

# KIRKLAND & ELLIS

Kirkland Alert

## FTC Restarts Subscription Rulemaking

19 March 2026

On March 11, 2026, the U.S. Federal Trade Commission (FTC) announced an [Advance Notice of Proposed Rulemaking \(ANPRM\)](#) that would eventually propose new rules for businesses offering products using subscription, automatic renewal and other negative-option structures. The ANPRM is the first step of the lengthy process to formalize a rule governing subscriptions and merely seeks comment on a variety of questions. The ANPRM comes eight months after a federal court vacated the FTC's earlier version of the rule – the so-called [Click-to-Cancel rule](#) – on procedural grounds and signals the agency's continued focus on subscription services and other automatic renewal products.

For additional background on the FTC's prior rulemaking efforts, see our [October 2024 Alert](#) discussing the finalized Click-to-Cancel rule.

### Background

Negative option marketing is already subject to a patchwork of federal laws and regulations, including the FTC's existing (and more limited) [Negative Option Rule](#), the [Restore Online Shoppers' Confidence Act \(ROSCA\)](#), the [Telemarketing Sales Rule \(TSR\)](#) and [Section 5 of the FTC Act](#). These federal laws and regulations exist alongside a wide variety of state automatic renewal laws in which some states have no specific laws, some have laws governing only certain types of transactions and others have comprehensive rules, with [California](#) perhaps being the best-known example.

During the prior administration, the FTC proposed to replace its Negative Option Rule with the new Click-to-Cancel rule. The Click-to-Cancel rule would have applied broadly to any negative option transaction under the FTC's jurisdiction. However, this rule never took effect. On July 8, 2025, just days before the compliance deadline, the U.S. Court of Appeals for the Eighth Circuit [unanimously vacated the rule](#) on procedural

grounds. Importantly, the vacatur did not affect the FTC's pre-existing authority under ROSCA, the TSR or Section 5.

## Summary of the ANPRM

The FTC's ANPRM does not propose any specific rules or regulations. Rather, the ANPRM explains that the FTC believes there is still a need for some sort of rulemaking on subscriptions and automatic renewals, and solicits comment on a broad range of issues. The ANPRM asks for input on (among other things): (1) whether amendments to the existing rule are needed to address negative option practices not currently covered; (2) information about the use of negative options generally across the economy; (3) the costs and benefits to businesses and consumers of various regulatory approaches, including specific provisions from the vacated rule; and (4) whether/how certain industries or business types should be exempt from any new requirements.

The ANPRM represents the first step in a lengthy rulemaking process. The FTC's rulemaking authority is more complex than standard APA rulemaking. After the ANPRM, the FTC must issue a proposed rule, followed by opportunities for informal hearings, before issuing a final rule. A final rule is likely years away.

## Key Takeaways

Although the ANPRM does not itself impose any obligations, this development further demonstrates that subscriptions and automatic renewals remain high on the agency's enforcement agenda. Even without the rulemaking, the FTC already has significant authorities. Indeed, the ANPRM explains that, since January 2025 alone, the FTC has initiated five new cases and approved six settlements involving alleged negative option misconduct, including a \$2.5 billion settlement with one major retailer. And this federal authority exists alongside state laws that may have more onerous (or just different) requirements.

## Authors

Christopher B. Leach

Partner / Washington, D.C.

Olivia Adendorff, P.C.

Partner / Dallas / Washington, D.C.

Lucie H. Duvall

Partner / Washington, D.C.

Richard H. Cunningham, P.C.

Partner / Washington, D.C.

## Related Services

### Practices

- Consumer Protection
- Antitrust & Competition
- Litigation

## Suggested Reading

- 11 July 2025 Kirkland Alert Eighth Circuit Blocks FTC's Click-to-Cancel Rule
- 21 October 2024 Kirkland Alert FTC Finalizes "Click to Cancel" Rule Governing Subscriptions and Autorenewals

This publication is distributed with the understanding that the author, publisher and distributor of this publication and/or any linked publication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, portions of this publication may constitute Attorney Advertising.

© 2026 Kirkland & Ellis LLP.