

April 13, 2026

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
District of Columbia, 20580

Re: Negative Option Rule ANPRM, Project No. P064202

The Consumer Federation of America, the National Consumer Law Center, and the National Consumers League (“consumer advocates”) write in strong support for a Federal Trade Commission (“FTC” or “Commission”) rule comprehensively addressing modern negative option plans (also called “subscription plans” or “subscriptions” interchangeably in this comment). The undersigned consumer advocates have represented the public interest on negative option policy issues for several years, including extensive efforts at the FTC¹ and various state governments.²

Unfair and Deceptive Practices Around Negative Option Plans Are Prevalent and Cause Substantial Consumer Injury

Current business use cases of subscription plans frequently result in consumer overpayment, unintended enrollment, and unreasonable cancellation procedures. A significant record has developed demonstrating that current practices around subscription plans result in substantial consumer injury. For example, a 2022 C+R survey found that consumers pay two-and-a-half times what they originally estimated on monthly subscriptions, on average.³ A survey from West Monroe in 2021 found that 66% of consumers misjudged their monthly spend on negative option

¹ “CFA and AELP Submit Petition to FTC for Renewed Click to Cancel Rulemaking,” *Consumer Federation of America*, December 1, 2025. <https://consumerfed.org/testimonial/cfa-and-aelp-submit-petition-to-ftc-for-renewed-click-to-cancel-rulemaking/>; “Advocacy Groups Urge the Eighth Circuit to Uphold FTC’s Click to Cancel Rule,” *National Consumers League*, March 25, 2025. <https://nclnet.org/advocacy-groups-urge-the-eighth-circuit-to-uphold-ftcs-click-to-cancel-rule/>; “NCL Urges FTC to Strengthen Consumer Protections for Subscriptions,” *National Consumers League*, June 26, 2023. <https://nclnet.org/urges-ftc-to-strengthen-consumer-protections-for-subscriptions/>; Letter from consumer advocates in 2024 Negative Option Rule administrative proceeding, *National Consumers League*, February 8, 2024. <https://nclnet.org/wp-content/uploads/2024/07/Consumer-Advocates-Letter-to-Hearing-Officer-Foelak-re-Neg-Opt.-2.8.24.pdf>

² “NCL Supports Click-to-Cancel Legislation in Maryland Senate,” *National Consumers League*, January 21, 2025. <https://nclnet.org/ncl-supports-click-to-cancel-legislation-in-maryland-senate/>; “DC City Council Should Protect Consumers from Deceptive Automatically Renewing Subscriptions,” *National Consumers League*, January 14, 2018. https://nclnet.org/dc_autorenewals/; “Advocacy Organizations Launch State Campaign to End Subscription Traps,” *Consumer Federation of America*, November 3, 2025. https://consumerfed.org/press_release/advocacy-organizations-launch-state-campaign-to-end-subscription-traps/

³ “Subscription Service Statistics and Costs,” C+R Research, May 18, 2022. <https://www.crrresearch.com/blog/subscription-service-statistics-and-costs/>

plans by more than \$200.⁴ 42% of respondents to the 2022 C+R poll had forgotten about at least one recurring monthly subscription they were still paying but no longer using.⁵ A 2024 poll found that 86% of consumers had at least one paid subscription go unused each month.⁶

In 2022, Bankrate found that 34% of respondents said it was difficult to cancel or turn off automatic payments for a subscription.⁷ Separately, Chase found that 71% of respondents to a 2021 study lost more than \$600 annually to unwanted or unneeded subscriptions.⁸ Astonishingly, West Monroe's 2021 study found that 100% of respondents were unaware of their actual spend on subscription services.⁹ Such a figure makes clear that consumers are not to blame for the harms stemming from these practices. Negative option plans are so difficult to manage that an entire cottage industry of services and apps has arisen where consumers pay to have their bank accounts scanned for unwanted or forgotten subscription plans.¹⁰ This widespread confusion stems from two sources: sellers who intentionally deceive and injure consumers to gain an unfair advantage, and a regulatory environment that fails to protect the public.

The impacts of negative option practices appear to affect younger consumers the most. The 2022 Bankrate poll found that 51% of adults have incurred "unwanted charges" related to a subscription.¹¹ This number jumped to 58% for Millennial and 57% for Gen Z consumers. Visa statistics for United Kingdom shopping habits reinforced this conclusion, finding that Gen Z consumers spend an average of £305 per month on subscriptions, followed by Millennials at £261, Baby Boomers at £108, and Gen X consumers at £91.¹² A different survey found that 23% of Gen Z respondents pay for social media subscriptions (like Snapchat+ or X Premium), compared to just 14% of all U.S. consumers.¹³

⁴ "Americans Are Spending More on Subscriptions and Are Less Aware of Their Spending, Says West Monroe Poll," *West Monroe*, August 30, 2021. <https://www.westmonroe.com/press-releases/americans-are-spending-more-on-subscriptions-and-are-less-aware-of-spending>

⁵ "Subscription Service Statistics and Costs," C+R Research, July 26, 2024. <https://www.cresearch.com/blog/subscription-service-statistics-and-costs/>

⁶ "The Cost of Unused Subscriptions 2025," *Self*, November 21, 2025. <https://www.self.inc/info/cost-of-unused-paid-subscriptions/>

⁷ "51% of U.S. Adults with a Subscription or Membership Account Have Incurred Unwanted Charges," *Bankrate*, February 7, 2022. <https://www.bankrate.com/f/102997/8022a86964/20220207-subscription-services-survey.pdf>

⁸ "Survey from Chase Reveals That Two-Thirds of Consumers Have Forgotten About At Least One Recurring Payment In The Last Year," *Chase*, April 1, 2021. <https://media.chase.com/news/survey-from-chase-reveals>

⁹ "Americans Are Spending More on Subscriptions and Are Less Aware of Their Spending, Says West Monroe Poll," *West Monroe*, August 30, 2021. <https://www.westmonroe.com/press-releases/americans-are-spending-more-on-subscriptions-and-are-less-aware-of-spending>

¹⁰ "The best subscription trackers of 2026," *CNBC*, February 16, 2026. <https://www.cnn.com/select/best-subscription-trackers/>

¹¹ "51% of U.S. Adults with a Subscription or Membership Account Have Incurred Unwanted Charges," *Bankrate*, February 7, 2022. <https://www.bankrate.com/f/102997/8022a86964/20220207-subscription-services-survey.pdf>

¹² "Gen Z boosts subscription economy, tripling spend of older generations," *Visa*, March 1, 2025. <https://corporate.visa.com/en/sites/visa-perspectives/trends-insights/gen-z-boosts-subscription-economy-tripling-spend-from-older-generations.html>

¹³ "Nearly one-quarter of Gen Z now pays for social media subscriptions," *NCS*, April 15, 2025. <https://www.newscaststudio.com/2025/04/15/nearly-one-quarter-of-gen-z-now-pays-for-social-media-subscriptions/>

According to a 2026 eMarketer survey, 34% of Gen Z consumers have no emergency savings, leaving them uniquely vulnerable to the fallout of unfair or deceptive business practices.¹⁴ Other age groups are not too much better, with 28% of Millennials and 24% of Gen X consumers also reporting having no emergency savings, according to the same eMarketer poll. Retaining money that would otherwise be lost to unfair and deceptive subscription practices can make a significant difference for these consumers.

In addition to the volume of data provided in the record for the 2024 Final Rule, the breadth of industry lobbying in opposition to the FTC’s 2024 Final Rule (now “Vacated Rule”) demonstrated the prevalence of unfair and deceptive negative option practices. Industry representatives lobbying on behalf of entertainment, insurance, multi-level marketing, tech, telecommunications, transportation, and social media companies were among the many that sought to protect their revenues gained via unfair and deceptive subscription practices by fighting the Commission’s work in both administrative and Article III courts.¹⁵

Regarding the FTC’s question about educational materials—Question A.2.b. of the ANPRM—the Commission should ensure that businesses are properly educated on their obligations under Section 5 of the FTC Act, including any potentially updated FTC negative option policy that takes effect as a result of this rulemaking. Public education campaigns regarding unlawful subscription practices can raise policy awareness among the general public and improve the Commission’s data collection. The FTC could also provide template complaint language for consumers and competitors to use in communicating with businesses that members of the public suspect to be violating Commission policy on negative options—ideally limiting the proliferation of unlawful subscription practices without necessitating formal FTC enforcement action. However, education alone cannot fix a multi-billion dollar problem. Issues like total cost opacity require more than informed consumers; they require rigorous enforcement of the FTC Act.

Consumer Advocates Strongly Support an Updated Negative Option Rule

An adequate Negative Option Rule should rely on the following principles:

1. Prohibition on misrepresentations;
2. Disclosure of material terms;

¹⁴ “Gen Z is the generation least likely to have a financial cushion when things go wrong,” *eMarketer*, March 30, 2026. <https://www.emarketer.com/content/gen-z-generation-least-likely-have-financial-cushion-things-go-wrong>

¹⁵ *Custom Communications, Inc. v. Federal Trade Commission*, Opinion, *U.S. Court of Appeals for the Eighth Circuit*, July 8, 2025. <https://ecf.ca8.uscourts.gov/opndir/25/07/243137P.pdf>; “Notice Regarding Requests Relating to the Informal Hearing in Project No. P064202, the Negative Option Rule,” *Federal Trade Commission*, January 10, 2024. https://www.ftc.gov/system/files/ftc_gov/pdf/P064202-Neg-Option-Rule-Notice-Informal-Hrg-Requests.pdf

3. Cancellation as easy as initiation;
4. Consent separate from other portions of a transaction;
5. Prohibition on unreasonable save offers; and
6. Notice to consumers prior to each recurring charge.

The first three of those principles have already been discussed and supported in detail in the significant record developed for Project No. P064202, including by the Commission itself.¹⁶ Consumer advocates continue to support those policies as the agency intended to implement two years ago (§§ 425.3, 425.4, and 425.6). The FTC, however, should go further in protecting Americans. Components 4-6 in the list above would remedy deficiencies with the Vacated Rule.

Consent separate from other portions of a transaction. The Vacated Rule sought to enact this requirement in § 425.5. § 425.5 as finalized was strong except that it lacked language specifically addressing free trials. Consumers should provide consent to a subscription plan separately from other portions of a transaction, including consent to a free trial. A free trial period is not a negative option plan—consent to a free trial should not be considered consent to a full subscription.

Consumer advocates suggest that the FTC codify policy regarding consent for negative option plans with the following provisions:

- The substance of § 425.5 as intended to be implemented with the Vacated Rule;
- A requirement that free trial providers allow consumers to enjoy a free trial without providing payment information; and
- An explicit prohibition on the use of consent to a free trial as consent to a paid negative option plan.

Prohibition on unreasonable save offers. Promotional offers to dissuade a cancellation (or a “save”) can be a source of frustration for consumers when businesses weaponize this mechanism to completely stall a cancellation effort. But legitimate save offers do provide a benefit to consumers and businesses. Sellers may also wish to fully inform customers about the impacts of cancellation, particularly if consumer data will be lost or if cancellation will affect attempted resubscriptions in the future.

Consumer advocates recommend that the FTC codify policy regarding save offers for negative option plans with the following provisions:

¹⁶ “Negative Option Rule,” Final Rule, *Federal Trade Commission*, November 15, 2024.
<https://www.federalregister.gov/documents/2024/11/15/2024-25534/negative-option-rule>

- A prohibition on unreasonable save offers, including unconsented pop-ups, consecutive offers across multiple webpages, and other design choices that substantially hinder the cancellation process;
- An allowance for reasonable save offers, such as a short statement above the cancellation button with a hyperlink to claim a discount and other designs that do not involve pop-ups or additional pages to click through and should otherwise appear in-page with the cancellation mechanism, if digital;
- An allowance for sellers to ask for consumer consent to receive additional save offers than is allowed under the “reasonable save offers” criteria. This ask should not involve pop-ups or additional pages to click through and should otherwise appear in-page with the cancellation mechanism, if digital; and
- An allowance for reasonable disclosure of cancellation impacts, including the date the consumer will lose service, the deletion of consumer data, impacts to future attempted resubscriptions, or other information regarding loss of service that consumers do not typically expect. This disclosure should not involve pop-ups or additional pages to click through and should otherwise appear in-page with the cancellation mechanism, if digital.

Notice to consumers prior to each recurring charge. Consumers are often unaware that a negative option provider is going to issue a charge, sometimes because the consumer did not give informed or separate consent to a subscription. For negative option plans that were properly offered and consented to, consumers may have last seen the terms and cancellation procedures months or years prior.

Consumer advocates suggest that the FTC codify policy regarding notice to subscription enrollees with the following provisions:

- A requirement for negative option providers to notify consumers prior to each recurring or automatic charge, with information regarding the material terms of the subscription (including price) and cancellation procedures;
- A requirement for negative option providers to provide notice at least via the same medium consumers can enroll with, excepting in-person reminders; and
- An allowance for consumers to reduce the frequency of reminders they receive, to opt-out of regular reminders entirely, or to change the medium they receive reminders through.

A Strong FTC Rule Is Long Overdue and Statutorily Authorized

The Commission’s ANPRM highlights that efforts to strengthen FTC negative option policy date back nearly two decades. Indeed, as far back as 2013, a report estimated that unwanted and

unintended subscriptions cost consumers over \$1 billion each year.¹⁷ This is an extraordinarily long time for the American public to suffer from unfair and deceptive negative option practices. The U.S. Court of Appeals for the Eighth Circuit panel decision in 2025 did not preclude the Commission from regulating unfair and deceptive negative option practices, despite many efforts from industry representatives in court to prevent the Commission from doing so. In fact, the Eighth Circuit panel stated that it “...certainly do[es] not endorse the use of unfair and deceptive practices in negative option marketing...” and purposefully drafted its decision narrowly, confined to only administrative procedure.¹⁸

Unfair and deceptive negative option practices are clearly prohibited by the FTC Act. The Commission has a mandate to finally eliminate these predatory tactics from the American economy.

The FTC Has Narrow Excepting Authority

Updated FTC policy to combat unfair and deceptive negative option practices should apply to all industries under the Commission’s jurisdiction. The Commission’s statutory authority does provide limited exceptions to the FTC’s jurisdiction for industries regulated by other agencies. The law states “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful. The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions...Federal credit unions...common carriers...air carriers and foreign air carriers...and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921...from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”¹⁹ 15 U.S.C. § 57a(g)(2) authorizes the agency to grant petitions for exemptions only if “...the application of a rule...is not necessary to prevent the unfair or deceptive act or practice to which the rule relates....”

To the extent the Commission seeks to comply with executive orders from the White House, Section 3(a) of Executive Order 14219 states that agencies have a “paramount obligation to discharge their legal obligations” and that they shall prioritize “the best reading of a statute.”²⁰

¹⁷ “The Economic Impact of Grey Charges on Debit and Credit Card Issuers,” *AiteNovarica*, July 25, 2013. <https://web.archive.org/web/20230627070147/https://aite-novarica.com/report/economic-impact-grey-charges-debit-and-credit-card-issuers>

¹⁸ *Custom Communications, Inc. v. Federal Trade Commission*, July 8, 2025. <https://ecf.ca8.uscourts.gov/opndir/25/07/243137P.pdf>

¹⁹ 15 U.S.C. § 45(a). <https://www.govinfo.gov/content/pkg/USCODE-2024-title15/pdf/USCODE-2024-title15-chap2-subchapI-sec45.pdf>

²⁰ “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” *Executive Office of the President*, February 25, 2025.

Section 4 directs agencies to consider, among other factors, “the best reading of the underlying statutory authority or prohibition” in promulgating new regulations. Federal law expressly requires the Commission to “prevent persons...from using...unfair or deceptive acts or practices...” The best reading of the FTC Act makes clear that Congress did not draft Section 5 to be optional.

It is difficult to imagine consumer-facing subscription plans that are legal under Section 5 of the FTC Act if they do not adhere to, at minimum, the components of the Vacated Rule. The rejection of petitions for extra-statutory exceptions is also surely necessary for implementation of Executive Order 14219. Consumer advocates urge the FTC to reject petitions for extra-statutory exceptions beyond what is stipulated under 15 U.S.C. 45(a)(2).

Concurrent 30-Day Comment Periods Limit the Value of Public Input

Consumer advocates appreciate regulatory expediency and strongly support the FTC pursuing its consumer protection mandate with haste. However, concurrent 30-day comment periods as currently provided for the ANPRMs regarding the Negative Option Rule and rental housing fees²¹ present difficulty for public interest advocates to fully engage and provide maximum assistance to the agency. In this ANPRM alone the Commission asked 98 specific questions of the public.

Proponents of unfair and deceptive negative option practices may have expensive lobbying budgets with dozens, if not hundreds, of staff weighing in on behalf of industry interests. Consumer advocates, however, do not have the same resources. Consumer advocates would like to support the Commission’s important work on these issues. But offering concurrent 30-day comment periods will likely result in an imbalance of submissions in favor of proponents of unfair and deceptive practices since public interest advocates are limited in our capacity to fully respond.

As the FTC continues with these rulemakings, consumer advocates would be able to more robustly engage and provide supporting data if comment periods are no less than 60 days.

<https://www.federalregister.gov/documents/2025/02/25/2025-03138/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency>

²¹ “Rule on Unfair or Deceptive Rental Housing Fee Practices,” Advanced Notice of Proposed Rulemaking, *Federal Trade Commission*, March 13, 2026. <https://www.federalregister.gov/documents/2026/03/13/2026-04907/rule-on-unfair-or-deceptive-rental-housing-fee-practices>

Conclusion

Thank you for your attention to this important consumer protection issue. Questions regarding these comments may be directed to National Consumers League Senior Public Policy Manager Eden Iscil (edeni@nclnet.org or 202-835-3323).

Sincerely,

Consumer Federation of America
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League