



FTC Issues “Click to Cancel” Final Rule

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I. Overview

The FTC's "Click to Cancel" rule requires businesses offering goods or services with recurring payments – such as fitness center memberships – to provide a cancellation process as simple as the sign-up. The rule also mandates clear disclosures of all material terms, including recurring charges and deadlines, and ensures that consumers can cancel via the same medium used to enroll, without unnecessary steps or costs. Fitness operators must also obtain explicit, informed consent and keep records of consent for at least three years, promoting transparency and compliance.

II. Key HFA Wins for Industry

Based on HFA's comments submitted to the FTC (06.23.23 IHRSA Comments) and comparing them to the Final Rule, several changes and considerations reflect HFA's influence in advocating for the fitness industry's specific needs.

Here's how HFA's input helped shape the final rule:

1. Annual Reminders

- **HFA's Input:** HFA highlighted that the health and fitness industry operates on continuous service agreements, like month-to-month gym memberships, which do not carry the same risks as long-term auto-renewing contracts. HFA argued that imposing annual reminder requirements would create unnecessary administrative burdens for fitness facilities.
- **Final Rule:** The FTC removed the requirement for annual reminders in the final rule. This change directly reflects HFA's concerns about the burden this provision would place on fitness businesses, especially small operators. Instead, the rule

focuses on upfront consent and clear disclosures, aligning with HFA's request for a more streamlined approach.

2. Pre-Cancellation 'Save' Attempts

- **HFA's Input:** HFA advocated for the ability of fitness facilities to offer membership pauses, freezes, or tier adjustments when members attempt to cancel. We argued that these standard customer service practices should not be restricted by excessive consent requirements for each attempt to retain a member.
- **Final Rule:** The final rule allows save attempts as long as they don't impede the consumer's ability to cancel. While not adopting HFA's full recommendation to remove the affirmative consent requirement for save attempts, the rule softened the proposed restriction, ensuring that fitness facilities can still offer alternative membership options (like pauses or lower tiers) without excessive administrative burdens.

3. Simplified Cancellation Mechanisms

- **HFA's Input:** HFA expressed concerns about the "Click to Cancel" provision, arguing that fitness facilities often need in-person cancellations for identity verification and account security reasons. We requested that the rule take into account the operational realities of gyms, especially when it comes to protecting member information and handling payment methods like ACH transactions.
- **Final Rule:** The FTC maintained the "Click to Cancel" requirement but acknowledged the need for security in cancellation processes. While the final rule requires a cancellation method as easy as the sign-up method, HFA's advocacy led to a recognition that fitness facilities can include reasonable safeguards in their cancellation processes, balancing convenience with privacy and fraud prevention.

4. Clarification of Negative Option Features

- **HFA's Input:** HFA stressed the distinction between in-person memberships at gyms, where members interact with staff regularly, and purely online subscription services. We urged the FTC to tailor the rule to account for the differences between these two types of business models, particularly in how they handle

recurring fees and customer service.

- **Final Rule:** While the FTC expanded the rule's scope to all forms of negative option marketing, the final rule's focus on clear consent and disclosure reflects HFA's input on ensuring that continuous service agreements (like gym memberships) are not unnecessarily conflated with more complex auto-renewal practices seen in digital subscriptions. The FTC acknowledged that certain recurring memberships already include transparent terms, which mitigates the need for heavy-handed regulations.

5. Distinguishing Free Trials from Memberships

- **HFA's Input:** HFA pointed out that fitness facilities typically offer money-back guarantees rather than free trials, which is different from the negative option marketing practices the FTC sought to regulate (e.g., free-to-pay digital subscriptions). We requested that the rule reflect this difference and not apply the same stringent standards to gym memberships.
- **Final Rule:** The final rule clarifies distinctions between free trials and continuous service agreements, aligning with HFA's request to exclude the fitness industry from unnecessary regulation related to free trials. The rule is focused on ensuring transparency in how services transition from free trials to paid subscriptions, which generally does not apply to the health and fitness industry.

6. Small Business Impact Consideration

- **HFA's Input:** HFA raised concerns about the potential disproportionate impact on small fitness businesses, which often operate with thin margins and minimal cash reserves. They requested that the FTC consider the unique challenges faced by small gym operators when finalizing the rule.
- **Final Rule:** Although the rule applies broadly, the FTC acknowledged the concerns about burdening small businesses. The decision to remove certain requirements (such as annual reminders) and allow flexibility in compliance measures helps ease the administrative strain on smaller fitness facilities, reflecting HFA's advocacy for small business protections.

In Summary:

HFA's advocacy on behalf of the fitness industry played a key role in shaping several aspects of the final rule. The removal of the annual reminder requirement, the flexibility around save attempts, and the recognition of the operational differences between gyms and digital subscription services are all outcomes where HFA's influence can be seen. These changes help mitigate some of the potential burdens on fitness facilities, allowing them to continue offering memberships with reasonable compliance measures.

On a closing note, the commission delayed the final Rule for 180 days from October 16, 2024 to allow time for implementation (except for the provisions related to misrepresentations and other procedural requirements, which should not be an added burden for businesses already complying with the law and which take effect 60 days after October 16, 2024).

III. What Fitness Facilities Need to Know (i.e. the Details)

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II. Misrepresentations

In connection with promoting or offering for sale any good or service with a [Negative Option Feature](#), it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”) for any [Negative Option Seller](#) to misrepresent, expressly or by implication, any [Material](#) fact, including any of the following:

- (a) the [Negative Option Feature](#) or any term of the [Negative Option Feature](#), including consumer consent, any deadline to prevent or stop a [Charge](#), or the cancellation of the [Negative Option Feature](#);
- (b) cost;
- (c) purpose or efficacy of the underlying good or service;
- (d) health or safety; or
- (e) any other [Material](#) fact.

III. Important Information

- (a) Disclosures.

In connection with promoting or offering for sale any good or service with a [Negative Option Feature](#), it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for a [Negative Option Seller](#) to fail to disclose to a consumer, prior to obtaining the consumer’s [Billing Information](#), all [Material](#) terms, regardless of whether those terms directly relate to the [Negative Option Feature](#), and including but not limited to:

(1) That consumers will be [charged](#) for the good or service, or that those Charges will increase after any applicable trial period ends, and, if applicable, that the Charges will be on a recurring basis, unless the consumer timely takes steps to prevent or stop such Charges;

(2) Each deadline (by date or frequency) by which the consumer must act to prevent or stop the Charges;

(3) The amount (or range of costs) the consumer will be [Charged](#) and, if applicable, the frequency of the Charges a consumer will incur unless the consumer takes timely steps to prevent or stop those Charges; and

(4) The information necessary for the consumer to find the simple cancellation mechanism required pursuant to section 425.6.

(b) Form and Content of Required Information.

(1) [Clear and Conspicuous](#): Each disclosure required by paragraph (a) of this section must be [Clear and Conspicuous](#).

(2) Placement:

(i) The disclosures required by paragraphs (a)(1-4) of this section must appear immediately adjacent to the means of recording the consumer's consent for the [Negative Option Feature](#); and

(ii) The disclosures required by paragraph (a) of this section (including, but not limited to, the disclosures required by paragraphs (a)(1-4)) must appear before obtaining the consent required pursuant to section 425.5.

(3) Other Information: All communications, regardless of media, must not contain any other information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to read, hear, see, or otherwise understand the disclosures required by paragraph (a) of this section.

IV. Consent

(a) Express Informed Consent.

In connection with promoting or offering for sale any good or service with a [Negative Option Feature](#), it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for a [Negative Option Seller](#) to fail to obtain the consumer's express informed consent before [Charging](#) the consumer. In obtaining such expressed informed consent, the [Negative Option Seller](#) must:

- (1) Obtain the consumer's unambiguously affirmative consent to the [Negative Option Feature](#) offer separately from any other portion of the transaction;
- (2) Not include any information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to provide their express informed consent to the [Negative Option Feature](#); and
- (3) Keep or maintain verification of the consumer's consent for at least three years.

However, if the seller can demonstrate by a preponderance of the evidence that it uses processes ensuring no consumer can technologically complete the transaction without consent, such seller does not have to maintain these records for such transactions.

(b) Requirements for [Negative Option Features](#)

Covered in the Telemarketing Sales Rule.

[Negative Option Sellers](#) covered by the Telemarketing Sales Rule must comply with all applicable requirements provided in part 310 of this title, including, for transactions involving preacquired account information and a free-to-pay–conversion feature, obtaining from the customer, at a minimum, the last four (4) digits of the account number to be charged and making and maintaining an audio recording of the entire telemarketing transaction as required by part 310.

(c) Documentation of Unambiguously Affirmative Consent for Written Offers.

Except for transactions covered by the preauthorized transfer provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693e) and Regulation E (12 CFR 1005.10), a [Negative Option Seller](#) will be deemed in compliance with the requirements of paragraph (a)(1) of this section for all written offers (including over the Internet or phone applications), if that seller obtains the required consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the [Negative Option Feature](#) and no other portion of the

transaction. The consent request must be presented in a manner and format that is clear, unambiguous, non-deceptive, and free of any information not directly related to the consumer's acceptance of the [Negative Option Feature](#).

V. Click to Cancel

(a) Simple Mechanism Required for Cancellation.

In connection with promoting or offering for sale any good or service with a [Negative Option Feature](#), it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for the [Negative Option Seller](#) to fail 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.

(b) Simple Mechanism at Least as Simple as Consent.

The simple mechanism required by paragraph (a) of this section must be at least as easy to use as the mechanism the consumer used to consent to the [Negative Option Feature](#).

(c) Minimum Requirements for Simple Mechanism.

At a minimum, the [Negative Option Seller](#) must provide the simple mechanism required by paragraphs (a) and (b) of this section through the same medium the consumer used to consent to the [Negative Option Feature](#), and:

(1) For cancellation by [Interactive Electronic Medium](#), the simple cancellation mechanism must be easy to find when the consumer seeks to cancel. Compliance with the disclosure required under section 425.4(a)(4) does not discharge this obligation. In no event shall a consumer be required to interact with a live or virtual representative (such as a chatbot) to cancel if the consumer did not do so to consent to the [Negative Option Feature](#).

(2) For cancellation by telephone call, the [Negative Option Seller](#) must promptly effectuate cancellations requested by the consumer via a telephone number that is answered or records messages, made available during normal business hours, and not more costly to use than the telephone call the consumer used to consent to the [Negative Option Feature](#).

(3) For cancellation of consent obtained in person, in addition to offering cancellation, where practical, via an in-person method similar to that the consumer used to consent to the [Negative Option Feature](#), the [Negative Option Seller](#) must offer the simple mechanism through an [Interactive Electronic Medium](#) or by providing a telephone number. The alternate simple mechanism required by this paragraph must satisfy all requirements of sections 425.6(c)(1) and (2), as applicable. If the [Negative Option Seller](#) offers the alternate mechanism by providing a telephone number, the seller shall not erect a cost-barrier to cancellation by imposing any unnecessary or unreasonable cost for the cancellation call.

VI. Relation to State Laws

(a) In General.

This part shall not be construed as superseding, altering, or affecting any State statute, regulation, order, or interpretation relating to negative option requirements, except to the extent it is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) Greater Protection under State Law.

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if it affords any consumer greater protection than provided under this part.

VII. Definitions

(a) *Billing Information* means any data that enables any person to access a consumer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(b) *Charge, Charged, or Charging* means any attempt to collect money or other consideration from a consumer, including but not limited to causing [Billing Information](#) to be submitted for payment, including against the consumer's credit card, debit card, bank account, telephone bill, or other account.

(c) *Clear and Conspicuous* means that a required disclosure is easily noticeable (*i.e.*, difficult to miss) and easily understandable by ordinary consumers, including in all of the following ways:

(1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

(2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

(4) In any communication using an [Interactive Electronic Medium](#), such as the Internet, mobile application, or software, the disclosure must be unavoidable.

(5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

(6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

(7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

(8) When the representation or sales practice targets a specific audience, such as children, older adults, or the terminally ill, “ordinary consumers” includes members of that group.

(d) *Interactive Electronic Medium* is any electronic means of communicating (except via telephone calls), including Internet, mobile application, text, chat, instant message, email, software, or any online service.

(e) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(f) *Negative Option Feature* is a provision of a contract under which the consumer's silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the [negative option seller](#) as acceptance or continuing acceptance of the offer, including, but not limited to:

(1) an automatic renewal;

(2) a continuity plan;

(3) a free-to-pay conversion or fee-to-pay conversion; or

(4) a pre-notification negative option plan.

(g) *Negative Option Seller* means the person selling, offering, charging for, or otherwise marketing a good or service with a [Negative Option Feature](#).