

FTC Looks to Crack Down on Subscription and Membership Auto-Renewals

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On March 23, 2023, the FTC issued a [notice of proposed rulemaking](#) aimed at deceptive and unfair practices involving recurring charges for automatically renewing subscriptions and memberships. The proposed rule is part of a broader FTC initiative designed to crack down on “[dark pattern](#)” tactics that retailers employ to aid in customer acquisition and retention, among other things. Difficult cancellation procedures for subscription-based services are one such tactic identified as problematic by the FTC and targeted by the new proposed rule.

The proposed rule requires sellers of subscription-based goods or services to make cancellation easier. The rule would impose several new requirements on sellers, including:

1. disclosing information including the frequency, amounts, dates, and cancellation options for recurring charges before obtaining a consumer’s billing information;
2. obtaining the consumer’s express informed consent to the subscription feature separately from any other portion of the transaction;
3. providing a cancellation mechanism that is at least as simple as the method used to initiate the subscription, such as a “click to cancel” option for subscriptions that were initiated online;
4. obtaining a consumer’s express consent before making additional offers to a consumer attempting to cancel a subscription; and
5. providing annual reminders informing consumers of their enrollment for any subscriptions that do not involve delivery of physical goods.

If the rule takes effect, retailers that provide subscription-based goods or services will need to review their policies and develop compliant strategies for consumer acquisition and retention. While the rule does not prohibit free or reduced-price trials to entice consumers to sign up, it may limit the effectiveness of such promotions. The restraints on cancellation procedures may have an even greater impact on customer retention. The rule’s cancellation provisions are intentionally broad to prevent creative workarounds, but this may cause some confusion over whether a cancellation

procedure is “at least as easy to use” as the subscription procedure. Retailers should monitor any changes to the rule and be prepared to implement new policies and strategies.

The FTC is seeking comments on the proposed rule. The comment period will be open for 60 days once the notice has been published in the Federal Register.

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