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**PROTECTING CONSUMERS SINCE 1975**

April 13, 2026

*Via Electronic Submission: <https://www.regulations.gov>*

Federal Trade Commission

Office of the Secretary

600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex R)

Washington, DC 20580

**RE: Negative Option Rule ANPRM, Project No. P064202**

Dear Commissioners:

The South Carolina Department of Consumer Affairs ("SCDCA"/"Department") is pleased to offer comments in response to the Federal Trade Commission's ("FTC"/"Commission") request related to its Rule Concerning the Use of Prenotification Negative Option Plans ("Negative Option Rule"). SCDCA is South Carolina's consumer protection agency. Established in 1974, SCDCA is responsible for the administration and enforcement of over 120 state and federal laws. A large part of our authority stems from Title 37 of the South Carolina Code of Laws, the Consumer Protection Code (the "Code"). The Code, among other purposes, is meant to further consumer understanding of the terms of credit transactions, foster competition among suppliers of consumer credit, and permit and encourage the development of fair and economically sound credit practices.<sup>1</sup> Further, it requires the Department to undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion and sale of consumer goods and services.<sup>2</sup> Central to SCDCA's mission is protecting consumers from inequities in the marketplace by educating them and businesses on their respective rights and responsibilities.

SCDCA supports the FTC's efforts to ensure consumer transparency in the marketplace. We offer the comments below based upon our experience regulating various industries and collecting and handling consumer complaints for both regulated and unregulated businesses.

### **Discussion**

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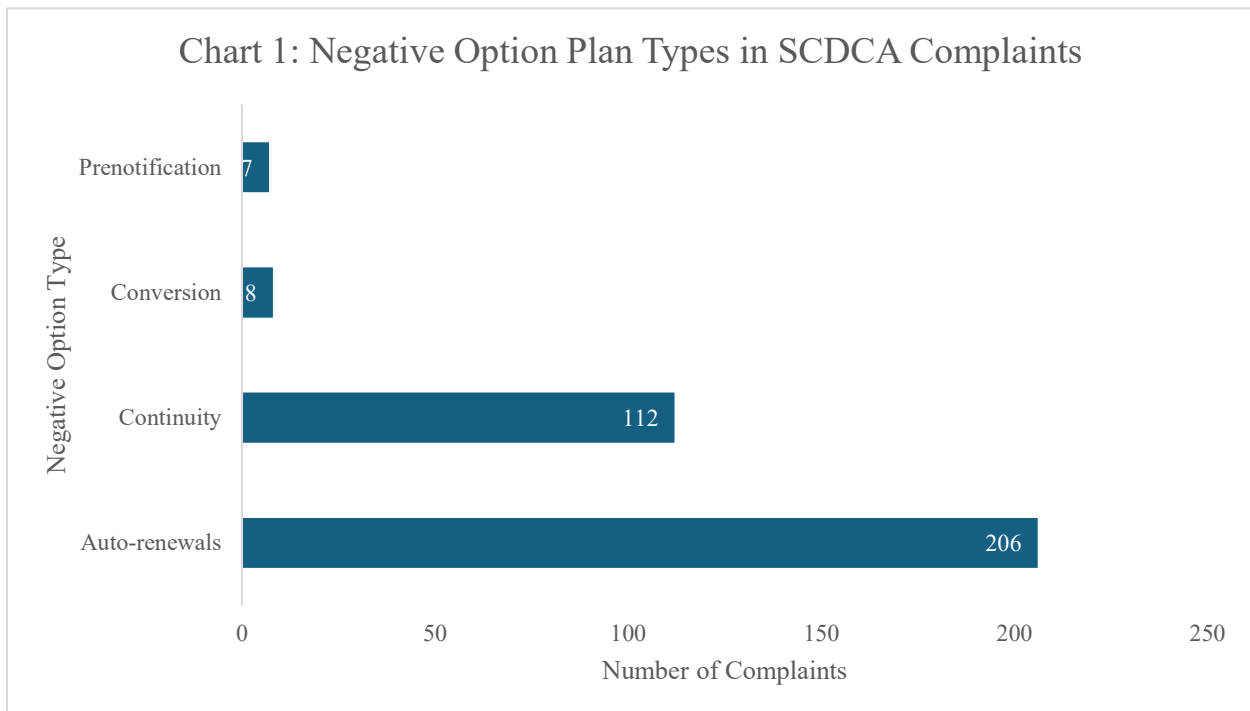
<sup>1</sup> S.C. Code Ann. § 37-1-102(c)-(e)(2019).

<sup>2</sup> S.C. Code Ann. § 37-6-117(f) (2019).



The FTC notes that “[p]renotification plans are the only negative option practice currently covered by the Commission’s Negative Option Rule.”<sup>3</sup> Despite the Commission’s 1998 clarification that the Current Rule “covers all promotional materials that contain a means for consumers to subscribe to prenotification negative option plans, including those that are disseminated through newer technologies. . . .” (63 FR 44555), the practice persists and is the subject of numerous complaints the Department receives.

From January 1, 2020 to March 13, 2026, the Department received 340 complaints related to negative option practices.<sup>4</sup> The Department analyzed and categorized its complaint data into each negative marketing category.



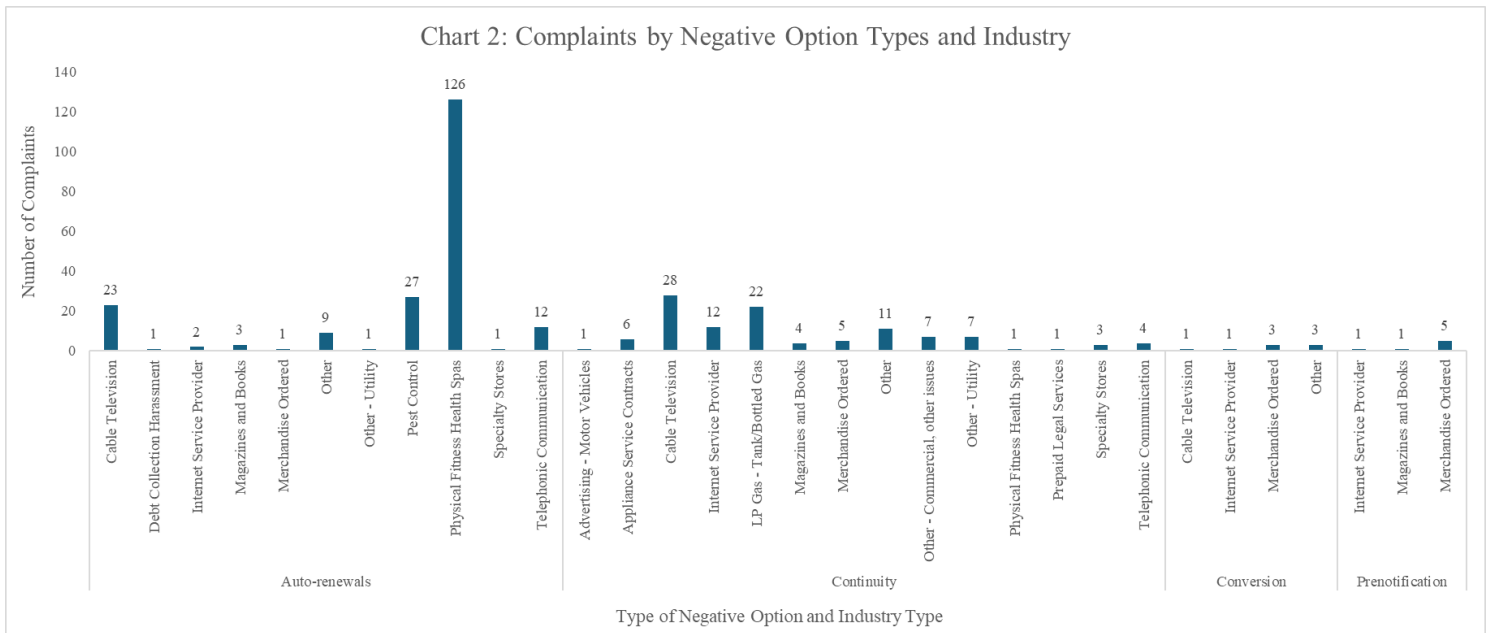
As Chart 1 demonstrates, most of the Department’s negative option complaints relate to continuity and automatic renewals. The Current Rule only covers prenotification negative option plans and excludes continuity plans, automatic renewals, and free-to-pay or nominal-fee-to-pay conversion offers. Therefore, the Department supports a new or amended rule to expand the application.

<sup>3</sup> Negative Option Rule, 91 Fed. Re. 49, 12318 (Advanced Notice of Public Rulemaking Mar. 13, 2026) (to be codified at 16 C.F.R. pt. 425)

<sup>4</sup> See Chart 1 for number of complaints in each negative option category. The Department excluded seven falling under the “other” category.



Chart 2 indicates the complaints by industry and shows the negative option category they fit within. A majority of the complaints relate to auto-renewals in physical fitness contracts, an industry regulated by the Department. The Department also received a number of complaints related to cable companies that fall within the continuity and automatic renewal categories. Thus, the Department’s comments are primarily related to these industries. However, similar issues can be found in other industries that utilize automatic renewals or continuity contracts. The Department recognizes the need to evaluate the impacts on various industries as a whole. While the Department does not have the expertise to address all industry specific issues, we hope the FTC finds the data we provided beneficial, as it decides a path forward.



The Department categorized its complaints depending on whether a contract existed or if the customer may cancel any time. Complaints with contracts fell into the “automatic renewals” category, otherwise it fell within continuity. The majority of cable complaints across both categories related to trouble with cancelling or requesting a refund for improper fees following cancellation.<sup>5</sup>

Physical fitness complaints primarily relate to contract cancellations, halting collection attempts, and/or removing auto drafts. South Carolina law provides that gyms may have an automatic renewal clause included in the contract, but the duration may be for no longer than one

<sup>5</sup> The Department has previously offered the Federal Communications Commission comments related to cable operators and direct broadcast satellite billing practices and imposition of early termination fees. *See Memo Re: MB Docket No. 23-405 – Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices (2/5/2024)* available at <https://consumer.sc.gov/sites/consumer/files/Documents/Advocacy/SCDCA%20Comment%20Letter%20on%20Cable%20and%20Satellite%20Billing%20Practices.pdf>



month and to be enforceable, the language “must be disclosed in bold type of at least fourteen-point font on the front page of the contract and must be initialed by the customer.”<sup>6</sup> However, the Department frequently sees that contracts do not clearly label automatic renewal segments and instead this information is included in the “fine print”. Additionally, the disclosures may be too high of a reading level and thus, not readily understood by consumers. Further, there may be unnecessarily restrictive cancellation methods.<sup>7</sup> Having prominent, easily discernable automatic renewal provisions are key to ensuring consumer understanding of their rights and a businesses responsibilities.

Another issue that arises with both automatic renewals and continuity plans is that contracts may unreasonably restrict the ability to terminate by imposing unrealistic cancellation conditions. For example, unlike cancelling a streaming service where a customer may click to cancel, a gym membership contract may require sending notice by certified mail as its only cancellation method. A customer should have convenient options (e.g., click to cancel or call to cancel), to stop an automatic renewal plan.<sup>8</sup> Therefore, the Department supports requiring specific methods to cancel negative option plans that are as convenient to the consumer as signing up for the product or service, including automatic renewal and continuity plans, in its final rule.

South Carolina currently has a statute placing limitations on automatic renewals applying to certain services purchased for personal, family, or household use. The protection is triggered if the renewal is for more than one month and causes the contract to be in effect for six months or more<sup>9</sup>. For the automatic renewal provision to be enforceable, the consumer must receive notice between 30-60 days prior to the cancellation deadline. The notice must contain a disclosure that the contract will renew, state charges upon renewal, and provide information on a cost-effective, timely, and easy-to-use mechanism for cancellation.<sup>10</sup> While helpful, the language does not address disclosure of an automatic renewal provision at the time of contract.

### **Conclusion**

The Department recognizes that automatic renewals can benefit both customers and business by creating convenience; however, they may also result in unexpected costs, if the customer fails to timely terminate. To this end, the Department supports clear and conspicuous negative option disclosures in the marketing and contracting processes. The Department also supports easy-to-use cancellation mechanisms for negative options.

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<sup>6</sup> S.C. Code Ann. §44-79-60(4).

<sup>7</sup> To help consumers better understand these issues, the Department has a general fact sheet on its website regarding gym memberships. See <https://consumer.sc.gov/sites/consumer/files/Documents/GymMembership.pdf>.

<sup>8</sup> Much like the vacated “click to cancel” rule.

<sup>9</sup> See S.C. Code Ann. §§37-1-301(31), 37-6-120.

<sup>10</sup> S.C. Code Ann. §37-6-120.



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We commend the Commission for the work and effort put into this process and appreciate the opportunity to comment. We hope this information is useful in the Commission's review. Should you have any questions pertaining to our comments, please feel free to contact us at 803-734-4233.

Regards,

A handwritten signature in blue ink that reads "Carri Grube Lybarker".

Carri Grube Lybarker, Esq.  
*Administrator/Consumer Advocate*