



April 13, 2026

The Honorable Andrew Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Response to Advance Notice of Proposed Rulemaking Concerning the Use of
Prenotification Negative Option Plans

Dear Chairman Ferguson,

On behalf of the American Fintech Council (AFC),¹ I submit this comment letter in response to the Federal Trade Commission's (FTC) Advance Notice of Proposed Rulemaking concerning the use of Prenotification Negative Option Plans (ANPRM).² AFC is the largest and most diverse trade association representing financial technology companies and innovative banks. AFC appreciates the FTC's proactive engagement on this issue, particularly in light of the dual pendulum that exists between the growing volume of consumer concern associated with negative option marketing practices as well as evolving business models.

On behalf of more than 150 member companies and partners, AFC offers these comments to address the FTC's core inquiries regarding the continued need for the current Rule, the prevalence of unfair or deceptive practices, and the appropriate scope and design of any future regulatory framework. AFC's membership includes entities that engage with subscription-based, continuity, and recurring payment models across digital and non-digital channels. Our members therefore have direct experience with both the consumer benefits and the operational challenges associated with negative option marketing.

AFC supports a regulatory approach that is clear and technology neutral, applying consistent standards across delivery channels without prescribing specific platforms or methods. The framework should address demonstrable consumer harm while avoiding unnecessary or duplicative compliance burdens. Negative option marketing can provide meaningful value to consumers by facilitating continuity of service and reducing transactional friction. It can also promote uninterrupted access to products and services that consumers wish to retain. At the same time, the FTC's record reflects that material consumer harm continues to arise where sellers fail to provide adequate disclosures, obtain informed consent, or honor cancellation requests through straightforward means. Targeted regulatory intervention is therefore warranted.

¹ American Fintech Council's (AFC) membership spans banks, non-bank lenders, payments providers, EWA providers, loan servicers, credit bureaus, and personal financial management companies.

² Federal Trade Commission, "Rule Concerning the Use of Prenotification Negative Option Plans," Federal Register 91, no. 49 (March 13, 2026): 12318–12325, <https://www.federalregister.gov/documents/2026/03/13/2026-04952/rule-concerning-the-use-of-prenotification-negative-option-plans>.

I. AFC Supports Modernizing the Negative Option Rule to Establish a Coherent Framework That Enhances Consumer Comprehension and Promotes Regulatory Consistency

The existing regulatory framework governing negative option marketing is dispersed across multiple statutory and regulatory regimes, including Section 5 of the FTC Act, the Restore Online Shoppers' Confidence Act (ROSCA), and the Telemarketing Sales Rule. This fragmented structure produces obligations that vary according to the channel through which an offer is presented. The absence of a uniform standard creates avoidable compliance complexity and, more importantly, risks diluting consumer understanding of recurring-payment arrangements.

This fragmentation also increases the risk of duplicative regulatory obligations where existing statutory frameworks already provide comprehensive consumer protections. In particular, businesses that utilize negative option features in online transactions and are already subject to ROSCA, which imposes clear requirements regarding disclosure, express informed consent, and simple cancellation mechanisms. Because these protections substantially align with the principles under consideration in this rulemaking, the FTC should provide an explicit exemption for entities already subject to ROSCA. Doing so would reduce unnecessary compliance overlap and enable the Commission to more effectively focus its rulemaking efforts on business models and channels that remain insufficiently addressed under the current framework.

AFC therefore supports the FTC's objective of developing a harmonized framework that applies consistent principles across online, telephonic, and in-person contexts. A coherent approach would promote regulatory clarity, reduce interpretive uncertainty, and enable firms to build compliance systems that function effectively across evolving delivery channels.

Modernization, however, should proceed through a principles-based lens rather than through a rigid set of prescriptions detached from marketplace realities. As academic commentary has observed, negative option marketing has become increasingly common among subscription-based sellers, yet consumer reactions remain mixed, which underscores the importance of a framework that meaningfully addresses consent and consumer understanding without assuming that a single mechanical solution will fit every commercial context.³ The FTC should therefore articulate clear and durable standards grounded in transparency, informed consent, and the practical ability to exit recurring arrangements. Such an approach would preserve necessary flexibility while advancing core consumer protection objectives.

II. AFC Supports Disclosure and Consent Standards That Are Clear, Salient, and Adapted to Contemporary Consumer Interfaces

AFC agrees that consumers must be presented with clear and conspicuous disclosures of all material terms before enrollment in a negative option arrangement. Those disclosures should convey, in a manner consumers are likely to notice and understand, the existence of the negative option feature, the cadence and magnitude of future charges, and the means by which recurring obligations may be discontinued.

³ S. Wang, "The Shortcomings of Current Negative Option Legislation," *Cornell Journal of Law and Public Policy* 26, no. 1 (2016): 121–52, <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1449&context=cjlp>.

Equally, however, disclosure requirements should be calibrated to reflect how consumers actually engage with modern interfaces. The FTC has previously observed that online consumers often proceed rapidly through transactional interfaces and may fail to read lengthy or poorly placed disclosures. The FTC therefore recommended concise notices focused on material information, together with disclosure design that emphasizes prominence, placement, and readability.⁴ For that reason, the FTC should focus on ensuring that disclosures are presented in a manner that consumers are likely to notice and understand, rather than imposing rigid formatting requirements that do not meaningfully enhance comprehension.

AFC further supports the requirement that businesses obtain express informed consent before initiating recurring charges. In practice, that standard should be operationalized through affirmative checkboxes, digital acknowledgments, and comparable mechanisms embedded in the transaction flow. The FTC should consider recognizing those established practices as effective indicia of assent when paired with adequate disclosures. This is particularly important because the FTC has previously recognized that consumer dissatisfaction is especially acute where a seller's disclosures are insufficient to make clear that the consumer has entered a separate recurring arrangement or where billing information is transferred in connection with a third-party upsell.

III. AFC Supports Accessible and Effective Cancellation While Preserving Reasonable Operational Flexibility

AFC agrees that consumers must be afforded a meaningful and straightforward ability to terminate negative option arrangements. A cancellation process should be readily accessible and should not subject consumers to delay, confusion, or procedural obstacles that undermine the exercise of that choice. Where cancellation is made unnecessarily arduous, the negative option feature ceases to function as a convenient commercial tool and instead becomes a mechanism for extracting payments for products or services the consumer no longer wishes to receive.

The body of regulatory and enforcement activity over many years reflects that cancellation remains a persistent area of consumer harm in the negative option context. FTC staff has previously identified recurring concerns with sellers' failure to provide effective cancellation procedures, including practices that make termination unnecessarily difficult or time-consuming. More recent federal rulemaking materials likewise cite complaint data, enforcement actions, and other record evidence reflecting continued concern with cancellation mechanisms that impede consumers' ability to end recurring charges. These issues are properly relevant to the FTC's present inquiry because they bear directly on whether additional regulatory clarity is needed to ensure that consumers can in fact discontinue arrangements they no longer wish to maintain.

The FTC should nevertheless avoid imposing cancellation requirements that are so rigid that they fail to account for legitimate operational considerations. While consumers should generally be able to cancel through the same general medium used for enrollment, businesses should retain

⁴ Federal Trade Commission, *Negative Options: A Report by the Staff of the FTC Division of Enforcement* (January 2009), <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>.

the ability to offer multiple pathways that account for operational realities. Those pathways may include customer support channels that assist with account verification, resolve billing discrepancies, or confirm proper account closure in subscription-based relationships, provided that such channels do not operate in a manner that delays or impedes a consumer's ability to cancel.

The FTC should also take a measured approach to retention or "save" offers, which are offers presented to consumers at the point of cancellation that are intended to encourage them to maintain the subscription, often through discounted pricing or modified service terms. When presented transparently and without coercion, such offers can furnish consumers with legitimate alternatives, including lower-cost plans or modified service tiers. The regulatory question is therefore not whether every save offer is inherently improper, but whether such practices are deployed in a manner that delays cancellation, obscures the consumer's options, or otherwise interferes with the consumer's clear expression of intent to terminate the arrangement.

IV. AFC Supports an Evidence-Based Regulatory Approach That Is Carefully Calibrated to Address Prevalent Harm

AFC encourages the FTC to ground any rulemaking in a robust evidentiary record that distinguishes between isolated instances of misconduct and practices that have become sufficiently widespread to warrant rulemaking under Section 18 of the FTC Act. The issues under consideration are not limited to isolated actors, but instead arise across a range of business models and market participants. A carefully calibrated regulatory response is therefore appropriate to address these recurring concerns while preserving the benefits of legitimate subscription-based arrangements.

An evidence-based framework should also recognize the specific forms that consumer harm often takes. The FTC has previously identified significant consumer dissatisfaction associated with third-party upsells, particularly where consumers do not realize that they have agreed to a second purchase, do not recognize the second seller, or have not knowingly consented to the transfer of their billing information. More recently, the CFPB has warned that negative option programs can be especially harmful when paired with digital dark patterns that deceive, steer, or manipulate consumers into recurring charges and make unwanted products or services difficult to cancel.⁵ These concerns are directly relevant to the FTC's inquiry regarding practices that impede consumer understanding, enrollment, and cancellation.

For these reasons, the FTC should endeavor to align new requirements with existing federal and state regimes in order to avoid duplication or conflict, articulate clear examples or safe harbors that provide practical compliance guidance, allow reasonable implementation timelines that reflect operational realities, and calibrate expectations in a manner that is proportionate to the risks presented.

⁵ Consumer Financial Protection Bureau, "CFPB Issues Guidance to Root Out Tactics Which Charge People Fees for Subscriptions They Don't Want," January 19, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-root-out-tactics-which-charge-people-fees-for-subscriptions-they-dont-want/>.

V. AFC Supports Leveraging Existing Enforcement Authorities and Complementary Supervisory Tools

The FTC already possesses substantial authority under Section 5 of the FTC Act and ROSCA to address unfair or deceptive negative option practices, and those authorities have continued to serve as a meaningful basis for enforcement. Practices which obscure consent or frustrate cancellation expose businesses to potential legal risks, including liability, consumer refunds, and injunctive relief. Businesses therefore already operate in an environment in which compliance expectations are actively enforced and failures in this area may carry significant consequences.

AFC therefore encourages the FTC to consider whether carefully framed rulemaking, coupled with enhanced guidance, best practices, and targeted enforcement, may provide the clearest path forward. Targeted guidance and educational materials directed to both consumers and market participants may also improve outcomes by clarifying key terms at the point of sale and reinforcing expectations around transparent enrollment and straightforward cancellation practices. Where additional rulemaking is pursued, it should be designed to operate in harmony with existing authorities and to provide clarity and predictability rather than introduce new ambiguity.

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AFC remains cognizant that the FTC's continued engagement on negative option marketing presents an important opportunity to advance a regulatory framework that is both protective of consumers and responsive to the realities of modern commerce. As articulated within this letter, negative option models can provide meaningful value when implemented with transparency, informed consent, and accessible cancellation, but may also present identifiable risks when those principles are not observed. A carefully calibrated framework that reinforces these core protections, while avoiding unnecessary rigidity, will address demonstrable consumer harm without disrupting legitimate and beneficial business practices. AFC appreciates the FTC's consideration of these comments and welcomes continued engagement as rulemaking in this area progresses.

Sincerely,



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American Fintech Council