



April 10, 2026

**VIA EMAIL**

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Washington, DC 20580

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

Re: Negative Option Rule ANPRM, Project No. P064202

Truth in Advertising, Inc. (“TINA.org”) respectfully submits this comment in response to the Federal Trade Commission’s March 13, 2026 request for public input on whether amendments to the Rule Concerning the Use of Prenotification Negative Option Plans (i.e., “Negative Option Rule” or “Rule”) are necessary to help consumers avoid recurring payments for products and services they did not intend to order and to allow them to cancel such payments without unwarranted obstacles. Although a multitude of laws currently govern these practices, harmful conduct remains widespread. Consumers continue to be misled into enrolling in subscription programs through deceptive marketing and they frequently encounter unnecessary friction when attempting to cancel. These persistent issues demonstrate that the current regulatory framework is insufficient to prevent consumer harm.

These problems existed before the Eighth Circuit Court of Appeals vacated the 2024 Click-to-Cancel Rule based on perceived procedural infirmities, and they continue to exist today. As such, TINA.org urges the Commission to strengthen its Negative Option Rule to more effectively deter consumer deception in this area, and reincorporates by reference its January 2, 2026 comment submitted to the FTC in support of the November 2025 petition for renewed Click-to-Cancel rulemaking.<sup>1</sup>

**I. INTEREST OF COMMENTER**

TINA.org is a nonpartisan, nonprofit consumer advocacy organization dedicated to combating deceptive advertising and consumer fraud; promoting understanding of the serious harms commercial dishonesty inflicts; and working with consumers, businesses, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in the economy. Its website, [www.tina.org](http://www.tina.org), provides information about common deceptive advertising techniques; consumer

protection laws, regulatory actions and other lawsuits; and alerts about specific deceptive marketing campaigns.

Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted authority on false and misleading tactics, testifying before Congress on issues related to consumer protection, deceptive marketing and economic justice.<sup>2</sup> TINA.org regularly draws on its expertise to advocate for consumer interests before the FTC and other governmental bodies, and appears as amicus curiae in cases raising important questions of consumer protection law.<sup>3</sup>

Since its inception, TINA.org has received more than 10,000 tips and complaints from consumers, filed legal actions with regulatory agencies against hundreds of companies and entities, published more than 1,600 ad alerts and more than 1,100 news articles, and tracked more than 6,600 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained monetary judgments of more than \$380 million against wrongdoers based on TINA.org's legal actions and evidence, and returned millions in ill-gotten gains to consumers.

With respect to negative option marketing specifically, TINA.org has investigated and reported on dozens of companies using deceptive negative option offers,<sup>4</sup> and has filed complaints with state and federal regulators against seven brands for engaging in such tactics.<sup>5</sup> As a result of these investigations and complaints, six regulatory enforcement actions have been taken (including one by the FTC<sup>6</sup>), cumulatively resulting in more than \$6 million in civil penalties and consumer redress.<sup>7</sup> TINA.org is also tracking more than 240 class-action lawsuits challenging alleged misleading negative option marketing used by a multitude of companies in diverse industries.<sup>8</sup>

In short, the tools the FTC has at its disposal to stop deceptive negative option offers and subscriptions are of central importance to TINA.org's work and mission.

## **II. A STRENGTHENED NEGATIVE OPTION RULE IS NECESSARY**

Deceptive marketing and other forms of commercial dishonesty impose significant harm on the U.S. economy. These practices cost consumers billions of dollars, distort fair competition, and undermine trust in the marketplace. When bad actors profit from misleading tactics, honest businesses are placed at a competitive disadvantage, resulting in a misallocation of resources and reduced market efficiency.

The rapid expansion of e-commerce has further intensified these challenges. As more consumers rely on online platforms for everyday purchases, increasingly sophisticated schemes make it harder for individuals to identify and avoid deceptive practices. This growing complexity places an unfair burden on consumers to detect fraud that is often intentionally designed to evade scrutiny.

A particularly harmful example is the rise of deceptive negative option contracts. These arrangements—where consumers are charged unless they take affirmative steps to

cancel—have evolved into a multibillion-dollar problem affecting both consumers and legitimate businesses. Despite ongoing enforcement efforts by the FTC and state attorneys general, deceptive negative option practices continue to proliferate.

Given the scale, persistence and evolving nature of these harms, a strengthened Negative Option Rule is necessary to protect consumers and promote fair competition.

**A. A strengthened Negative Option Rule is needed to curb widespread and harmful abuses of negative option offers.**

Misleading negative option offers routinely trap consumers in unwanted subscriptions that are difficult to cancel. Consumers are often enrolled through confusing interfaces, hidden terms or deceptive representations about costs and cancellation requirements, and then face significant barriers to termination.

These harms persist despite existing federal and state laws,<sup>9</sup> as companies continue to take advantage of enforcement gaps and use increasingly sophisticated tactics to mislead consumers. The result is a marketplace where consumers are forced to spend time and resources trying to cancel recurring charges they did not knowingly accept.

The problem is widespread and costly, imposing billions of dollars in consumer losses, undermining trust in digital commerce and distorting competition by rewarding firms that rely on manipulation rather than value.

**i. Deceptive subscriptions are pervasive.**

While not all subscription services involve dishonesty or are unwanted, deceptive conduct perpetuated by companies engaging in negative option offers has persisted for decades.<sup>10</sup> Indeed, for those industries that employ negative option contracts, it is difficult to identify one that does *not* have members engaged in deceptive recurring subscriptions. TINA.org’s investigations of more than 100 products and services sold through problematic subscription programs span a multitude of industries, including home internet and mobile services, vitamins and supplements, hunting supplies and outdoor gear, food delivery services, legal services, home cleaning services, printers, skin care products, books and magazines, movie tickets, perfumes, fitness memberships, clothing and lingerie, contact lenses, e-cigarettes, multilevel marketing opportunities and weight-loss products, among others.<sup>11</sup> Moreover, deceptive autorenewing models are not used just by small, fly-by-night operations, but also by large, sophisticated entities, including, for example, Amazon, AARP, Unilever and Xfinity.<sup>12</sup> TINA.org has also tracked class-action lawsuits alleging misleading subscription practices by such well-known companies as The New York Times, Walmart, Apple, Google, NFL Enterprises, YouTube, Peacock TV, Paramount +, Disney, Audible, Panera, Staples and Zoom.<sup>13</sup>

Although subscription plans span a wide range of industries, the manipulative tactics used to trap consumers in negative option offers remain remarkably uniform: (1) use deceptive marketing to lure consumers in, (2) conceal subscription terms so that

consumers remain unaware of the recurring costs, and (3) impose burdensome cancellation processes that make termination difficult. These tactics are highly effective.

Evidence confirms the scale of the problem. In 2022, the Washington Attorney General’s office reported that 59 percent of Washingtonians (approximately 3.5 million residents) may have been enrolled in a subscription when they believed they were making a one-time purchase.<sup>14</sup> Similarly, the FTC has documented thousands of annual complaints related to negative option offers, noting that such complaints have “steadily increase[ed] over the past five years.”<sup>15</sup> In 2024 alone, the Commission received nearly 70 complaints per day on average, up from 42 per day in 2021.<sup>16</sup>

These data make clear that far too many companies are manipulating consumers with deceptive and misleading subscription offers, costing Americans billions of dollars each year on charges they have forgotten about.<sup>17</sup>

**ii. Unwanted subscriptions cause significant harm to consumers and create economic inefficiencies.**

The goal of companies deceptively employing recurring subscription models is to charge consumers indefinitely—luring and locking consumers in, driving out competitors, and all but ensuring consumers can never leave.<sup>18</sup> This type of deceptive conduct deprives consumers of free choice in their purchasing decisions.<sup>19</sup>

Victims in 16 resolved FTC deceptive subscription cases brought between 2008 and 2019 collectively lost \$1.4 billion.<sup>20</sup> Importantly, these numbers do not account for FTC deceptive subscription cases brought after 2019, including, among others, the Commission’s actions against Vonage (resulting in \$100 million in consumer refunds), GrubHub Inc. (resulting in nearly \$25 million to consumers), IM Mastery Academy/IYOVIA (company accused of taking more than \$1.2 billion from consumers), Amazon.com, Inc. (resulting \$1.5 billion in consumer redress) and Legion Media, LLC (resulting in \$27.6 million in payments to consumers).<sup>21</sup> From 2015 to 2017, approximately 37,000 complaints filed with the Better Business Bureau reported an average loss of \$186 as a result of deceptive subscriptions.<sup>22</sup> The FBI’s Internet Crime Complaint Center recorded more than 9,600 complaints about free trial offers between 2015 and 2019, with losses totaling more than \$28 million over that time span.<sup>23</sup> And these numbers are likely lower because, inter alia, as FTC studies have found, less than 10 percent of fraud victims report their losses to the BBB or law enforcement.<sup>24</sup>

Further, a 2024 survey found that more than 85 percent of consumers had at least one paid subscription going unused each month.<sup>25</sup> Similarly, a 2021 study by Chase Bank found that nearly three-quarters of Americans waste more than \$50 a month on unwanted subscription fees.<sup>26</sup> And in a 2022 survey, consumers reported underestimating their actual monthly spend on subscriptions by \$133 (or two-and-a-half times more than what they thought they were paying).<sup>27</sup> Corresponding with this consumer dissatisfaction, more than 240 federal class actions have been filed on behalf of consumers over various negative option terms and conditions since 2013.<sup>28</sup>

Indeed, the scope and reach of deceptive subscription plans is so extensive that consumer complaints about them are ubiquitous.<sup>29</sup> In fact, issues with deceptive negative option offers are one of the most common types of complaints that TINA.org receives.<sup>30</sup> Consumers generally report unwittingly being enrolled in a negative option plan, and then finding it impossible to cancel the subscription. The following examples are illustrative of the kinds of complaints consumers have had for over a decade:

- “I ordered some jewelry from this company. I got my jewelry and saw that I was part of there month subscription which I was unaware of. I tried contacting them and customer service. Didn’t hear anything from them. Followed online instructions to cancel. But on the website there is no where to goto cancel. I’ve messaged them on Instagram and gotten nothing back. They made the charges to my card into 3 days and they progressively get more expensive. There Instagram has a lot of commenters so asking the same questions of when they will hear back from customer service. Or that they havent gotten there package. And if you look up this brand they are known for scamming people. So I had to goto my bank to get a new card.” (jewelry company, Feb. 2026 complaint)<sup>31</sup>
- “They mislead me into enrolling into a subscription and they are charging me despite I don’t own a house anymore. They are saying there is no way to cancelling the plan. I must pay 210\$ to cancel their service which I have never used more than once.” (Homeaglow, Dec. 2025 complaint)<sup>32</sup>
- “MaxAI . . . offers browser-based AI plugin services and charged me unauthorized subscription fees without my informed consent. In February 2024, I was charged \$300 via Stripe for what I believed to be a one-month trial or annual subscription. In February 2025, I was again charged \$300 without any renewal notice, opt-out reminder, or confirmation from my side. There was no clear cancel button, no effective cancellation workflow before the renewal occurred, and no adequate warning provided. When I reached out to MaxAI’s support to request a refund, they refused and only offered account credits. This practice is highly misleading and violates the Restore Online Shoppers’ Confidence Act (ROSCA), as well as the FTC’s auto-renewal disclosure guidelines.” (MaxAI, May 2025 complaint)<sup>33</sup>
- “I first saw the ad on a facebook reel. When I went to their page, it reads as if you can get the shower head and filter for \$0 if you sign up for a subscription for filters(\$33) every 3 months. When I went to the second page, again in bold, larger font lettering again states \$0 due today. I went ahead with purchase and immediately received a noticed I had a \$160 charge pending. I quickly went back to their site and went through the process(with my reading glasses this time, which I thought weren't needed the first time because I could read all the larger font) the read in

smaller/grayed out font that if I were to keep the product 10 days, I would then be charged. I immediately sent an email to cancel my order, but received another email this morning the order had already shipped.” (showerhead company, May 2025 complaint)<sup>34</sup>

- “In December 2024 I ordered perfume from this company as a Christmas gift for my daughter. At the beginning of January 2025, I noticed that the company charged my credit card over \$42. When I disputed the charge they said it was for my monthly subscription. I asked that they refund the money & cancel the subscription since I had never agreed or subscribed to anything! They reversed the charges in short order. However—it is now February and I now see another \$42+ charge on my credit card from this company” (perfume company, Feb. 2025 complaint).<sup>35</sup>
- “If you try to cancel your service, they will make it so difficult that you will cry. I had to talk to 5 different people who all gave me different information, was assured that my service was canceled multiple times, only to continue receiving bills, it was a nightmare . . .” (Xfinity, Sept. 2024 complaint).<sup>36</sup>
- “Once you sign up for auto-renew, they make it near impossible to cancel. Thus they are participating in the kind of financial abuse of elders that they should be protecting us from. Avoid at all costs” (AARP, June 2023 complaint).<sup>37</sup>
- “I tried to call and cancel, they told me it was canceled, but it was not. I received packages from them filled with . . . things I don’t eat. I called the bank to file a dispute and set up a stop payment, but that didn’t stop, they just kept changing the amount they were charging, so the stop payment didn’t do anything. Now left with no options, I have to close my card!” (HelloFresh, Apr. 2022 complaint).<sup>38</sup>
- “They charge your card \$39 every single month even if you do not shop that month. I would have never even shopped on their website if I known that. No where did I see I would be charged \$39. I think it’s sneaky and not good business. And I also see I’m not the only one who had this problem. I would have never known they were taking money out if it wasn’t for me checking my bank statement because they don’t send you a receipt to your email like they do when you order something” (children’s clothing company, Apr. 2021 complaint).<sup>39</sup>
- “I have been trying to cancel my monthly subscription/membership for MONTHS. No response on live chats, no response through customer service. They keep charging me 50 dollars . . .” (lingerie company, Jan. 2020 complaint).<sup>40</sup>

- “[S]ent for the free bottle of . . . oil plus an extra one bottle they charged me \$98/93 . . . THAT IS FRAUD . . . i realize I have been scammed and as I am a pensioner they have taken my xmas money for my kids. i want to cancel the order and get my money back can you help me please as that amount for 1 bottle is outrageous there is no phone number to ring” (weight-loss company, 2016 complaint).<sup>41</sup>
- “In August, they took my money but never sent me the product. I contacted them via email to inform them of this and asked them to cancel my subscription since they did that. In September, they again took my money and never sent my product. Again, I contacted them for a refund and cancellation. It happened again this week. I emailed them on Wednesday and today. I called today and they stated that they have not received any communication from me. They also said they would not refund my money unless I send them the bottles. But, being I am not receiving the product, how am I suppose to mail the bottles to them?” (multilevel marketing company, 2013 complaint).<sup>42</sup>

The tactics employed to trick consumers into subscriptions that are difficult to cancel also have an especially burdensome impact on susceptible populations, including those with limited financial resources,<sup>43</sup> seniors,<sup>44</sup> the disabled<sup>45</sup> and children (and their parents).<sup>46</sup>

Of course, the harm of deceptive negative option contracts is not limited to consumers—such dishonest practices inflict systemic damage on the American economy. Bad advertising can drive out good: when consumers become suspicious of advertising claims, persuading them that an honest representation is true becomes more costly—a special obstacle for new market entrants, who account for a disproportionate share of innovative products and must rely on advertising to overcome consumer wariness.<sup>47</sup> Capital is likewise being misdirected to fraudulently successful subscription businesses and toward efforts to keep consumers locked in negative option contracts. In significant ways, such issues have worsened over time as more and more companies have adopted the subscription model.<sup>48</sup>

Without a strengthened negative option rule, the FTC will be prevented from effectively and efficiently regulating deceptive negative option contracts and, as such, many companies that utilize subscription models will continue to ignore the fundamentals of truth-in-advertising requirements and persist in their manipulation of consumers. As the Supreme Court stated nearly a century ago, “[t]he careless and the unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down.”<sup>49</sup>

### **B. A strengthened Negative Option Rule would provide much-needed protection for all consumers.**

As the FTC acknowledged in its March 2026 advanced notice of proposed rulemaking, the record compiled during the 2023-2024 rulemaking, as well as ongoing consumer

complaints and recent enforcement cases, “show continued unlawful negative option marketing practices in the marketplace.”<sup>50</sup> These “persistent concerns” remain despite the existence of the Negative Option Rule as currently worded,<sup>51</sup> as well as other regulatory tools, including the Restore Online Shoppers’ Confidence Act (“ROSCA”)<sup>52</sup> and the Telemarketing Sales Rule (“TSR”).<sup>53</sup>

This does not result from any want of trying.<sup>54</sup> Since 2011, the FTC has brought 51 actions alleging violations of ROSCA.<sup>55</sup> In addition, recognizing the ever-present harms associated with deceptive subscriptions and automatic renewal provisions that continue to plague consumers, a multitude of states<sup>56</sup> and even some credit card companies<sup>57</sup> have issued laws and rules in an attempt to fill the gap in federal oversight. However, much like the federal landscape, these rules and regulations have not been able to effectively eradicate the negative option offer problem. Moreover, these efforts differ significantly in scope, requirements, and category of products to which they apply. As a result, consumers receive different levels of protection depending on where they live geographically, what goods or services they are purchasing, or what credit card they use; and so far, these provisions have been inadequate to stem the tide of unwanted subscriptions that continue to bedevil American consumers. As such, the uniform protection of a strengthened negative option rule is much needed.

To be sure, lying to consumers can be a lucrative business strategy, which is why a strengthened rule is needed specifically targeting deceptive negative option practices that remain pervasive despite the current regulatory landscape. In the absence of a strengthened FTC rule, deceptive negative option practices will continue to harm consumers and honest businesses. As former FTC Chair Joseph Simons aptly stated, “Truthful advertising allows consumers to make well-informed decisions about how to best use their resources and promotes the efficient functioning of market forces by encouraging the dissemination of accurate information.”<sup>58</sup>

### **III. SUGGESTED AMENDMENTS TO THE CURRENT RULE**

As explained in more detail below, the Rule should be amended in several ways to better inform marketers of their legal obligations and further protect consumers and honest businesses.

#### **A. The FTC’s 2024 amendments should be reimplemented.**

The Commission should reimplement the 2024 amendments to the Negative Option Rule because they reflect a common-sense modernization of consumer protection in an economy increasingly defined by subscription-based and automatically renewing services. By extending coverage across all media, the 2024 amendments appropriately recognized that deceptive practices are platform-agnostic and should not escape scrutiny based on the technology used to deliver them.

Moreover, the requirements to prohibit material misrepresentations, provide clear and conspicuous disclosures before billing, obtain express informed consent, and offer a

simple, immediate cancellation mechanism do not impose novel or undue burdens. Rather, they reflect baseline expectations for fair dealing that are firmly grounded in longstanding principles under Section 5 of the FTC Act. Importantly, these requirements would address well-documented consumer harms—such as unauthorized charges, hidden terms and intentionally friction-filled cancellation processes—while providing clear compliance guidance to businesses acting in good faith.

Implementing these amendments would promote transparency, strengthen consumer autonomy, and foster a more level competitive landscape by ensuring that firms compete on the merits of their offerings rather than on exploitative enrollment or retention tactics.

Notably, there is broad recognition that these substantive protections are necessary; the current proposed rulemaking stems not from disagreement over the merits of these protections, but from the Eighth Circuit decision identifying procedural deficiencies in the 2023-2024 rulemaking process.<sup>59</sup> Addressing those procedural concerns and restoring the substantive 2024 amendments would provide widely supported consumer and economic protections.

#### **B. The FTC should also adopt certain additional amendments.**

While TINA.org continues to support the 2024 amendments to the Rule as an important step toward clarifying legal obligations and enhancing consumer protection, additional targeted measures would further improve the Rule’s effectiveness and ensure it keeps pace with modern subscription practices.

First, the Rule should require sellers to provide reminders to consumers of their ongoing subscriptions. Second, the Rule should require notice of any material changes to subscription terms.

##### **i. The Rule should be amended to require periodic reminders.**

In order to help consumers avoid incurring charges they do not anticipate or understand, the Rule should be amended to require negative option sellers to provide clear and conspicuous reminders of ongoing subscriptions. At a minimum, such reminders should be provided annually and should identify the product or service, the frequency and amount of charges, and the means to cancel.

As the FTC noted in 2023, many consumers reasonably forget that they enrolled in recurring payment arrangements and, as a result, continue to incur charges for services they no longer want or use. The Commission further recognized that failing to provide reminders can satisfy all three elements of unfairness, while imposing only minimal compliance burdens on businesses (*e.g.*, a short, generic email).<sup>60</sup> This reasoning remains sound and strongly supports adopting a reminder requirement as part of the Rule.

The FTC’s earlier determination that reminders may be unnecessary for subscriptions involving the automatic delivery of physical goods<sup>61</sup> does not reflect the realities of many

modern subscription models, which the FTC later acknowledged.<sup>62</sup> In practice, deliveries often fail to function as meaningful reminders—particularly where a “free trial” transitions into a paid subscription without clear notice. In such cases, consumers may reasonably believe that the trial period is ongoing, rather than recognize that they have entered into a recurring payment obligation – an issue that has been reported to TINA.org on numerous occasions. For example, in February 2023, one consumer noted:

I purchased an HP Printer in Oct. 2022 and signed up for their 6-month trial. It was then offered to me, to enroll in their paper subscription trial for 3 months, so I did. At no point did I receive a notice that the trial was ending, they cannot provide anything about their policy in writing, and the offer did not inform me that if the paper subscription is not cancelled or paid for, it would impact my ability to print. They're refusing to provide a statement or bill for Dec 2022-Jan 2023.

Such consumer complaints are consistent with survey data showing that 42 percent of consumers forget they are still paying for a subscription they no longer use.<sup>63</sup> “Many of those happen after you get enticed by a free trial for an online streaming service or a monthly subscription service for clothes or personal items, and then you forget to cancel it after that trial is over.”<sup>64</sup> In fact, a 2025 survey found that nearly 65 percent of consumers have forgotten to cancel a free trial.<sup>65</sup>

Moreover, some negative option programs involving physical goods do not provide any automatic delivery at all unless the consumer takes affirmative action. In these instances, consumers may be charged recurring fees without receiving any product, eliminating even the possibility that a delivery could serve as a reminder. Examples of this type of negative option offer include those used by lingerie brands Adore Me and Savage X Fenty in which consumers are charged a monthly fee but receive nothing unless they make a selection.<sup>66</sup> Consumer complaints in these contexts frequently reflect surprise charges and a lack of awareness that enrollment occurred at all. As one consumer explained:

I bought from this company once because of a sale, I did enjoy what I got. HOWEVER, WITHOUT MY KNOWLEDGE SAVAGEXFENTY USED MY DEBIT CARD INFORMATION TO SIGN ME UP FOR THEIR MONTHLY SUBSCRIPTION. this is a VIP package that costs \$49.95 a month. I did not want or authorize the making of this account for me. 5 months later (because I do not use my debit card often and don't check transaction history often) I had 5 months and \$250 missing from my account. I never wanted this VIP package and never authorized SavagexFenty to sign me up for it.<sup>67</sup>

To prevent these types of surprise charges, the Rule should require all negative option sellers to provide periodic reminders that are clear and conspicuous. In addition, for offers that begin with a free or discounted trial—whether involving physical goods or not—the Rule should require sellers to provide reminders *before* the trial converts into a paid subscription.

Implementing these requirements would significantly reduce inadvertent charges, improve consumer awareness and align business practices with fundamental principles of transparency and informed consent.

**ii. The Rule should be amended to require notice of material changes to subscription terms.**

The Rule should also be amended to require negative option sellers to provide clear, conspicuous and timely notice to consumers whenever there are material changes to the terms of a subscription contract. Without such a requirement, consumers may remain bound to agreements that have fundamentally changed in ways that affect cost, service or obligations—often without their knowledge or meaningful opportunity to respond.

In declining to adopt such a requirement in 2023, the FTC reasoned that whether changes to subscription terms are unfair or deceptive can be highly fact-specific, and therefore best addressed through case-by-case enforcement.<sup>68</sup> While it is true that applications may vary across contexts, this rationale does not justify the absence of a baseline requirement that consumers be informed when material terms change.

Indeed, such a position is difficult to reconcile with the Commission’s longstanding definition of materiality. In its Policy Statement on Deception, the FTC defines a material practice as one that is likely to affect a consumer’s choice or conduct regarding a product—information that is, by definition, important to consumers.<sup>69</sup> Changes to core subscription terms—such as price, billing frequency, product quantity or service features—plainly meet this standard. If such information must be disclosed at the outset of a transaction,<sup>70</sup> it follows that consumers should also be informed when those same terms are materially altered after enrollment.

Failing to provide notice of material changes creates a substantial risk of consumer harm. Negative option contracts are typically adhesion contracts that consumers rarely revisit after enrollment, and many consumers are not even fully aware they are enrolled in such arrangements.<sup>71</sup> Allowing companies to modify key terms without direct notice effectively enables those changes to occur in the dark, depriving consumers of the opportunity to make informed decisions about whether to continue the subscription.

By contrast, requiring notice of material changes would impose minimal burden on businesses—perhaps no more than a clear and conspicuous email and/or in-app notification—while significantly enhancing transparency and consumer control.<sup>72</sup> Such an approach would also be consistent with FTC precedent,<sup>73</sup> as well as with the laws of numerous states—including California, Colorado, Hawaii, New York, North Dakota, Oregon and Virginia—which require that, if there is a material change in the terms of an automatic renewal or continuous service offer, the business must provide the consumer with a clear and conspicuous notice of the material change.<sup>74</sup>

For these reasons, the Commission should amend the Rule to require that sellers provide clear, conspicuous and timely notice of any material changes to negative option contracts, along with a straightforward opportunity for consumers to review the changes and cancel if they do not agree. Such a requirement would close a significant gap in the current framework and ensure that consumers remain informed participants in ongoing subscription relationships.

#### IV. CONCLUSION

Deceptive negative option marketing is a pervasive and widespread problem in our economy, which has not been effectively addressed by the Commission’s currently available tools. As such, TINA.org urges the Commission to strengthen its Negative Option Rule as explained above.

Sincerely,



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<sup>1</sup> TINA.org’s Comment to FTC Re: Petition for Renewed Click to Cancel Rulemaking, FTC-2025-0792 (Jan. 2, 2026), [https://truthinadvertising.org/wp-content/uploads/2023/06/1\\_2\\_26-comment-to-FTC-re-Click-to-Cancel-rulemaking-petition.pdf](https://truthinadvertising.org/wp-content/uploads/2023/06/1_2_26-comment-to-FTC-re-Click-to-Cancel-rulemaking-petition.pdf).

Of note, TINA.org has also filed two other previous comments pertaining to the FTC’s Negative Option Rule. *See* TINA.org’s Comment to FTC Re: Negative Option Rule; Project No. P064202 (June 20, 2023), [https://truthinadvertising.org/wp-content/uploads/2023/06/6\\_20\\_23-Negative-Option-Rule-Comment-to-FTC.pdf](https://truthinadvertising.org/wp-content/uploads/2023/06/6_20_23-Negative-Option-Rule-Comment-to-FTC.pdf); TINA.org’s Comment to FTC Re: The FTC Should Update Its Negative Option Rule (Dec. 2, 2019), [https://truthinadvertising.org/wp-content/uploads/2019/12/12\\_2\\_19-comment-to-FTC-re-NOO-Rule.pdf](https://truthinadvertising.org/wp-content/uploads/2019/12/12_2_19-comment-to-FTC-re-NOO-Rule.pdf).

TINA.org also filed a comment with the FTC on July 15, 2021 supporting the Movie Pass, Inc. Consent Agreement, which is also relevant here, particularly as it pertains to the Commission’s previous proposal to prohibit misrepresentations in connection with a negative option offer of “any material fact related to the transaction, such as the negative option feature, or any material fact related to the underlying good or service” (Proposed Section 425.3), which TINA.org continues to support. *See* TINA.org’s Comment to FTC Re: In the Matter of MoviePass, Inc. – Consent Agreement (Commission File No. 192 3000) (July 15, 2021), [https://truthinadvertising.org/wp-content/uploads/2021/07/FTC-2021-0032-0003\\_attachment\\_1.pdf](https://truthinadvertising.org/wp-content/uploads/2021/07/FTC-2021-0032-0003_attachment_1.pdf).

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<sup>2</sup> Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com., 117th Cong. (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp., 117th Cong. (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

<sup>3</sup> See, e.g., Brief for Amici Curiae Truth In Advertising, Inc., et al. in Support of Plaintiff-Appellee, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.* (2d Cir. July 24, 2025) (No. 25-12), [https://truthinadvertising.org/wp-content/uploads/2021/12/7\\_24\\_25-TINA-amici-motion-and-brief.pdf](https://truthinadvertising.org/wp-content/uploads/2021/12/7_24_25-TINA-amici-motion-and-brief.pdf); Brief of Amici Curiae Truth In Advertising, Inc., et al. in Support of Respondent, *Intuit, Inc. v. Fed. Trade Comm'n* (5th Cir. June 21, 2024) (No. 24-60040), <https://truthinadvertising.org/wp-content/uploads/2024/06/Intuit-v-FTC-TINA-Amici-Brief.pdf>; Brief for Truth In Advertising, Inc. as Amicus Curiae Supporting Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, 593 U.S. 67 (2020) (No. 19-508), [https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389\\_19-508%20brief.pdf](https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf); Brief of Amici Curiae Truth In Advertising, Inc., et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.* (2d Cir. Mar. 6, 2019) (No. 17-3745), [https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen\\_Amici-Curiae-brief.pdf](https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf).

<sup>4</sup> TINA.org's Ad Alerts: Results Using the "Subscriptions" Filter, <https://truthinadvertising.org/ad-alerts/?f-search=&f-tactic%5B%5D=4700>.

<sup>5</sup> TINA.org's Shapes, Inc investigation, <https://truthinadvertising.org/brands/shapes-inc/>; TINA.org's Homeaglow Investigation, <https://truthinadvertising.org/brands/homeaglow/>; TINA.org's HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>; TINA.org's Savage X Fenty Investigation, <https://truthinadvertising.org/brands/savage-x-fenty/>; TINA.org's FabKids Investigation, <https://truthinadvertising.org/brands/fabkids/>; TINA.org's Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/>; TINA.org's O2PUR Investigation, <https://truthinadvertising.org/brands/o2pur/>.

<sup>6</sup> Complaint for Permanent Injunction and Other Equitable Relief, *Fed. Trade Comm'n v. AdoreMe, Inc.* (S.D.N.Y. 2017) (No. 1:17-cv-09083), <https://truthinadvertising.org/wp-content/uploads/2017/11/FTC-v-AdoreMe-complaint.pdf>; Motion to Enter Stipulated Order for Permanent Injunction and Monetary Judgment, *Fed. Trade Comm'n v. AdoreMe, Inc.* (S.D.N.Y. 2017) (No. 1:17-cv-09083), <https://truthinadvertising.org/wp-content/uploads/2017/11/FTC-v-AdoreMe-settlement-motion.pdf>.

<sup>7</sup> Settlement Agreement, *In the Matter of Scott Barth*, DCP Case No. 82403 and 86039 (Utah Div. of Consumer Prot. Dept. of Com. Jan. 20, 2017), <https://truthinadvertising.org/wp-content/uploads/2017/01/O2Pur-Settlmt-Agrmt-w-Scott-Barth.pdf>; Settlement Agreement, *In the Matter of: Alpha Int'l Mktg. LLC*, No. 86039 (Utah Div. of Consumer Prot. Dept. of Com. Jan. 4, 2017), <https://truthinadvertising.org/wp-content/uploads/2017/01/O2Pur-Settlmt-Agrmt-w-Alpha-Intern.pdf>; Motion to Enter Stipulated Order for Permanent Injunction and Monetary Judgment, *Fed. Trade Comm'n v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. Nov. 20, 2017), <https://truthinadvertising.org/wp-content/uploads/2017/11/FTC-v-AdoreMe-settlement-motion.pdf>; Press Release, Off. N.Y. State Att'y Gen., A.G. Schneiderman Announces Settlement With Adore Me Lingerie Company For Deceptive Advertising (Mar. 20, 2018),

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<https://ag.ny.gov/press-release/2018/ag-schneiderman-announces-settlement-adore-me-lingerie-company-deceptive>; Stipulation for Entry of Final Judgment, *State of California v. AdoreMe, Inc.*, No. 18cv332846 (Cal. Super. Ct. Aug. 20, 2018), <https://truthinadvertising.org/wp-content/uploads/2019/01/Adore-Me-Final-Judgment.pdf>; Final Judgment and Injunction Pursuant to Stipulation, *State of California v. Lavender Lingerie, LLC d/b/a Savage X Fenty*, No. 22CV402737 (Cal. Super. Ct. Nov. 23, 2022), <https://truthinadvertising.org/wp-content/uploads/2021/12/CA-v-Savage-x-Fenty-order.pdf>; *In the Matter of AdoreMe, Inc.* Settlement Agreement (June 9, 2023), [https://truthinadvertising.org/wp-content/uploads/2021/12/NC\\_AdoreMe\\_Settlement-Agreement.pdf](https://truthinadvertising.org/wp-content/uploads/2021/12/NC_AdoreMe_Settlement-Agreement.pdf).

<sup>8</sup> TINA.org’s Class-Action Tracker: Results Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Search Results for “Amazon” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=AMAZON&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Walmart+ Subscriptions, <https://truthinadvertising.org/class-action/walmart-subscriptions/>; TINA.org’s Class-Action Tracker: Apple’s Subscriptions to Digital Content, <https://truthinadvertising.org/class-action/apples-subscriptions-to-digital-content/>; TINA.org’s Class-Action Tracker: Search Results for “Google” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Search Results for “YouTube” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=YOUTUBE&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: Search Results for “NFL” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=NFL&f-tactic%5B%5D=4700>; TINA.org’s Class-Action Tracker: MLB Prime Subscriptions, <https://truthinadvertising.org/class-action/mlb-prime-subscriptions/>; TINA.org’s Class-Action Tracker: Search Results for “New York Times” Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=new%20york%20times&f-tactic%5B%5D=4700>.

<sup>9</sup> See *infra*, Section II. B.

<sup>10</sup> See Negative Option Rule, 89 Fed. Reg. 90476 (Nov. 15, 2024); see also Sophia Wang, *One Size Does Not Fit All: The Shortcomings of Current Negative Option Legislation*, 26 CORNELL J. L. & PUB. POL’Y 197, 201-03 (2016) (describing deceptive practices in early negative option marketing starting in the 1970s).

<sup>11</sup> See TINA.org’s Ad Alerts: Results Using the “Subscriptions” Filter, <https://truthinadvertising.org/ad-alerts/?f-search=&f-tactic%5B%5D=4700>; TINA.org Legal Actions, Brands & Industries: Results Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/brands-industries/?f-tactic%5B%5D=4700>.

<sup>12</sup> See *id.*

<sup>13</sup> See TINA.org Class-Action Tracker: Results Using the “Subscriptions” Filter, <https://truthinadvertising.org/legal-action/class-action-tracker/?f-search=&f-tactic%5B%5D=4700>.

<sup>14</sup> Press Release, Wash. State Off. Att’y Gen., *Consumer Alert: Attorney General’s Consumer Survey Reveals that Millions of Washingtonians May Have Been Unintentionally Enrolled in a*

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*Subscription Service* (Oct. 10, 2022), <https://www.atg.wa.gov/news/news-releases/consumer-alert-attorney-general-s-consumer-survey-reveals-millions-washingtonians>.

<sup>15</sup> Press Release, Fed. Trade Comm’n, *Federal Trade Commission Announces Final “Click-to-Cancel” Rule Making It Easier for Consumers to End Recurring Subscriptions and Memberships* (Oct. 16, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/federal-trade-commission-announces-final-click-cancel-rule-making-it-easier-consumers-end-recurring>.

<sup>16</sup> *Id.*

<sup>17</sup> Ben Cohen, *The Real Reason You’re Paying for So Many Subscriptions*, WALL ST. J. (Jan. 19, 2024), <https://www.wsj.com/business/cancel-subscriptions-save-money-streaming-peacock-da7e6123>.

<sup>18</sup> *See, e.g.,* Caruso & Cox, *Silence as Consumer Consent: Global Regulation of Negative Option Contracts*, 73 AM. U. L. REV. 1611, 1624 (2024) (“Negative option contracts fundamentally differ from most other contracts. Absent regulation, a consumer can sign up once and, via negative option, essentially obligate themselves to pay for some good or service indefinitely. While they may offer some efficiencies and benefits [ . . . ], these contracts also present real consumer risks and are highly susceptible to abuse.”).

<sup>19</sup> *See FTC v. Am. Screening, Ltd. Liab. Co.*, 105 F.4th 1098, 1104 (8th Cir. 2024) (noting that “because the seller’s misrepresentation tainted the purchasing decision . . . the consumer has lost the chance to avoid the purchase entirely, and is stuck with one that he did not intend to make”); *see also Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 189 (1948) (“People have a right to assume that fraudulent advertising traps will not be laid to ensnare them.”); *Spiegel, Inc. v. FTC*, 494 F.2d 59, 62 (7th Cir. 1974) (“[I]ndividuals in society have a right to be told the truth so that their choices among products, or, as in this case, among offers, can be understandingly made.”). And when consumers are deprived of free choice, they suffer financially. *See Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements*, BETTER BUS. BUREAU (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> [hereinafter *Subscription Traps*].

<sup>20</sup> *Subscription Traps; BBB Investigation Update: Free Trial Offer Scams*, BETTER BUS. BUREAU (Apr. 21, 2020), <https://www.bbb.org/article/news-releases/22040-bbb-update-free-trial-offer-scams> [hereinafter *BBB Investigation Update*].

<sup>21</sup> FTC Sends Nearly \$100 Million in Refunds to Vonage Consumers Who Were Trapped in Subscriptions By Dark Patterns and Junk Fees, Oct. 30, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-sends-nearly-100-million-refunds-vonage-consumers-who-were-trapped-subscriptions-dark-patterns>; FTC, Illinois Attorney General Take Action Against Grubhub for Harming Diners, Workers, and Small Businesses, Dec. 17, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-illinois-attorney-general-take-action-against-grubhub-harming-diners-workers-small-businesses>; FTC, State of Nevada Take Action Against IM Mastery Academy for Deceiving Consumers, May 1, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-state-nevada-take-action-against-im-mastery-academy-deceiving-consumers>; 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>; FTC Sends More Than \$27.6 Million to Consumers Harmed by Unauthorized Billing Schemes, Dec. 9, 2025,

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<https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-sends-more-276-million-consumers-harmed-unauthorized-billing-schemes>.

<sup>22</sup> *Subscription Traps; BBB Study: Free Trial Scams*, BETTER BUS. BUREAU ([https://www.bbb.org/all/scamstudies/free\\_trial\\_scams/free\\_trial\\_scams\\_full\\_study](https://www.bbb.org/all/scamstudies/free_trial_scams/free_trial_scams_full_study)) [hereinafter *BBB Study*].

<sup>23</sup> *Subscription Traps; BBB Study; BBB Investigation Update*.

<sup>24</sup> *BBB Study*. See also Jeffrey Gottfried et al., *Online Scams and Attacks in America Today*, Pew Research Center (July 31, 2025), <https://www.pewresearch.org/internet/2025/07/31/online-scams-and-attacks-in-america-today/> “Most people who’ve been a financial victim to an online scam or attack never contacted the authorities. Roughly three-quarters of this group say they have not reported to law enforcement that they lost money from an online scam or attack.”)

<sup>25</sup> *The Cost of Unused Subscriptions 2025*, Self, <https://www.self.inc/info/cost-of-unused-paid-subscriptions/#forgotten-to-cancel>.

<sup>26</sup> *Survey from Chase Reveals That Two-Thirds of Consumers Have Forgotten About At Least One Recurring Payment In The Last Year*, CHASE (Apr. 1, 2021), <https://media.chase.com/news/survey-from-chase-reveals>.

<sup>27</sup> *Subscription Service Statistics and Costs*, C+R RESEARCH (May 18, 2022), <https://www.cresearch.com/blog/subscription-service-statistics-and-costs/>.

<sup>28</sup> See TINA.org’s Class-Action Tracker, available at <https://truthinadvertising.org/legal-action/class-action-tracker/>.

<sup>29</sup> Unsurprisingly, a 2016 consumer survey found that hidden fees associated with, among other things, trial offers and automatically renewing subscriptions was the biggest financial complaint of consumers. See Rebecca Lake, *Report: Hidden Fees Are #1 Consumer Complaint*, MY BANK TRACKER (updated Nov. 29, 2021), <https://www.mybanktracker.com/money-tips/money/hidden-fees-consumer-complaint-253387>.

<sup>30</sup> Other outlets for consumer complaints, including the FTC, BBB, and TrustPilot, also receive complaints concerning negative option offers on a frequent and continual basis.

<sup>31</sup> Complaint submitted to TINA.org.

Note: All typographical errors in the consumer complaints recited in this comment were in the original text.

<sup>32</sup> Complaint submitted to TINA.org.

<sup>33</sup> Complaint submitted to TINA.org.

<sup>34</sup> Complaint submitted to TINA.org. See also *Ad Alert: Jolie Filtered Showerhead*, TINA.ORG (May 27, 2025), <https://truthinadvertising.org/articles/jolie-filtered-showerhead/>.

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- <sup>35</sup> *Business Profile: Dossier, Complaint Details*, BETTER BUS. BUREAU, <https://www.bbb.org/us/ny/new-york/profile/perfume/dossier-0121-87146464/complaints> (last visited Mar. 19, 2025).
- <sup>36</sup> *Ad Alert: Xfinity Home Internet and Mobile Promotion*, TINA.ORG (Mar. 3, 2025), <https://truthinadvertising.org/articles/xfinity-home-internet-and-mobile-promotion/>.
- <sup>37</sup> *Ad Alert: AARP Membership*, TINA.ORG (Feb. 25, 2025), <https://truthinadvertising.org/articles/aarp-membership/>.
- <sup>38</sup> TINA.org's Comment to FTC Re: Negative Option Rule; Project No. P064202 (June 20, 2023), [https://truthinadvertising.org/wp-content/uploads/2023/06/6\\_20\\_23-Negative-Option-Rule-Comment-to-FTC.pdf](https://truthinadvertising.org/wp-content/uploads/2023/06/6_20_23-Negative-Option-Rule-Comment-to-FTC.pdf); Judy W., Review on BBB's HelloFresh Customer Reviews (Apr. 24, 2022), <https://www.bbb.org/us/ny/new-york/profile/food-delivery/hellofresh-0121-142623/customer-reviews>.
- <sup>39</sup> TINA.org, Complaint Letter to FTC re: FabKids' Deceptive Advertising and Illegal Business Practices (Aug. 30, 2021), [https://truthinadvertising.org/wp-content/uploads/2021/08/8\\_30\\_21-FabKids-complaint-to-FTC\\_Redacted.pdf](https://truthinadvertising.org/wp-content/uploads/2021/08/8_30_21-FabKids-complaint-to-FTC_Redacted.pdf).
- <sup>40</sup> TINA.org's Comment to FTC Re: Negative Option Rule; Project No. P064202 (June 20, 2023), [https://truthinadvertising.org/wp-content/uploads/2023/06/6\\_20\\_23-Negative-Option-Rule-Comment-to-FTC.pdf](https://truthinadvertising.org/wp-content/uploads/2023/06/6_20_23-Negative-Option-Rule-Comment-to-FTC.pdf).
- <sup>41</sup> TINA.org's Comment to FTC Re: The FTC Should Update Its Negative Option Rule (Dec. 2, 2019), [https://truthinadvertising.org/wp-content/uploads/2019/12/12\\_2\\_19-comment-to-FTC-re-NOO-Rule.pdf](https://truthinadvertising.org/wp-content/uploads/2019/12/12_2_19-comment-to-FTC-re-NOO-Rule.pdf).
- <sup>42</sup> *What You Should Know about Nerium*, TINA.ORG (updated Sept. 28, 2023), <https://truthinadvertising.org/articles/what-you-should-know-about-nerium/>; *see also* Nerium Complaints on File with FTC 2012-July 2016, <https://truthinadvertising.org/wp-content/uploads/2017/04/Nerium-Complaints.pdf> (sent to TINA.org in response to FOIA Request).
- <sup>43</sup> Consumers with limited disposable income do not have the means to absorb unexpected or unauthorized negative option payments, and as a result, when they are tricked into recurring subscription charges, they may find themselves unable to pay for necessary expenses or may incur costly overdraft charges. *See* Kamaron McNair, *Nearly Half of Americans Say They Live Paycheck to Paycheck*, CNBC (Nov. 19, 2024), <https://www.cnbc.com/2024/11/19/bank-of-america-nearly-half-of-americans-live-paycheck-to-paycheck.html> (noting that 26 percent of households spend 95 percent or more of their income on necessities); Sally Greenberg, *Capital One Eliminates Predatory Overdraft Charges*, NCL (Jan. 6, 2022), [https://nclnet.org/overdraft\\_fees/](https://nclnet.org/overdraft_fees/) (explaining that a \$5 charge can result in a \$40 cost, when including a \$35 overdraft fee).
- <sup>44</sup> Older adults are particularly vulnerable to deceptive subscription services. One study by the Iowa Attorney General's office found that consumers older than 65 were disproportionately represented among those who were billed for a subscription but never used any of its purported benefits. *See* Prentiss Cox, *The Invisible Hand of Preacquired Account Marketing*, 47 HARV. J. LEGIS. 425, 452 (2010).

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<sup>45</sup> Deceptive negative option offers are problematic for those with disabilities, especially those with vision and hearing impairments. For example, cancellation policies that require a phone call can be particularly difficult for consumers who have hearing problems, and a website that disguises or hides material terms of an offer is a notable challenge for those with vision issues. See Natasha Frost, *Why Call-to-Cancel Policies Are an Accessibility Nightmare*, MODERNRETAIL (July 22, 2020), <https://www.modernretail.co/retailers/why-call-to-cancel-policies-are-an-accessibility-nightmare/>; Caruso & Cox, *supra*, at 1636. Further, those with mental health challenges or disabilities are especially susceptible to deceptive negative option schemes. See, e.g., Nadya Ali et al., Citizens Advice, TRICKS OF THE TRADE (Dec. 2022), [https://assets.ctfassets.net/mfz4nbgura3g/4UtD4Gkl7cmdVrps2Uy2ZG/378374c06e75496974571cfd6a9237bf/OCA\\_20report\\_20-20version\\_202\\_20\\_5\\_.pdf](https://assets.ctfassets.net/mfz4nbgura3g/4UtD4Gkl7cmdVrps2Uy2ZG/378374c06e75496974571cfd6a9237bf/OCA_20report_20-20version_202_20_5_.pdf) (“[W]hen looking at subscription traps we found 26% of people have signed up accidentally, but this rises to 46% of people with a mental disability or mental health problem.”).

<sup>46</sup> Children are vulnerable to deceptive subscription traps. Although children are adept at handling technology, when it comes to advertising, they do not interpret or understand marketing material in the same ways that adults do—a smaller proportion of children than adults have the ability to recognize advertising messages, and even those that do may not be able to critically evaluate the underlying marketing message. See Angela Campbell, *Rethinking Children’s Advertising Policies for the Digital Age*, 29 LOY. CONSUMER L. REV. 1, 38 (2017); Iulia Grad, *Ethical Considerations on Advertising to Children*, 6 POSTMODERN OPENINGS 43, 51 (2015); Fran Blumberg et al., *Linkages Between Media Literacy and Children’s and Adolescents’ Susceptibility to Advertising*, ADVERTISING TO CHILDREN: NEW DIRECTIONS, NEW MEDIA 158, 163 (Mark Blades et al. eds., 2014). Thus, children (and by extension their parents) are also unwitting consumers of subscription products and services. See Jaime Catmull, *4 Ways Your Child’s Unlimited App Usage May Be Costing You*, FORBES (Feb. 26, 2025), <https://www.forbes.com/sites/jaimecatmull/2025/02/26/four-ways-your-childs-unlimited-app-usage-may-be-costing-you/> (“Whether a child signed up for the app under the pretense that it was entirely free, or if they meant to come back and cancel it before the first charge, it’s possible for busy parents to go months paying for a rogue app subscription without even realizing it.”).

<sup>47</sup> See Peter S. Menell, *Symposium—Brand New World: Distinguishing Oneself in the Global Flow, Part II 2014: Brand Totalitarianism*, 47 U.C. DAVIS L. REV. 787, 790 n.17 (2014) (“[I]nformative advertising plays a role in the introduction of new products to the market and in allowing consumers to differentiate among similar products.”); see also, e.g., Andrew Faridani, *How To Market To Skeptical Consumers*, FORBES (May 22, 2024), <https://www.forbes.com/councils/forbesbusinessdevelopmentcouncil/2024/05/22/how-to-market-to-skeptical-consumers/> (“Clearing that air of mistrust requires a robust marketing strategy that is both novel and authentic.”).

<sup>48</sup> See *Spiegel*, 494 F.2d at 63 (“If sellers in our society are free to compete for consumers’ patronage with others by unfair advertising, not only is the consumers’ right violated, but our commitment to fair competition becomes a pretense.”).

<sup>49</sup> *FTC v. Algoma Co.*, 291 U.S. 67, 79 (1934) (citations omitted).

<sup>50</sup> Rule Concerning the Use of Prenotification Negative Option Plans, Advanced notice of proposed rulemaking (Mar. 13, 2026), <https://www.federalregister.gov/documents/2026/03/13/2026-04952/rule-concerning-the-use-of-prenotification-negative-option-plans>.

<sup>51</sup> 16 C.F.R. § 425 (1973).

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<sup>52</sup> ROSCA contains provisions related to disclosures, express consent, and provision of simple cancellation of negative option offers; however, it only applies to online transactions and does not provide the level of detail prescribed in the previously proposed amendments to the Rule (i.e., the Click-to-Cancel Rule). *See* 15 U.S.C. § 8403.

<sup>53</sup> The TSR prohibits telemarketers from making misrepresentations regarding negative option offers—but it applies only to offers made over the phone. *See* 16 C.F.R. 310.

<sup>54</sup> The FTC, the Consumer Financial Protection Bureau, and multiple state attorneys general have all brought civil actions to enforce the current laws against companies allegedly engaged in deceptive negative option marketing. *See* Negative Option Rule, 89 Fed. Reg. 90476 (Nov. 15, 2024) (to be codified at 16 C.F.R. pt. 425); Comment Letter from Attorneys General to FTC re: Negative Option Rule (16 C.F.R. pt. 425) (Project No. P064202); Request for Public Comment, 84 Fed. Reg. 52393-01 (Dec. 2, 2019) (ANPRM).

Further, the FTC’s ability to rely on the FTC Act to protect consumers and deter deception has been limited since the Supreme Court’s decision in the AMG Capital Management case. *See AMG Capital Mgmt., LLC v. FTC*, 593 U.S. 67 (2021) (holding that the FTC does not have the authority to obtain consumer redress under Section 13(b) of the FTC Act).

<sup>55</sup> *FTC’s ROSCA Actions*, TINA.ORG (updated Oct. 15, 2025), <https://truthinadvertising.org/articles/fcs-rosca-actions/>. The agency has also issued a staff advisory opinion regarding the application of ROSCA.

<sup>56</sup> *See, e.g.*, Alaska Stat. §§ 45.45.920, 930; Ark. Code Ann. § 4-86-112; Cal. Bus. & Prof. Code §§ 17600-17606; Colo Rev. Stat. 6-1-732; Conn. Gen. Stat. § 42-126b; D.C. Code § 28A-201 – 28A-204; Del. Code Ann. tit. 6, §§ 2731-2737; Fla. Stat. § 501.165; Ga. Code Ann. §§ 13-12-1 - 13-12-5; Haw. Rev. Stat. § 481-9.5; Idaho Code § 48-603G; 815 Ill. Comp. Stat. § 601/1-601/20; Ky. Rev. Stat. Ann. § 367.570 – 367.585; La. Stat. Ann. § 9:2716; 940 Mass. Code Regs. 38.00; Minn. Stat. §§ 325G.56-325G.63; N.J. Stat. Ann. § 56:12-95.5; N.M. Code R. §§ 12.2.11.1 – 12.2.11.9; N.Y. Gen. Bus. Law §§ 527, 527-a; N.C. Gen. Stat. §§ 75-41; N.D. Cent. Code §§ 51-37-01 – 51-37-006; Or. Rev. Stat. §§ 646A.292 - 646A.295; Tenn. Code Ann. § 47-18-133; Vt. Stat. Ann. tit. 9, § 2454a; Va. Code Ann. § 59.1-207.45 – 59.1-207.49; *See also* Iowa Code Ann. § 552.8 (regarding physical exercise clubs); Me. Stat. tit. 10, § 1210-C (regarding health club memberships); Md. Code Ann., Com. Law § 14-12B-06 (regarding health club services); Mo. Rev. Stat. § 407.675 (regarding discount buying clubs); Mont. Admin. R. 38.5.6004 (regarding natural gas services); Nev. Rev. Stat. § 598.940 – 598.966 (regarding dance studio contracts and health club memberships); N.H. Rev. Stat. Ann. § 358-I:5 (regarding health club memberships); 73 Pa. Cons. Stat. § 2164(b) (regarding health clubs memberships); 6 R.I. Gen. Laws § 6-13-14 (regarding written leases of personal property); S.C. Code Ann. § 44-79-60 (regarding physical fitness services); S.C. Code Ann. §§ 37-6-120, 38-78-55 (regarding service contracts for repair, replacement or maintenance of property); S.C. Code Ann. § 44-79-60(4) (regarding physical fitness services); S.D. Codified Laws § 49-31-116 (regarding telecommunications services); Utah Code Ann. §§ 15-10-201 – 15-10-202 (regarding service contracts for property maintenance or repair); Wis. Stat. § 134.49 (regarding business contracts for leasing equipment or providing services).

<sup>57</sup> MasterCard, Visa and American Express, for example, have established their own rules to govern negative option offers. *See* Updated Policy for Subscription Merchants Offering Free Trials or Introductory Promotions, VISA (June 20, 2019), <https://usa.visa.com/dam/VCOM/>

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[global/support-legal/documents/subscription-merchants-visa-public.pdf](https://usa.visa.com/content/dam/VCOM/global/support-legal/documents/subscription-merchants-visa-public.pdf) (requiring merchants to get express consent for recurring payments, send copies of terms and conditions of subscriptions, make upfront disclosures, and create easier cancellation, among other requirements); Visa Trial Subscription Updates (April 18, 2020), <https://usa.visa.com/content/dam/VCOM/global/support-legal/documents/visa-new-subscription-rules-flier.pdf> (requiring merchants to send notifications when a trial, promotional or introductory period is about to expire and if there are any changes to the agreement); *Press Release: Visa Brings Convenience and Control to Booming Subscription Economy*, VISA (Apr. 4, 2024), <https://usa.visa.com/about-visa/newsroom/press-releases.releaseId.20541.html> (announcing Visa’s subscription manager tool for Visa cardholders to more easily track and stop their subscriptions); Visa Subscription Management, <https://corporate.visa.com/en/products/visa-subscription-management.html>; Revised Standards for Subscription/Recurring Payments and Negative Option Billing Merchants, MASTERCARD (Nov. 2022), [https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/subscription\\_recurring-payments-and-negative-option-billing-merchants.pdf](https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/subscription_recurring-payments-and-negative-option-billing-merchants.pdf) (requiring, among other things, merchants to provide cardholders with an email or other electronic communication every time there is an approved authorization request for a subscription, including instructions for canceling subscriptions); Mastercard Greater Transparency for Cardholders (Nov. 2022), <https://www.mastercard.com/content/dam/mccom/shared/business/support/rules-pdfs/subscription-and-negative-option-billing-model-summary.pdf>; *Don’t Let Disputes Become a Recurring Thing*, AMERICAN EXPRESS, <https://www.americanexpress.com/content/dam/amex/sg/merchant/pdf/recurring-disputes-guide-sg.pdf> (requiring merchants to disclose the terms of billing and cancellation at the time of purchase, send reminders for upcoming payments, and have a clear and simple cancellation process, among other things); American Express Recurring Billing – Introductory Offer/Free Trial Policy, <https://www.americanexpress.com/content/dam/amex/au/pdfs/rb-intro-offer-free-trial.pdf> (requiring merchants to disclose all terms of Introductory Offers and Free Trials, have a simple and easy cancellation process that allows card members to cancel before the first recurring charge, and send a written notification before submitting the first recurring charge, among other things).

<sup>58</sup> *Federal Trade Commission: Protecting Consumers and Fostering Competition in the 21st Century, Before the H. Comm. on Appropriations*, 116th Cong. 16-17 (2019) (Statement of Joseph Simons, Chair of the Fed. Trade Comm’n).

When there is a specific FTC rule in place delineating certain conduct as prohibited, companies have clear parameters to stay within the boundaries of acceptable behavior and regulators have a clear path for enforcement. *See Keynote Remarks of FTC Acting Chairwoman Rebecca Kelly Slaughter*, FED. TRADE COMM’N, (May 4, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1589607/keynote-remarks-acting-chairwoman-rebecca-kelly-slaughte-cfa-virtual-consumer-assembly.pdf](https://www.ftc.gov/system/files/documents/public_statements/1589607/keynote-remarks-acting-chairwoman-rebecca-kelly-slaughte-cfa-virtual-consumer-assembly.pdf) (“Once developed and published, rules provide clarity about the boundaries of illegal behavior, and in exchange for that clarity companies can face penalties even for first-time rule violations. As a result, rules create strong incentives to comply with the law. Powerful deterrence makes for lawful markets that are good for consumers and businesses alike.”).

<sup>59</sup> *Custom Commc’ns, Inc. v. Fed. Trade Comm’n*, No. 24-3137, slip op. at 6 (8th Cir. July 8, 2025).

<sup>60</sup> Negative Option Rule, 88 Fed. Reg. 24716, 24736 (Apr. 24, 2023), <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

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<sup>61</sup> Negative Option Rule, 88 Fed. Reg. 24716, 24736 (Apr. 24, 2023), <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

<sup>62</sup> Negative Option Rule, RIN 3084-AB60, Action: Final Rule, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p064202\\_negative\\_option\\_rule.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p064202_negative_option_rule.pdf) (“limiting the reminder provision to just non-physical goods . . . may not adequately mitigate the harm caused by negative option practices in the marketplace.”)

<sup>63</sup> *Subscription Service Statistics and Costs*, C+R Research, May 18, 2022, <https://www.crrresearch.com/blog/subscription-service-statistics-and-costs/>. See also Dasha Mildner, *You May Be Losing \$1,000 a Year to Subscriptions, and You May Not Even Know It*, *CNET Survey Finds*, CNET (June 18, 2025), <https://www.cnet.com/tech/services-and-software/subscription-survey-2025/> (“Subscribers report spending an average of \$17 each month (\$204 per year) on unused subscription services . . .”); Jessica Guynn & Bailey Schulz, *The High Cost of Subscription Binges: How Businesses Get Rich Off You Forgetting to Cancel*, USA Today (Dec. 3, 2023), <https://www.usatoday.com/story/money/2023/12/03/forgot-to-cancel-subscription-cost/71755592007/> (“Consumers often lose track of the myriad services they subscribe to. Nearly three-quarters of consumers say it’s easy to forget about recurring monthly charges. Some 42% say they forgot about subscriptions and kept paying for them even though they were no longer using them.”); *Forgotten Subscriptions and Frustrating Cancellations Are Fueling Billions in Chargebacks*, Fintech Finance News (Sept. 30, 2025), <https://ffnews.com/newsarticle/paytech/forgotten-subscriptions-and-frustrating-cancellations-are-fueling-billions-in-chargebacks/> (“consumers spend an average of \$2,600 a year on subscriptions, and nearly half admit they’re paying for services they forgot they even had.”).

<sup>64</sup> Diane Wilson, *Survey: 42% of People Still Pay For Subscriptions They Don’t Use. Are You?*, ABC11 WTVD, Sept. 13, 2022, <https://abc11.com/subscription-not-using-still-paying-didnt-cancel-after-free-trial/12224628/>. See also *The Subscription Epidemic: Americans Are Bleeding \$27 Billion a Year on Subscriptions They Don’t Even Know About*, Medium (March 4, 2026), <https://medium.com/@davesiddharth01/the-subscription-epidemic-americans-are-bleeding-27-7-3f0d371b50c2> (“40% of unwanted subscriptions exist because the service auto-renewed without the consumer actively choosing to continue,” and “39% of consumers forgot to cancel a free trial that converted to a paid subscription.”); *Subscription Statistics 2025*, Marketing LTB (Nov. 15, 2025), <https://marketingltb.com/blog/statistics/subscription-statistics/> (“29% of consumers have subscribed to something accidentally.”).

<sup>65</sup> *The Cost of Unused Subscriptions 2025*, Self, <https://www.self.inc/info/cost-of-unused-paid-subscriptions/#forgotten-to-cancel>. See also 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/> (finding that 48 percent of consumers have signed up for a free trial of a paid subscription and then forgot to cancel it).

<sup>66</sup> See TINA.org’s Adore Me Investigation, <https://truthinadvertising.org/brands/adore-me/> and TINA.org’s Savage X Fenty Investigation, <https://truthinadvertising.org/brands/savage-x-fenty/>.

<sup>67</sup> Letter from TINA.org to FTC Regarding Savage X Fenty’s Deceptive Advertising and Illegal Business Practices (Feb. 10, 2020), at 8, [https://truthinadvertising.org/wp-content/uploads/2020/02/2\\_10\\_20-TINA-ltr-to-FTC-re-Savage-X-Fenty\\_Redacted.pdf](https://truthinadvertising.org/wp-content/uploads/2020/02/2_10_20-TINA-ltr-to-FTC-re-Savage-X-Fenty_Redacted.pdf).

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<sup>68</sup> Negative Option Rule, 88 Fed. Reg. 24716, 24729-30 (Apr. 24, 2023), <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

<sup>69</sup> FTC Policy Statement on Deception (Oct. 14, 1983), [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf).

<sup>70</sup> FTC’s Advertising FAQ’s: A Guide for Small Business, <https://www.ftc.gov/business-guidance/resources/advertising-faqs-guide-small-business>; FTC’s Dot Com Disclosures: Information About Online Advertising (May 2000), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-issues-guidelines-internet-advertising/0005dotcomstaffreport.pdf>; FTC’s .com Disclosures: How to Make Effective Disclosures in Digital Advertising (Mar. 2013), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

<sup>71</sup> The terms of negative option offers are typically presented to consumers in the form of lengthy contracts of adhesion in which consumers have no bargaining power and are unlikely to read the entirety of the contracts, never mind understand all the terms within them. As such, consumers would have no realistic way of knowing if one material term is changed unless the company is required to provide clear and conspicuous notice of the change. *See, e.g., Stover v. Experian Holdings, Inc.*, 978 F.3d 1082 (9th Cir. 2020) (holding that consumers have no obligation to investigate whether the contract drafter modified the contract after signing because to rule otherwise would undermine the contract principle requiring a “meeting of the minds” or mutual assent).

<sup>72</sup> TINA.org is not suggesting that all changes to contractual terms be disclosed. Rather, TINA.org is urging the FTC to require that negative option marketers always clearly and conspicuously disclose *material* changes to *material* terms.

<sup>73</sup> *See, e.g.,* Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief, *U.S. v. Facebook, Inc.*, No. 19-cv-2184 (D.D.C. July 24, 2019), [https://www.ftc.gov/system/files/documents/cases/182\\_3109\\_facebook\\_order\\_filed\\_7-24-19.pdf](https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_order_filed_7-24-19.pdf) (requiring Facebook to “clearly and conspicuously disclose” any sharing of users’ private information “which materially exceeds the restrictions imposed by a User’s Privacy Setting(s)” to consumers prior to such sharing, and obtain the user’s affirmative express consent.); Order Modifying Prior Decision and Order, *In the Matter of Facebook, Inc.*, No. C-4365 (F.T.C. Apr. 28, 2020), <https://www.ftc.gov/system/files/documents/cases/c4365facebookmodifyingorder.pdf> (same). *See also* Press Release, Fed. Trade Comm’n, Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises (Nov. 29, 2011), <https://www.ftc.gov/news-events/news/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep-privacy-promises>.

<sup>74</sup> *See, e.g.,* Ark. Code Ann. § 4-86-112(h) (“If there is a material change in terms of the automatic renewal or continuous service that has been accepted by a consumer in this state, the business shall provide the consumer with a clear and conspicuous notice of the material change and information regarding how to cancel in a manner that is capable of being retained by the consumer.”); Cal. Bus. & Prof. Code § 17602(g) (“In the case of a material change in the terms of the automatic renewal or continuous service that has been accepted by a consumer in this state, the business shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.”); Colo. Rev. Stat. §6-1-732(3) (“If a material change occurs in the

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terms of an automatic renewal contract that has been accepted by a consumer in this state, the person shall provide to the consumer, in a manner that may be retained by the consumer, a clear and conspicuous notice of the material change and information regarding cancellation of the automatic renewal contract, including information concerning the mechanism described in subsection (2)(d) of this section.”); Haw. Rev. Stat. §481-9.5(h) (“In the case of a material change in the terms of the automatic renewal or continuous service offer pursuant to a consumer contract that has been accepted by a consumer in Hawaii, the person shall clearly and conspicuously provide the consumer with a notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer prior to the implementation of the material change.”); Minn. Stat. § 325.G.57(3) (“Upon a material change in the terms of the indefinite subscription agreement, the seller must provide to the consumer in a timely manner, and in any case prior to the implementation of the material change, a clear and conspicuous notice of the material change and provide information regarding how to terminate the agreement in a manner that is capable of being retained by the consumer.”); N.Y. Gen. Bus. Law §527-a(1)(g) (“It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to fail to provide a consumer who has accepted an automatic renewal or continuous service offer with a clear and conspicuous notice of any material change to the term of the automatic renewal or continuous service offer, including any price increases, at least five business days prior, but no more than thirty days prior, to the date of the change, in the same manner as required by paragraph f of this subdivision.”); N.D. Cent. Code § 51-37-02(3) (“If there is a material change in the terms of an agreement that contains a provision for automatic renewal, the seller shall provide the buyer with clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner which is capable of being retained by the buyer.”); Or. Rev. Stat. § 646A.295(3) (“In the case of a material change in the terms of the automatic renewal or continuous service offer that has been accepted by a consumer, the person shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.”); Va. Code Ann. § 59.1-207.46(C) (“In the case of a material change in the terms of the automatic renewal or continuous service offer that has been accepted by a consumer in the Commonwealth, the supplier shall, prior to the implementation of the material change, provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.”)