

April 13, 2026

Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, D.C. 20580

*Comment submitted electronically via <https://www.regulations.gov>*

**Re: Negative Option Rule ANPRM, Project No. P064202, Docket FTC-2026-0265**

Dear Commissioners:

The undersigned civil society organizations write to you in strong support of the Federal Trade Commission's (FTC) efforts to modernize the Negative Option Rule.<sup>1</sup> In light of the enormous public record already established on the matter, we urge the FTC to move swiftly from the Advance Notice of Proposed Rulemaking (2026 ANPRM) stage to a proposed rule that will update the half-century-old regulation to match the realities of today's digital marketplace.

The case for revising the Negative Option Rule — particularly to make it easy for consumers to "click to cancel" unwanted subscriptions — remains as strong today as at any prior point in the rulemaking's long history.<sup>2</sup> As many Americans who have tried to end a gym membership or a predatory software subscription<sup>3</sup> know all too well, the modern marketplace remains rife with unfair or deceptive corporate trickery that traps people into buying products or services with perpetually recurring charges.

We welcome the revived rulemaking especially because a broad FTC crackdown on these business practices remains urgently needed regardless of the Eighth Circuit's vacatur of the prior 2024 Final Rule<sup>4</sup> over supposed procedural defects.<sup>5</sup> Indeed, the evidence compiled in the prior rulemaking proceeding — including enforcement actions, academic research, and tens of

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<sup>1</sup> 91 Fed. Reg. 12318, Fed. Trade Comm'n, *Rule Concerning the Use of Prenotification Negative Option Plans* (Mar. 13, 2026), <https://www.federalregister.gov/documents/2026/03/13/2026-04952/rule-concerning-the-use-of-prenotification-negative-option-plans>.

<sup>2</sup> As the 2026 ANPRM explains, the multi-year regulatory process preceding the FTC's 2026 Advance Notice of Proposed Rulemaking (ANPRM) included a regulatory review of the original rule initiated in 2009 (74 FR 22720 (May 14, 2009)), a prior ANPRM in 2019 (84 FR 52393 (Oct. 2, 2019)), a Notice of Proposed Rulemaking (NPRM) in 2023, and a Final Rule in 2024.

<sup>3</sup> See, e.g., Fed. Trade Comm'n, *FTC Takes Action Against Adobe and Executives for Hiding Fees, Preventing Consumers from Easily Cancelling Software Subscriptions* (June 17, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-takes-action-against-adobe-executives-hiding-fees-preventing-consumers-easily-cancelling>.

<sup>4</sup> 89 Fed. Reg. 90476, <https://www.federalregister.gov/documents/2024/11/15/2024-25534/negative-option-rule>.

<sup>5</sup> *Custom Commc'ns v. FTC*, 142 F.4th 1060 (8th Cir. 2025).

thousands of consumer complaints and public comments — documents the prevalence of unfair or deceptive negative option practices across the economy. That evidence has only grown since.

## I. The Massive Scope Of The Problem Calls For A Strong Modernized Rule

As the FTC itself noted, the agency has initiated five cases alleging negative option misconduct since January 2025<sup>6</sup> but "continues to receive thousands of complaints each year — including more than 100,000 complaints in the past five years"<sup>7</sup> involving negative options. These complaints come from all 50 states across dozens of industries and involve hundreds of companies.<sup>8</sup> While we appreciate the necessity of the FTC's individual enforcement actions against specific companies, the gap between the scope of the problem and the scope of the existing regulation has never been wider.

A whack-a-mole strategy, even when it targets corporate giants, has been wholly inadequate in light of the sheer volume of violations. However valuable they are, the FTC's heavy reliance on individual enforcement actions consumes agency resources while leaving the vast majority of abusive practices unaddressed and compliant businesses without certainty about what the law requires. In contrast, the trade regulation approach is a far more efficient, predictable, and uniform solution.

The FTC's recent \$2.5 billion settlement with Amazon over its misleading Prime membership sign-ups<sup>9</sup> is particularly instructive: Amazon duped 40 million consumers into enrolling in Prime without meaningful consent and deliberately designed a convoluted cancellation process because making cancellation easier reduced subscription revenue.<sup>10</sup> When a company of Amazon's size and sophistication builds its retention strategy around making it harder to leave rather than making the service worth keeping, it is a clear sign that the marketplace incentives are broken and that broader regulatory intervention is warranted.

The FTC's 2024 regulatory amendments were designed to address these core issues around negative option misconduct and to make noncompliance with the new rule subject to civil

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<sup>6</sup> 91 Fed. Reg. 12318, 12321 (describing the core prongs of the 2024 Final Rule).

<sup>7</sup> Fed. Trade Comm'n, *FTC Seeks Public Comment in Response to Advance Notice of Proposed Rulemaking Regarding Negative Option Marketing Practices* (Mar. 11, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/03/ftc-seeks-public-comment-response-advance-notice-proposed-rulemaking-regarding-negative-option>.

<sup>8</sup> 91 Fed. Reg. 12318, 12321.

<sup>9</sup> Fed. Trade Comm'n, *FTC Secures Historic \$2.5 Billion Settlement Against Amazon* (Sept. 25, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion-settlement-against-amazon>.

<sup>10</sup> Dan Catchpole & Jody Godoy, *Amazon trial begins on FTC claims it duped Prime subscribers*, Reuters (Sept. 23, 2025), <https://www.reuters.com/legal/government/amazon-trial-begins-ftc-claims-it-duped-prime-subscribers-2025-09-23/>.

penalties. Specifically, that amended rule<sup>11</sup> would have strengthened oversight of negative option marketing by prohibiting misrepresentations of material facts (§ 425.3); requiring clear and conspicuous disclosures before obtaining a consumer's billing information (§ 425.4); requiring a consumer's express informed consent before charges (§ 425.5); and requiring a simple cancellation mechanism and immediate cessation of charges (§ 425.6). We continue to urge the FTC to adopt those improvements as a major step forward in protecting consumers against corporate malfeasance.

Finally, the ANPRM asks whether alternatives to rulemaking, such as consumer and business education, could adequately address unfair or deceptive negative option practices. The answer is plainly no. The FTC has been educating consumers and businesses about negative option practices for decades — yet complaints continue to arise and abusive practices remain widespread. A trade regulation is needed precisely because case-by-case enforcement and education alone are not enough to deter marketplace misconduct at scale. Moreover, a rule provides pro-business, pro-competition benefits such as giving businesses clear, prospective guidance about what is required and subjecting violations to civil penalties, which helps create meaningful deterrence.

## **II. What The Modernized Negative Option Rule Should Include**

In responding to the 2026 ANPRM's request for comment on the specific provisions of the vacated 2024 Rule, we urge the FTC to retain the core requirements that formed the backbone of that regulation. To fulfill the President's promises to the American public, we also urge this FTC under Chairman Andrew Ferguson to exceed the consumer protections promulgated by the Biden-era FTC under Chairwoman Lina Khan.

### **A. Covered Forms Of Negative Option Marketing**

The modernized rule should cover all forms of negative option marketing — including prenotification plans (e.g., gift-of-the-month clubs), continuity plans (e.g., weekly bottled water delivery), automatic renewals, and free trial conversion offers — regardless of whether the transaction occurs online, by telephone, or in person. A system where different rules apply depending on the medium of the transaction creates confusion for businesses and gaps in protection for consumers, whereas establishing a single, coherent set of requirements would benefit both consumers and businesses. Broad expanded protections are also warranted given the gaps in the current patchwork of consumer protections on negative option transactions, particularly the archaic 1973 Negative Option Rule's limited coverage of only prenotification

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<sup>11</sup> 91 Fed. Reg. 12318, 12321.

plans for physical goods. This is a category that the FTC itself has estimated as encompassing fewer than 100 sellers and approximately 25 clubs.<sup>12</sup>

## **B. Strengthened Standards For Negative Option Tactics**

The revived trade regulation should implement comprehensive standards for a broader range of covered business practices to ensure consumers can understand and consent to what they are buying, as well as easily cancel if they wish. As a start, businesses should be required to provide clear and conspicuous disclosures about the material terms of the negative option — including the existence of the recurring charge, its amount, the deadline to cancel, and how to cancel — before they are asked to consent.

The consumer's consent to the negative option should also be unambiguously affirmative and obtained separately from any other portion of the transaction, so that consumers are not unwittingly agreeing to recurring charges buried in a broader set of terms. These requirements protect honest businesses as well as consumers: companies that already provide clear disclosures and obtain genuine consent will face no additional burden, while companies that currently rely on hidden or confusing terms to inflate sign-ups will be required to compete fairly.

To effectively address the widespread abuse of free trial conversions, the FTC must go further than simply requiring clear initial disclosures. We recommend the FTC require sellers to obtain a customer's unambiguously affirmative consent to a subscription purchase separately from consent to a free trial. Consumers commonly forget to cancel an unused trial or are unaware that a free trial would automatically convert into a paid subscription. Requiring a fresh, explicit opt-in immediately prior to billing ensures the transition to a paid subscription reflects genuine intent rather than a mere lapse in memory.

Furthermore, because too many consumers remember an unwanted subscription only when they see a charge on their bank or credit card statement, the FTC should promulgate robust reminder notification provisions. Specifically, the FTC should require sellers to send periodic reminders to consumers enrolled in negative option programs, notifying them of their enrollment, the terms of the subscription, and how to cancel. Sellers should also be required to notify consumers before each recurring charge and provide an immediate opportunity to cancel. Timely pre-charge reminders would give consumers the information they need to break the cycle of perpetual, unwanted billing. This provision would also benefit the honest businesses that are confident enough in the value of their offerings to remind customers of the upcoming charge.

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<sup>12</sup> Fed. Trade Comm'n, *Negative Option Rule*, 82 Fed. Reg. 38907, 38908 (Aug. 16, 2017), <https://www.federalregister.gov/documents/2017/08/16/2017-17318/agency-information-collection-activities-proposed-collection-comment-request>.

### **C. Cancellation Practices, Including "Click-to-Cancel"**

Sellers should be mandated to make the cancellation process as easy and hassle-free as the initial purchase and sign-up. That is, an online subscription service that a consumer bought on the internet with one click should be cancellable online with one click — rather than solely through a phone call, an in-person visit, or an online maze of confusing prompts. This click-to-cancel principle is arguably the most identifiable consumer-facing provision in this rulemaking, but it also directly promotes competitive interests because it levels the playing field for businesses that compete for customers by offering superior products and services, not by making it frustrating and burdensome to leave.

Additionally, the FTC should impose pro-consumer limitations on "saves" — the discounts and incentives that sellers offer consumers who are in the middle of canceling. (We contrast these "save" financial tactics from informational warnings about the effects of cancellation that customers would want to know, such as cancellation of a cloud subscription resulting in deletion of all their photos stored by the cloud service.) The FTC should establish clear guardrails to ensure that save offers do not function as a loophole for dark patterns that make the cancellation process needlessly difficult or confusing — such as by ensuring that consumers can decline retention offers without delay, that the cancellation process is not prolonged or complicated by repeated or escalating offers, and that the option to proceed with cancellation is always presented clearly alongside any retention offer. Prohibiting the endless gauntlet of confusing prompts and emotional manipulation that currently define retention strategies will ensure that cancellation requests are honored promptly and respectfully.

### **III. No Industry Should be Exempt From The FTC Rule**

With regard to proposals to exempt certain industries from stronger negative option standards, we emphasize that the core requirements of the modernized rule — including honest disclosures, genuine consent, and easy cancellation — reflect basic principles of fair dealing that apply across industries. Broad industry-wide exemptions would undermine the rule's purpose, recreating the very gaps in coverage that have made the current regulatory framework weak and inefficient.

Industry exemptions would also be counterproductive as a legal matter. Exempted industries that sell subscriptions online would still be required to provide "simple" cancellation mechanisms under the Restore Online Shoppers' Confidence Act (ROSCA) (15 U.S.C. § 8403(3)), which has major coverage gaps necessitating the new Negative Option Rule but nonetheless contains no industry exemptions of its own. And the vast majority of industries, whether exempted or not, would remain subject to the FTC's authority to pursue unfair or deceptive subscription practices under Section 5 of the FTC Act. The result would thus not be deregulation but confusion: businesses would face uncertainty about which standard applies to them, and courts would be

forced to litigate whether the new rule's specific cancellation requirements mean the same thing as ROSCA's general "simple" cancellation standard or something more. Uniform expectations across industries would be far better for consumers, compliant businesses, and legal clarity alike.

We also note that many states have already enacted their own click-to-cancel laws with varying lists of exempted industries — carveouts that often reflect the political influence of the industries that secured them rather than any principled distinction in how consumers are harmed. The most ardent proponents of exemptions at the federal level are likely to be the same companies and industries that profit the most from trapping consumers in unwanted subscriptions. For all these reasons, the guiding question for the FTC to ask is not, "should this industry be exempt from the rule?" but rather, "why should any company or industry be permitted to mislead and trap consumers in subscriptions they do not want or cannot afford?"

#### **IV. Conclusion**

The undersigned organizations applaud the FTC's efforts to provide the sensible, long-overdue updates to the Negative Option Rule that consumers and honest businesses deserve. The record supporting this rulemaking — compiled over a decade of regulatory proceedings, enforcement actions, and mounting consumer complaints — is extensive. We urge the FTC to take the procedural actions necessary to address the Eighth Circuit's ruling and expeditiously move forward with this rulemaking to establish robust negative option protections for the modern American economy.

Thank you for considering our views. We look forward to working with the FTC on this critical consumer protection priority.

Sincerely,

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