



March 27, 2025

The Honorable Mike Johnson  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable John Thune  
Majority Leader  
U.S. Senate  
Washington, D.C. 20510

The Honorable Hakeem Jeffries  
Democratic Leader  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Chuck Schumer  
Democratic Leader  
U.S. Senate  
Washington, D.C. 20510

Dear Speaker Johnson, Majority Leader Thune, Leader Jeffries, and Leader Schumer:

The undersigned organizations urge Congress to exercise its authority under the Congressional Review Act (CRA) to overturn the Federal Trade Commission's "Rule Concerning Recurring Subscriptions and Other Negative Option Programs" (the "Rule").

The Rule is overbroad, beyond the FTC's statutory authority, and will needlessly burden businesses and confuse consumers. Although Congress has enacted targeted statutes regulating particular types of recurring subscriptions, the Rule would effectively override those statutes with new, one-size-fits-all requirements.

The Rule applies to "negative option" marketing of goods or services through automatic renewals, continuity plans, and free-to-pay trial subscriptions that continue until the consumer cancels. The Rule covers offers online, on the phone, and in person, and covers both business-to-consumer and business-to-business transactions.

In all, the Rule would govern more than a *billion* recurring subscription agreements, spanning every sector of our national economy. These subscription agreements allow companies to provide the vast majority of American consumers – more than 220 million individuals – everything from internet and home security service to lawn care and home meal kits. Large tech companies offer bundled subscription services that allow consumers to make one monthly payment to cover streamed video, games, music, and even cloud storage. Small startup companies rely on free-to-pay subscription models to introduce their products to new customers. Apart from being swallowed up by the Rule, the only thing these agreements have in common is that they are designed to provide a product or service until the customer cancels, allowing consumers the convenience of uninterrupted service. The FTC calls these subscriptions "negative option" contracts, and has now deemed them categorically "unfair or deceptive" unless sellers meet a new set of complex and burdensome requirements.

Congress enacted the Magnuson-Moss Warranty Act in 1975 to limit the FTC's rulemaking authority to "specific," "prevalent" unfair or deceptive practices, and to require the FTC to follow rigorous rulemaking procedures. The FTC disregarded those constraints here.<sup>1</sup> While popular recurring subscriptions are used lawfully and nondeceptively in a wide array of transactions and sectors, the FTC's Rule broadly regulates *all* recurring subscriptions in *all* sectors of the economy. The Rule imposes onerous obligations on all aspects of the transaction, from enrollment to cancellation. This will deter many companies from offering popular programs and promotions, and add compliance costs for those that do offer recurring subscriptions.

### Negative Effects on Growth, the Economy & Consumers

The expansive and uncertain civil liability regime created by the FTC's Rule will discourage businesses from offering automatic renewal, trial subscriptions, and other negative-option contracting methods that consumers have come to expect and enjoy. The end result will be fewer choices for consumers and greater friction in the provision of goods and services. Imagine going to your favorite streaming service and having to re-enroll before watching a program because the auto-renew feature was no longer available, thanks to the liability risk created by the Rule.

Even where businesses try to maintain negative option contracting methods, they will incur compliance costs associated with implementing the Rule's disclosure, consent, and cancellation requirements or, as the necessary alternative, obtaining an "exemption" from the FTC. Instead of a simple, efficient enrollment process, consumers will have to wade through multiple disclosures and take extra steps to consent to the recurring subscription separately from the rest of the transaction. This will increase costs and confusion for consumers.

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<sup>1</sup> The FTC subverted at least three special rulemaking requirements that Congress set out in Section 18 of the FTC Act for "Magnuson-Moss" rulemaking:

1. The FTC dramatically expanded the scope of the proposed rule only *after* issuing the ANPRM required by law. As a result, interested parties were deprived of the opportunity to provide "suggestions or alternative methods for achieving" the objectives addressed by the final rule. As Commissioner Holyoak observed, the FTC thereby "cut itself off from valuable public comments at important early stages (especially as to regulatory alternatives) and ignored the rulemaking guardrails that Congress carefully established to forestall nondelegation concerns that might otherwise exist."
2. Congress also provided in Section 18 that the FTC must "prescribe ... rules which define with specificity acts or practices which are unfair or deceptive acts or practices." Instead, the Negative Option Rule broadly prohibits misrepresentation of "**any** Material fact" — and broadly requires disclosure of "**all** Material terms" in connection with the sale or promotion of "**any** good or service with a Negative Option Feature." (emphasis added).
3. The FTC ignored Congress's mandate to propose rules "only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent." The FTC failed to establish the enforcement record necessary to justify a rule under the law for sectors across the economy.

For these reasons and more, the FTC's two Republican commissioners (including now-Chairman Ferguson) voted against issuing the Rule. The Rule is also subject to judicial challenge for violating the First Amendment and the nondelegation doctrine, among other deficiencies.

Invoking Congress's prerogative as provided in the CRA will help re-establish the rulemaking guardrails that Congress set for the FTC almost fifty years ago. Repeal also would save taxpayer money by expediting the resolution of legal challenges brought against the FTC by impacted parties. But perhaps most important, repeal would allow American consumers to continue to access vital, helpful, and innovative goods and services using the subscription model they have come to expect. We therefore urge Congress to enact a resolution of disapproval to vitiate the FTC's Rule.

Sincerely,

ACA Connects - America's Communications Association

ACT | The App Association

American Financial Services Association

American Property Casualty Insurance Association

Association of National Advertisers

Computer & Communications Industry Association

Consumer Credit Industry Association

Consumer Technology Association

Electronic Security Association

Guaranteed Asset Protection Alliance

Health & Fitness Association

Interactive Advertising Bureau

International Franchise Association

Motor Vehicle Protection Product Association

Motion Picture Association

National Home Services Contract Association

NCTA – The Internet & Television Association

National Retail Federation

Real Estate Services Providers Council, Inc.

Small Business & Entrepreneurship Council

Service Contract Industry Council

Software & Information Industry Association

TechNet

U.S. Chamber of Commerce