

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

April 13, 2026

Re: Negative Option Rule ANPRM, Project No. P064202

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

On behalf of our member organizations across the country, Consumer Federation of America (CFA) thanks the Federal Trade Commission (“FTC” or “Commission”) for renewing 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). We petitioned in November for the commission to restart this rulemaking,¹ and we are heartened to see the progress that has been made so quickly on this important issue.

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. To address this reality, 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 2019,² followed by a Notice of Proposed Rulemaking (NPRM) in 2023,³ and a Final Rule in 2024.⁴ 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 for procedural deficiencies. *Custom Commc’ns v. FTC*, 142 F.4th 1060 (8th Cir. 2025). This current effort corrects for the concerns of the Court, and should result in a final rule as quickly as the law allows.

In the time the rule has gotten to this stage, the harms from the practices it focuses on have continued to dupe consumers, and have garnered continued attention from state and city regulators and lawmakers. It is past time for a similar rule to exist at the national level.

The proposed rule offered for comment provides necessary, pro-consumer changes to the existing negative-option rule, but the rule should be strengthened to ensure that consumers are able to fully take advantage of its protections. The final rule should:

¹ Consumer Federation of America and American Economic Liberties Project, “Petition for Renewed Click to Cancel Rulemaking,” Nov. 26, 2025. <https://consumerfed.org/wp-content/uploads/2025/12/11.26.25-Petition-for-Renewed-Click-to-Cancel-Rule-making-CFA-AELP.pdf>

² 84 Fed. Reg. 52,393.

³ 88 Fed. Reg. 24,716.

⁴ 89 Fed. Reg. 90,476.

- Address conversions from free trial subscriptions to paid subscriptions that ensure the consumer consents and has the ability to cancel before the end of the trial. Specifically, companies should be required to get renewed consumer approval before billing.
- Require companies to provide notice before each charge. Reminders of the terms of the subscription and period of renewal should be timed appropriately to facilitate the ability to cancel.
- Tighten the rules for what companies can do to "save" the subscription when someone is trying to cancel. Save offers should not be used as a loophole to introduce the kinds of confusion and difficulty in cancellation the entire rule has been designed to prevent.
- Ensure that no industry is exempt from the FTC's rule. The rules should be an outline of fair play throughout the economy, there is no industry that should be allowed to cheat consumers.

A model rule is appended to this comment.

Though this is the type of pro-consumer rulemaking CFA encourages at any agency, and while we do applaud the effort and hope it continues to a final rule stage, the circumstances under which the Commission undertakes this rulemaking are extremely concerning and worthy of attention in this comment. After the firing of Commissioners Becca Slaughter and Alvaro Bedoya in March of last year, the Commission is operating without the bipartisan, independent structure authorized by Congress when setting up the FTC more than 100 years ago. Operating without these structural safeguards undermines the Commission's ability to fulfill its mission to lower prices, protect consumers, and ensure a fair marketplace, at a time when those goals are critical. We hope that as a final rule takes effect, the FTC will once again be operating with a full slate of bipartisan commissioners and with true independence as Congress intended.

Thank you again for your attention to this important matter. Please do not hesitate to reach out to us if there is any further assistance we can provide.

Respectfully,

Emily Peterson-Cassin
Director, Competition and Market Fairness
Consumer Federation of America
1602 Eye Street, NW
Washington, D.C.

Appendix: Proposed Rule Text

§ 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.