



April 13, 2026

Hon. April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex C)  
Washington, D.C. 20580

Re: International Franchise Association Comments on the Advance Notice of Proposed Rulemaking Regarding Negative Option Marketing Practices and the Rule Concerning the Use of Prenotification Negative Option Plans [The Negative Option Rule], 16 C.F.R. Part 425, : RIN 3084-AB54

Dear Secretary Tabor:

The International Franchise Association (IFA) appreciates this opportunity to submit its views to the Federal Trade Commission, as requested by the Commission in its Advance Notice of Proposed Rulemaking (ANPRM) regarding the Negative Option Rule (the “Rule”), published in the Federal Register on March 13, 2026.<sup>1</sup> As IFA advised in our January 2, 2026 filing before the Commission, we do not believe that another rulemaking proceeding is either necessary or appropriate, for the reasons detailed in that filing.<sup>2</sup> However, if the Commission ultimately determines to conduct another rulemaking proceeding, and issues a Notice of Proposed Rulemaking to that effect, we intend to participate in that proceeding and represent and actively support the views and interests of our members.

#### International Franchise Association

The International Franchise Association (IFA) is the largest organization representing franchising. Its members include franchise companies in over 300 different industries, individual franchisees, and companies that support those franchise companies in marketing, law, technology, human resources, business development, and operations. Franchising serves as an engine for economic growth, contributing an estimated \$907.3 billion in economic output and providing an estimated 8.8 million direct jobs in 2025 across the more than 830,000 franchised establishments

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<sup>1</sup> [Federal Trade Commission: 16 CFR Part 425: RIN 3084-AB54: Rule Concerning the Use of Prenotification Negative Option Plans: Advance Notice of Proposed Rulemaking and Request For Public Comment](#), 91 Fed. Reg. 12,318 (March 13, 2026) (hereinafter ANPRM).

<sup>2</sup> See [Public Comment Filed by the International Franchise Association and the Health & Fitness Association](#) (January 2, 2026), in [Federal Trade Commission: 16 CFR Part 425 \[File No. R607000\]: Petition for Rulemaking of Consumer Federation of America and the American Economic Liberties Project: Receipt of petition; request for comment](#) (Comment No. 22).

operating in the United States.<sup>3</sup> When considering the significant impact of franchised businesses on the U.S. economy, it is imperative to recognize that franchising is small. Approximately half of the U.S. franchised businesses are operated by franchisees owning a single unit.<sup>4</sup> These small business owners hire local workers, serve local consumers, support local families and invest in local communities. Often, these small businesses are the first casualties of broad sweeping regulations that fail to appropriately consider the disparate impact of compliance costs on small businesses, and those casualties have real consequences to local communities across America, including lost job opportunities, less competition resulting in higher prices and fewer consumer choices, and fewer local businesses investing back into the community.

On November 15, 2024, the Commission promulgated an amended version of the Negative Option Rule.<sup>5</sup> On July 8, 2025, however, the Court of Appeals for the Eighth Circuit granted a number of petitions for review and vacated the amended Rule.<sup>6</sup> Thereafter, on February 12, 2026, in response to the Court action, the Commission revised the Rule “to restore it in the form it existed before the 2024 Rule became effective.”<sup>7</sup> The Commission noted in particular that the Court had found that “the Commission’s failure to issue a preliminary regulatory analysis was ‘procedurally insufficient.’”<sup>8</sup> As noted above – and as our response to the general questions set forth in Part VIII.A. of the ANPRM – we do not believe that a new rulemaking proceeding is warranted because we do not believe that the current Rule needs to be amended. However, if the Commission nevertheless determines to conduct a new rulemaking proceeding to amend the current Rule, we respectfully urge the Commission to ensure both (1) that the rulemaking proceeding complies with all the procedural requirements prescribed by the Federal Trade Commission Act, and (2) that any amendments to the Rule which the Commission subsequently determines to effect will satisfy all applicable substantive requirements.

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<sup>3</sup> Alka Sinha, Khadija Cochinwala & Jin Wang, 2026 FRANCHISING ECONOMIC OUTLOOK 4, (INT’L FRANCHISE ASS’N 2026), <https://www.franchise.org/franchising-economic-outlook/>.

<sup>4</sup> See 2023 Mega 99 Rankings, MULTI-UNIT FRANCHISEE MAGAZINE ISSUE 1 (2023), [https://www.franchising.com/articles/2023\\_mega\\_99\\_rankings.html](https://www.franchising.com/articles/2023_mega_99_rankings.html) [hereinafter, the 2023 MEGA 99 RANKINGS].

<sup>5</sup> *Federal Trade Commission: 16 CFR Part 425: RIN 3084-AB60: Negative Option Rule: Final Rule*, 89 Fed. Reg. 90476, 90537 (November 15, 2024) (hereinafter *Final Rule Notice*).

<sup>6</sup> *Custom Communications, Inc., doing business as Custom Alarm, et al., v. Federal Trade Commission*, Nos. 24-3137, 24-3388, 24-3415, 24-3442, 24-3469 (8th Cir. July 8, 2025) (*per curiam*).

<sup>7</sup> *Federal Trade Commission: 16 CFR Parts 425, 463, and 910: RIN 3084-AB60, RIN 3084-AB72, and RIN 3084-AB74: Revision of the Negative Option Rule, Withdrawal of the CARS Rule, Removal of the Non-Compete Rule To Conform These Rules to Federal Court Decisions: Final Rule*, 91 Fed. Reg. 6507 (February 12, 2026), citing *Menorah Med. Ctr. v. Heckler*, 768 F.2d 292, 297 (8th Cir. 1985); *Action on Smoking & Health v. CAB*, 713 F.2d 795, 797 (D.C. Cir. 1983).

<sup>8</sup> *Id.*

## Procedural Issues

With respect to the applicable procedural requirements, if the Commission determines to issue a Notice of Proposed Rulemaking, that Notice should include a preliminary regulatory analysis, which should among other things address and answer the questions regarding the marketplace for negative option programs set forth in Part VIII.B. of the ANPRM. As our amicus brief before the Court of Appeals and the Court of Appeals opinion itself noted, Section 22 of the FTC Act requires the Commission to prepare such an analysis for any amendment to a rule that the Commission estimates will “have an annual effect on the national economy of \$100,000,000 or more – or will cause a substantial change in the cost or price of certain categories of goods or services – or otherwise determines “will have a significant impact upon persons subject to regulation under such amendment and upon consumers.”<sup>9</sup> That analysis must include, in particular,

- (A) a concise statement of the need for, and the objectives of, the proposed rule;
- (B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and
- (C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.<sup>10</sup>

When it issued the NPRM in the earlier rulemaking proceeding, the Commission did not include a preliminary regulatory analysis because it did not believe that the Rule would have any of the listed effects.<sup>11</sup> That belief proved to be erroneous, in light of the Presiding Officer’s later determination that “the proposed amendment to the Negative Option Rule will have an annual effect on the national economy of \$100 million or more.”<sup>12</sup> She concluded, in particular, that the costs of complying with the proposed rule would be far more than \$100 million, given the fact that it would impose several new requirements that would require changes in existing practices and/or disclosure forms. To reach that conclusion, she relied in large part on IFA’s estimate that compliance with the proposed rule would require IFA members to devote significant financial resources and hundreds of hours each “to review and modify their contracts, websites, telemarketing, and in-person sales practices;”<sup>13</sup> on the National Cable Television Association’s estimate that, with respect to the cable television industry, the proposed rule “would cost major

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<sup>9</sup> [15 U.S.C. § 57b-3\(a\)\(1\)\(A\),\(B\),\(C\),\(2\)](#).

<sup>10</sup> [15 U.S.C. § 57b-3\(b\)\(1\)\(A\),\(B\),\(C\)](#); [16 C.F.R. § 1.11\(c\)\(1\)-\(4\)](#), citing the Regulatory Flexibility Act, [5 U.S.C. §§ 601-612](#), and the Paperwork Reduction Act, [44 U.S.C. §§ 3501-3520](#).

<sup>11</sup> [Federal Trade Commission: 16 CFR Part 425: RIN 3084-AB60: Negative Option Rule: Proposed Rule](#), 88 Fed. Reg. 24716, 24731 (April 24, 2023) (hereinafter *Proposed Rule Notice*).

<sup>12</sup> [Negative Option Rule: Recommended Decision by Administrative Law Judge Carol Fox Foelak](#) (April 12, 2024) (hereinafter *Recommended Decision*) at 1; see *id.* at 7.

<sup>13</sup> *Recommended Decision* at 5, quoting [Testimony of Sarah Davies, General Counsel, International Franchise Association](#) (January 16, 2024), Transcript at 8. In a supplemental brief, IFA provided a number of examples of franchise systems which would have to devote thousands of hours and hundreds of thousands of dollars to complying with the proposed rule. [Additional Briefing Filed by the International Franchise Association](#) (January 23, 2024), at 1-2.

cable operators \$12 to \$25 million per company initially;”<sup>14</sup> and on a report submitted by the Interactive Advertising Bureau estimating that “compliance costs for just six firms would exceed \$53 million.”<sup>15</sup> In light of these findings in the previous rulemaking proceeding, it is virtually certain that any rule the Commission may propose, if it issues an NPRM, will “have an annual effect on the national economy of \$100,000,000 or more,” and the NPRM should therefore include a preliminary regulatory analysis.

A preliminary regulatory analysis is particularly important with respect to determining the likely effects of a newly proposed rule on small businesses, such as the hundreds of thousands of small businesses represented by IFA. As IFA pointed out in the comment it filed in response to the earlier NPRM:

The Commission has repeatedly stated that its role is to protect small business, including franchises. The Commission, however, has not conducted an empirical cost-benefit analysis to assess the proposed rule’s impact on small businesses. In the NPR, the Commission notes that it “does not have sufficient empirical data at this time regarding the affected industries to determine whether the proposed amendments to the Rule may affect a substantial number of small entities as defined in the RFA,” and “that it is also unclear whether the proposed amendments to the Rule would have a significant economic impact on small entities.”<sup>16</sup>

If the Commission determines to conduct a new rulemaking proceeding, IFA urges the Commission to develop, as part of its preliminary regulatory analysis, sufficient empirical data to determine whether the newly proposed rule “may affect a substantial number of small entities” or “would have a significant economic impact on small entities.” To that end, as it did in its earlier filing, IFA urges the Commission to conduct “a Small Business Regulatory Impact Analysis (SBRIA) to determine how the proposal will impact small businesses, and examine this issue fully at an informal hearing.”<sup>17</sup>

The earlier rulemaking proceeding demonstrates why including a preliminary regulatory analysis in the NPRM is so important. Because the earlier NPRM did not include the requisite analysis – including in particular assessments of the Proposed Rule’s likely effects on both the firms to be regulated and the national economy – commenters had no starting point from which to develop their own assessments, and nothing to critique. The Final Rule Notice did contain a regulatory analysis, but it was not subjected to a public comment period, and the massive range of costs, from low to high, that the analysis estimated the Rule would impose makes it clear that affected firms and organizations should have been given a chance to evaluate and critique those estimates, and to provide their own estimates, before the Rule was finalized. In particular, the

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<sup>14</sup> [Recommended Decision](#) at 5.

<sup>15</sup> [Recommended Decision](#) at 5.

<sup>16</sup> [International Franchise Association Comments on Proposed Amendments to the Commission’s Negative Option Rule](#) (June 23, 2023) at 2, quoting [Proposed Rule Notice](#), 88 Fed. Reg. at 24731.

<sup>17</sup> *Id.* at 2.

Commission analysis estimated that, across the economy, total initial year compliance costs might range from \$49.52 million to \$422.26 million;<sup>18</sup> that annualized costs thereafter over a ten-year period might range from \$11.9 million to \$91.97 million; and that total costs over that ten-year period might range from \$100.89 million to \$826.15 million.<sup>19</sup> If a new rulemaking proceeding is initiated, the NPRM should include preliminary estimates of all these costs, as well as their respective components, so that affected firms and organizations have the opportunity to review and critique them.

The earlier rulemaking proceeding also suffered from a number of other procedural defects, as detailed in the December 22, 2023 filing by the IFA and twenty other industry organizations,<sup>20</sup> which any new rulemaking proceeding will have to remedy. These defects derive in large part from the substantial changes to Commission trade regulation rulemaking procedures which the Commission effected in 2021. As former Commissioner Melissa Holyoak noted in her dissent when the Commission promulgated the earlier amended Rule, several of these changes are inconsistent with the requirements of Section 18 of the FTC Act:

Among other things, the Commission revised the Rules of Practice so as to remove selection of the Presiding Officer from an independent judge and assign that role to the Chair; strip the Presiding Officer of significant control over the hearing process; and narrow opportunities for the public to help determine which factual issues are in dispute.<sup>21</sup>

Moreover, Section 18 of the FTC Act expressly provides that “[t]he officer who presides over the rulemaking proceeding shall make a recommended decision based upon the findings and conclusions of such officer as to *all relevant and material evidence*.”<sup>22</sup> However, the Commission Rules now instead provide that “[t]he presiding officer's recommended decision will be limited to explaining the presiding officer's proposed resolution of disputed issues of material fact.”<sup>23</sup> This limitation is completely inconsistent with Section 18; nevertheless, the Commission relied on it to permit the Presiding Officer in the earlier rulemaking proceeding to produce only the following two findings:

[T]he proposed rule will have an annual effect on the national economy of \$100 million or more; and . . . [t]here is insufficient evidence to make a finding as to the size of the recordkeeping and disclosure costs associated with the proposed rule.<sup>24</sup>

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<sup>18</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90531.

<sup>19</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90532. The Commission analysis of estimated benefits from the Rule similarly produced massive ranges from low to high over the same ten-year period. [Final Rule Notice](#), 89 Fed. Reg. at 90526.

<sup>20</sup> [Comments Filed by Twenty-One Organizations](#) (December 22, 2023).

<sup>21</sup> [Dissenting Statement of Commissioner Melissa Holyoak](#), 89 Fed. Reg. at 90541.

<sup>22</sup> [15 U.S.C. § 57a\(c\)\(1\)\(B\)](#) (emphasis added).

<sup>23</sup> [16 C.F.R. § 1.13\(d\)](#).

<sup>24</sup> [Recommended Decision](#) at 1.

The failure to permit the Presiding Officer to issue a Recommended Decision as to whether, and if so in what respects, the Commission should amend the Negative Option Rule – based on findings and conclusions as to *all* relevant and material evidence in the rulemaking record – arguably constituted another procedural basis on which the Court of Appeals could have relied to vacate the Final Rule. To avoid that prospect in a new rulemaking proceeding, the Commission should follow the procedures prescribed by the FTC Act, rather than the more limited procedures prescribed by the revised Rules of Practice.

### Substantive Issues

With respect to addressing the substantive questions set forth in Part VIII.C. and Part VIII.D. of the ANPRM, it is important to remember that Section 18 of the FTC Act provides that a Court of Appeals reviewing an FTC trade regulation rule “shall hold unlawful and set aside the rule” if, *inter alia*, the “agency action, findings, and conclusion” are (1) “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;”<sup>25</sup> (2) “contrary to constitutional right, power, privilege, or immunity;”<sup>26</sup> (3) “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;”<sup>27</sup> (4) “not supported by substantial evidence in the rulemaking record . . . taken as a whole;”<sup>28</sup> or (5) “without observance of procedure required by law.”<sup>29</sup> The Eighth Circuit Court of Appeals did not address any of the four substantive factors;<sup>30</sup> as noted above, it instead relied on the fifth procedural factor to vacate the Rule because the Commission failed to prepare the preliminary regulatory analysis required by Section 22 of the FTC Act.<sup>31</sup> If the Commission once again conducts a rulemaking proceeding, however, and thereafter amends the Negative Option Rule to include the provisions discussed below, which were included in the Vacated Rule, a number of substantive problems make it likely that a reviewing Court of Appeals would vacate at least those provisions.

Part VIII.D. of the ANPRM includes questions addressing four separate requirements that were included in the vacated Rule, and IFA strongly opposes including any component of the first requirement (as set forth in Sections 425.1 and 425.3 of the Vacated Rule) or of the fourth requirement (as set forth in Sections 425.4, 425.5, and 425.6 of the Vacated Rule) in any newly amended version of the Rule. In implementing the first requirement set forth in Part VIII.D., Section 425.1 of the Vacated Rule defined the scope of the Rule as imposing “requirements related to any form of negative option program in any media, including, but not limited to, Interactive Electronic Media, telephone, print, and in-person transactions.”<sup>32</sup> Section 425.3 would then have applied this global definition to prohibit all misrepresentations of material fact, by prohibiting any

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<sup>25</sup> [5 U.S.C. § 706\(2\)\(A\)](#).

<sup>26</sup> [5 U.S.C. § 706\(2\)\(B\)](#).

<sup>27</sup> [5 U.S.C. § 706\(2\)\(C\)](#).

<sup>28</sup> [15 U.S.C. § 57a\(e\)\(3\)\(A\)](#). The term “evidence” is defined as “any matter in the rulemaking record.” *Id.*

<sup>29</sup> [5 U.S.C. § 706\(2\)\(D\)](#).

<sup>30</sup> *Custom Communications v. FTC*, slip op. at 16-22.

<sup>31</sup> [15 U.S.C. § 57b-3\(b\)\(1\)\(c\)\(1\)](#).

<sup>32</sup> *Final Rule Notice*, 89 Fed. Reg. at 90537.

Negative Option Seller – “[i]n connection with promoting or offering for sale any good or service with a Negative Option Feature” – *from misrepresenting,*

*expressly or by implication, any Material fact related to the transaction, including any of the following: (a) The Negative Option Feature or any term [of that feature]; (b) Cost; (c) Purpose or efficacy of the underlying good or service; (d) Health or safety; or (e) Any other Material fact.*<sup>33</sup>

This requirement should not be replicated in any newly amended version of the Rule. As detailed in Commissioner Holyoak’s Dissenting Statement from the promulgation of the Final Rule,<sup>34</sup> and in the briefs filed by the Petitioners and Amici in the proceedings before the Court of Appeals, Sections 425.1 and 425.3 together would in effect have prohibited any negative option seller from misrepresenting, expressly or by implication, absolutely any material fact, even if the material fact had nothing to do with the terms of the negative option feature at issue.<sup>35</sup>

The Commission has for more than forty years – since the issuance of its *Policy Statement on Deception* in 1983 – defined a deceptive act or practice as a “representation, omission or practice” (1) that is likely to mislead a consumer “acting reasonably in the circumstances,” and (2) that is “likely to affect the consumer’s conduct or decision with regard to a product or service,” and is therefore “material.”<sup>36</sup> Since then, the Commission has identified and prohibited or secured the prohibition of many misrepresentations of specific “material facts” through administrative and federal court cases and rulemaking proceedings, and proceeding in that fashion is perfectly consistent with the authority which Congress has granted to the Commission through the FTC Act and a variety of other statutes.

By contrast, the cited parts of Section 425.3 would have permitted the Commission to secure civil penalties to punish any and all misrepresentations of material fact by any negative option seller, and to include those parts in a newly amended version of the Rule would constitute an exercise of Commission rulemaking authority far in excess of any formulation ever previously endorsed in any Commission administrative case or federal court case or rulemaking proceeding. In particular, Section 18 of the FTC Act authorizes the Commission to prescribe, through extensive rulemaking proceedings, “rules which define *with specificity* acts or practices which are unfair or deceptive acts or practices in or affecting commerce . . . .”<sup>37</sup> Simply prohibiting all misrepresentations of material fact through a rulemaking proceeding would not provide any level

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<sup>33</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90538 (emphasis added to show that the initial text of Section 425.3 and Section 425.3(e) together would prohibit the misrepresentation, expressly or by implication, of “any material fact.”).

<sup>34</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90540-545.

<sup>35</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90538 (Sections 425.1 and 425.3(e)).

<sup>36</sup> [Federal Trade Commission Policy Statement On Deception \(October 14, 1983\)](#), appended to [In the Matter of Cliffdale Associates, Inc.](#), 103 F.T.C. 110, 174 (1984) (emphasis added); see [Final Rule Notice](#), 89 Fed. Reg. at 90497, citing [Cliffdale Associates.](#), 103 F.T.C. at 165 (1984) (misleading impression created by a solicitation is material if it “involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.”); [FTC v. Cyberspace.com, LLC](#), 453 F.3d 1196, 1201 (9th Cir. 2006); 16 CFR 310.2(t) (TSR); 16 CFR 461.1 (*Impersonation Rule*); *Policy Statement on Deception*.

<sup>37</sup> [15 U.S.C. § 57a\(a\)\(1\)\(B\)](#) (emphasis added).

of specificity. As a consequence, it would be inconsistent with the requirements of the major questions doctrine enunciated by the Supreme Court in [West Virginia, et al. v. Environmental Protection Agency](#), where the Court declined to permit an agency to take the action at issue because the agency could not identify “‘clear congressional authorization’ for the power it claim[ed].”<sup>38</sup> The FTC Act clearly does not empower the Commission to prohibit through a rulemaking proceeding any and all misrepresentations of material fact by any negative option seller.

In addition, in implementing the fourth requirement set forth in Part VIII.D., Section 425.6(a) of the Vacated Rule in relevant part would have required a Negative Option Seller to

provide a simple mechanism for a consumer to cancel the Negative Option Feature; avoid being Charged, or Charged an increased amount, for the good or service; *and immediately stop any recurring Charges*.<sup>39</sup>

This requirement similarly should not be replicated in any newly amended version of the Rule, in large part because – contrary to the suggestions conveyed by the questions in Part VIII.C.1.e. – it is neither unfair nor deceptive “to offer discounts or other incentives to remain enrolled in a negative option program (“Saves”)” as a way of persuading consumers to remain in the program rather than canceling their memberships altogether. Both consumers and competition benefit from consumers being able to secure lower prices or other benefits from negative option sellers with respect to the goods or services at issue. Moreover, as detailed in the June 23, 2023 public comments filed by IFA – and in the January 2024 testimony presented by IFA – in the previous rulemaking proceeding, the Vacated Rule would have had a variety of adverse effects on franchised small businesses, including in particular on the more than 45,000 franchised small businesses that operate in the fitness, preventative healthcare, spa/massage, location-based entertainment facility industries, and child care industries, “as well as other industries whose business models were constructed based on membership programs with their respective consumers.”<sup>40</sup> As the IFA summarized in testimony before the Presiding Officer:

Many of our small business franchisees operate almost entirely on a month-to-month membership model that allows for cancellation each month prior to the next renewal cycle and also provides for suspension or freezing of memberships as an alternative to cancellation. These small businesses should be able to explain alternative options to members without the administrative burden of single-use prior consent so that the consumer understands before they simply click to cancel a long-term relationship based on a short-term need that they need not terminate their membership entirely. . . . The FTC failed to consider how immediate cancellations [of preventative healthcare memberships, for example] could lead to adverse health outcomes as consent requirements restrict the facility’s ability to properly advise patients of the adverse effects of discontinuing care. The

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<sup>38</sup> [West Virginia, et al., v. Environmental Protection Agency](#), 597 U.S. 697, 723 (2022) (citation omitted).

<sup>39</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90539 (emphasis added).

<sup>40</sup> [International Franchise Association Comments on Proposed Amendments to the Commission’s Negative Option Rule](#) (June 23, 2023), at 1.

FTC also failed to consider how immediate cancellations could undermine discounting, as many of our members providing children’s extracurricular activities offer incentives like complimentary birthday parties and other benefits to customers electing to freeze rather than cancel.<sup>41</sup>

The concern with any new amendment to the Rule to restrict Saves is further illustrated in the comment submitted in response to the ANPRM by the Health & Fitness Association (“HFA”), with whom IFA shares many members, as well as the challenges presented by an “immediate” cancellation requirement given the reliance of IFA members with a recurring membership model on third party service providers to manage membership and process membership fees. IFA supports the comment submitted by the HFA specifically as to Section B.5 (Third Party Involvement), Section C.1.e (“Saves”), and Section D.1 (Questions About Specific Rule Provisions, Generally).

In addition to IFA’s franchised gym, in-home personal training and boutique fitness center members, IFA has other franchise members spanning industries that operate on a continuous service, recurring membership model, including chiropractic centers, massage studios, med-spas, infra-red sauna and cryotherapy, stretching facilities, IV-drip therapy centers, children’s extracurricular activities (martial arts, dance, STEM, adventure parks, trampoline parks, indoor sky diving, music lessons, swimming lessons, tutoring, and sports training), residential cleaning and maintenance services, landscaping, personal care (tanning, waxing, and lash studios), home healthcare, pet grooming and walking providers, among many others.

Ironically, when it promulgated the Vacated Rule, the Commission itself highlighted its lack of familiarity with the many thousands of firms that sign up members in person and rely on a month-to-month membership model:

Unlike negative option transactions entered into online (ROSCA) or by telephone (TSR), the Commission lacks comprehensive experience with negative option plans that require cancellation in person or through the mail.<sup>42</sup>

As IFA and other commenters emphasized in particular in their comments and testimony, the record in the previous rulemaking proceeding did not support requiring these firms to “immediately stop any recurring Charges,” because requiring immediate cancellations would affirmatively hurt consumers in particular industries; would discourage a variety of firm discounting efforts; and would in any event have been frequently unnecessary when consumers were given the option of freezing or modifying their memberships instead of completely cancelling them.

In addition, in implementing the fourth requirement in Part VIII.D., the “Important information,” “Consent,” and “Simple cancellation (“Click to Cancel”)” sections of the Vacated

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<sup>41</sup> [Testimony of Sarah Davies, General Counsel, International Franchise Association](#) (January 16, 2024), Transcript Page 8.

<sup>42</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90521.

Rule (Sections 425.4, 425.5, and 425.6)<sup>43</sup> would have imposed requirements on all “Negative Option Sellers” that are far more burdensome and extensive than the requirements which the Restore Online Shoppers’ Confidence Act (ROSCA), in particular, imposes on Internet sellers of negative option features.<sup>44</sup> As the ANPRM notes, Section 8403 of ROSCA provides, in relevant part, that any person who charges or attempts to charge “any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission’s Telemarketing Sales Rule . . .)” must

- (1) provide[ ] text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;
- (2) obtain[ ] a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and
- (3) provide[ ] simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.<sup>45</sup>

ROSCA empowers the Commission to enforce the Act, and provides that a violation of the Act or any regulation prescribed under it shall be treated as a violation of a Commission trade regulation rule,<sup>46</sup> and as the ANPRM points out, the Commission has an active ROSCA enforcement program. Nevertheless, Sections 425.4, 425.5, and 425.6 of the Vacated Rule would have expanded the requirements imposed by Section 8403 of ROSCA in two significant respects. First, they would have extended those requirements to cover negative option features “in any media, including but not limited to, Interactive Electronic media, telephone, print, and in-person transactions.”<sup>47</sup> Second, they would have required all negative option sellers – without regard to the literally thousands of variations in business models and operations from one negative option seller to another – to adopt procedures that would have been far more extensive and expensive than the “clear and conspicuous,” “express informed consent,” and “simple cancellation mechanisms” obligations which ROSCA now imposes on Internet sellers of negative option features. The filings by IFA, and Health & Fitness Association, the Chamber of Commerce, and numerous other organizations in the previous rulemaking proceeding established that the record in that rulemaking proceeding did not support imposing these detailed requirements on negative option sellers.

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<sup>43</sup> [Final Rule Notice](#), 89 Fed. Reg. at 90538-90539.

<sup>44</sup> [15 U.S.C. §§ 8401-8405](#).

<sup>45</sup> [15 U.S.C. § 8403\(1\),\(2\),\(3\)](#). The Commission’s Telemarketing Sales Rule defines a “negative option feature” in the following way:

*Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

[16 C.F.R. § 310.2\(w\)](#).

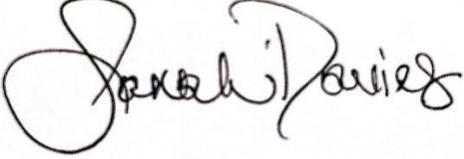
<sup>46</sup> [15 U.S.C. § 8404\(a\)](#).

<sup>47</sup> [16 C.F.R. § 425.1](#) (Scope).

## Conclusion

As the foregoing discussion indicates, IFA continues to believe that the current version of the Negative Option Rule need not be amended in any respect, and that the Commission should not initiate a new rulemaking proceeding. However, if the Commission ultimately determines to conduct another rulemaking proceeding, and issues a Notice of Proposed Rulemaking to that effect, we intend to participate in that proceeding and represent and actively support the views and interests of our members, with a particular focus on strict compliance with the rulemaking procedures required by the FTC Act, and on arguing that any newly amended version of the Rule should not include any of the foregoing substantive requirements.

Respectfully Submitted,  
INTERNATIONAL FRANCHISE ASSOCIATION

A handwritten signature in black ink, reading "Sarah Davies". The signature is written in a cursive style with a large initial "S" and "D".

Sarah Davies, General Counsel