



Office of the Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

June 25, 2024

The Honorable Mike McGuire
Senate President Pro Tempore
1021 O Street, Suite 8518
Sacramento, CA 95814 Assemblymember

The Honorable Robert Rivas
Speaker of the Assembly
1021 O Street, Suite 8330

1021 O Street, Room 3240
Sacramento, CA 95814

1021 O Street, Suite 4140
Sacramento, CA 95814

The Honorable Josh Lowenthal
Assemblymember
1021 O Street, Suite 5130
Sacramento, CA 95814

Dear Senate President Pro Tempore McGuire, Speaker Rivas, Chair Umberg, Assemblymember Shiavo, and Assemblymember Lowenthal,

I understand that the California Legislature is considering legislation to address automatic renewal and continuous service offers, two forms of negative option offers.¹ As the Director of the Bureau of Consumer Protection of the Federal Trade Commission (“FTC”), I write to provide information about the FTC’s efforts to address harmful practices related to negative option marketing. The views in this letter are my own and do not necessarily reflect the view of the FTC or any individual Commissioner.

Negative option programs are widespread in the marketplace and can provide substantial benefits for sellers and consumers. But far too often, companies manipulate consumers into making recurring payments for goods that the consumers never intended to purchase or did not want to continue buying. Over the years, deceptive and unfair negative option practices—such as failing to make adequate disclosures, billing consumers without their consent, or making cancellation difficult or imposing—have been a persistent source of consumer harm.

¹ Negative option offers come in a variety of forms, all of which share a central feature: each contain a term or condition that allows a seller to interpret a consumer’s silence, or failure to take an affirmative action, as acceptance of an offer.

or affect state statutes or regulations relating to negative option marketing, except to the extent that a state statute, regulation, order, or interpretation is inconsistent with the proposed rule.¹¹ The FTC received more than 1,100 unique comments on the NPRM, and FTC staff is currently analyzing the comments to determine the appropriate next steps.

Thank you for the opportunity to provide information about the FTC's efforts to address deceptive and unlawful negative option marketing at the federal level. I hope that the FTC's work provides useful insight as you consider legislation addressing automatic renewal and continuous service offers in California. To the extent the Federal Trade Commission can provide assistance with these inquiries, please do not hesitate to contact me.

Very Truly Yours,



Samuel Levine
Director
Bureau of Consumer Protection

Identical letter sent to:

The Honorable Gavin Newsom, Governor of California

¹¹ The proposed rule also indicates state requirements are not inconsistent with the rule to the extent they afford greater protection to consumers.