information necessary for the consumer to cancel the negative option feature.

(b) *Form and content of required information.*

- (1) Clear and conspicuous: Each disclosure required by paragraph (a) of this section must be clear and conspicuous.
- (2) Placement:
 - (i) If directly related to the negative option feature, the disclosures must appear immediately adjacent to the means of recording the consumer's consent for the negative option feature; or

(ii) If not directly related to the negative option feature, the disclosures must appear before consumers make a decision to buy (e.g., before they “add to shopping cart”).

(3) Other information: All communications, regardless of media, must not contain any other information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to read, hear, see, or otherwise understand the disclosures, including any information not directly related to the material terms and conditions of any negative option feature.

§ 425.5 **Consent.**

(a) *Express informed consent.* In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for a negative option seller to fail to obtain the consumer's express informed consent before charging the consumer. In obtaining such expressed informed consent, the negative option seller must:

(1) Obtain the consumer's unambiguously affirmative consent to the negative option feature offer separately from any other portion of the transaction;

(2) Not include any information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to provide their express informed consent to the negative option feature;

(3) Obtain the consumer's unambiguously affirmative consent to the rest of the transaction; and

(4) Keep or maintain verification of the consumer's consent for at least three years, or one year after the contract is otherwise terminated, whichever period is longer.

(b) *Requirements for negative option features covered in the Telemarketing Sales Rule.* Negative option sellers covered by the Telemarketing Sales Rule must comply with all applicable requirements provided in part 310 of this title, including, for transactions involving preacquired account information and a free-pay-conversion, obtaining from the customer, at a minimum, the last four (4) digits of the account number to be charged and making and maintaining an audio recording of the entire telemarketing transaction as required by part 310.

(c) *Documentation of unambiguously affirmative consent for written offers.* Except for transactions covered by the preauthorized transfer provisions of the

Electronic Fund Transfer Act ([15 U.S.C. 1693e](#)) and Regulation E ([12 CFR 1005.10](#)), a negative option seller will be deemed in compliance with the requirements of paragraph (a)(3) of this section for all written offers (including over the internet or phone applications), if that seller obtains the required consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the negative option feature and no other portion of the transaction. The consent request must be presented in a manner and format that is clear, unambiguous, non-deceptive, and free of any information not directly related to the consumer's acceptance of the negative option feature.

§ 425.6

Simple cancellation (“Click to Cancel”).

(a) *Simple mechanism required for cancellation.* In connection with promoting or offering for sale any good or service with a negative option feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for the negative option seller to fail to provide a simple mechanism for a consumer to cancel the negative option feature and avoid being charged for the good or service and immediately stop any recurring charges.

(b) *Simple mechanism at least as simple as initiation.* The simple mechanism required by paragraph (a) of this section must be at least as easy to use as the method the consumer used to initiate the negative option feature.

(c) *Minimum requirements for simple mechanism.* At a minimum, the negative option seller must provide the simple mechanism required by paragraph (a) of this section through the same medium (such as internet, telephone, mail, or in-person) the consumer used to consent to the negative option feature, and:

(1) For internet cancellation, in addition to the requirements of paragraphs (a) and (b) of this section, the negative option seller must provide, at a minimum, the simple mechanism over the same website or web-based application the consumer used to purchase the negative option feature.

(2) For telephone cancellation, in addition to the requirements of paragraphs (a) and (b) of this section, the negative option seller must, at a minimum, provide a telephone number, and assure that all calls to this number are answered promptly during normal business hours and are not more costly than the telephone call the consumer used to consent to the negative option feature.

(3) For in-person sales, in addition to the requirements of paragraphs (a) and (b) of this section, the negative option seller must offer the simple mechanism through the internet or by telephone in addition to, where

practical, an in-person method similar to that the consumer used to consent to the negative option feature. If the simple mechanism is offered through the telephone, all calls must be answered during normal business hours and, if applicable, must not be more costly than the telephone call the consumer used to consent to the negative option feature.

(d) *Saves*: The seller must immediately cancel the negative option feature upon request from a consumer, unless the seller obtains the consumer's unambiguously affirmative consent to receive a Save prior to cancellation. Such consent must apply only to the cancellation attempt in question and not to subsequent attempts. The negative option seller must keep or maintain verification of the consumer's consent to receiving a Save prior to cancellation for at least three years, or one year after the contract is otherwise terminated, whichever period is longer.

§ 425.7

Annual reminders for negative option features not involving physical goods.

In connection with sales with a negative option feature that do not involve the automatic delivery of physical goods, it is a violation of this Rule and an unfair act or practice in violation of Section 5 of the FTC Act for a negative option seller to fail to provide consumers reminders, at least annually, identifying the product or service, the frequency and amount of charges, and the means to cancel. At a minimum, such reminders must be provided through the same medium (such as internet, telephone, or mail) the consumer used to consent to the negative option feature. For in-person sales, the negative option seller must provide the reminder through the internet or by telephone in addition to, where practical, an in-person method similar to that the consumer used to consent to the negative option feature.

§ 425.8

Relation to State laws.

(a) *In general*. This part shall not be construed as superseding, altering, or affecting any other State statute, regulation, order, or interpretation relating to negative option requirements, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law*. For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part.

IV. CONCLUSION.

The FTC's Click to Cancel rule was a crucial, commonsense regulation to protect consumers against a widespread deceptive practice that the Commission has targeted through its enforcement actions for years. It represented a thoughtful, well-calibrated approach that is consistent with congressional intent expressed in ROSCA and the FTC Act. The Eighth Circuit's decision vacating the rule did not address the merits of that approach, only purported procedural infirmities. We urge the Commission to restart and swiftly conduct its rulemaking based on the language it proposed in its earlier notice of proposed rulemaking.

Respectfully,

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