

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Federal Trade Commission Request for Public Comment on Its Proposed Enforcement Policy Statement Regarding Personalized Pricing (released August 19, 2026).

Docket ID: FTC –2026–1057

The American Consumer Institute (ACI) is a nonprofit 501(c)(3) education and research organization. Its mission is to promote consumer welfare by enhancing the understanding and impact of public policies and regulations on consumers in a free market.

Personalized Pricing in Practice: FTC Must Protect Discounts and Loyalty Programs

Personalized pricing, referred to as “surveillance pricing” by its critics, is the economic practice of charging different prices to different consumers using their personal information, such as browsing data and purchase history. Critics deride the practice out of fear that businesses will leverage personal data to charge consumers an amount above market rates up to their maximum “willingness to pay.” Essentially, the accusation is that businesses use consumer data to find out the price an individual consumer can afford and then charge the consumer exactly that price, eliminating consumer surplus.¹ For this reason, personalized pricing is viewed by many as extractive, even though the same tools—discounts, one-time offers, and loyalty programs—are often used to lower consumer prices.

The alternative to discount offers is one single price paid by everyone. That may sound appealing on the surface—in one sense it does seem “fairer”—but that’s not what consumers say they prefer. 54 percent of US adults report that loyalty programs “influence what they buy” and 64 percent say it influences where they buy goods and services.² In response to inflation and a rapidly rising cost of living, consumers report “more aggressively looking for discounts.”³

¹ Brian Albrecht, “Eliminate ‘Personal Pricing’ and You Risk Harming Consumers,” *Financial Times*, July 2, 2026, <https://www.ft.com/content/e8a52d2a-9b48-45ac-8044-9143a014c3ef>.

² John Pedini, “Consumers Crave More Than Discounts from Loyalty Programs,” *Forrester*, January 23, 2025, <https://www.forrester.com/blogs/consumers-crave-more-than-discounts-from-loyalty-programs/>.

³ Zachary Russell, Survey: Consumers Looking for More Discounts, Buying Fewer Non-essentials to Save Money,” *Chain Store Age*, July 22, 2025, <https://chainstoreage.com/survey-consumers-looking-more-discounts-buying-fewer-non-essentials-save-money>.

And when it comes to using their personal data, such as purchasing history, to offer personalized discounts, 74 percent approve, setting a strong endorsement of companies using certain kinds of personalized data when it benefits the consumer, according to a 2021 YouGov poll.⁴ These benefits matriculate to consumers across markets, especially in competitive ones where coverage is bountiful and consumers have options. In that case, companies use personal information to keep consumers loyal or to attract consumers from competitors by lowering prices—a process called poaching.⁵

General Price Disclosures Can Harm Consumers

The Federal Trade Commission is right to consider transparency in algorithmic pricing decisions. Prudently designed transparency disclosures can be a useful tool to weed out clear instances of corporate deception and to correct misaligned consumer market perception by making it clear that not every consumer sees the same price. But transparency mandates, especially poorly designed disclosures, also have tangible downsides: eroding consumer trust, needlessly confusing and scaring consumers, thus frustrating routine purchasing habits.

The clearest possible downside of disclosure mandates is that they can unintentionally stoke unearned consumer anxiety about routine and beneficial business practices. To be compliant, the FTC implies that disclosures be “clear and conspicuous” that a “personalized price is based on a consumer’s estimated willingness to pay derived from data about that consumer’s previous purchases.”⁶ Under that disclosure framework, reasonable consumers may feel targeted and surveilled. That may be an earned reputation for a select few truly deceptive practices designed to confuse consumers and extract their resources, but the language is broad and generally applicable to other routine business practices. As a result, it sends consumers a misleading message about group discounts, coupons, targeted promotions, and one-time offers. Since promotions and discounts are disproportionately targeted to price-sensitive, lower-income consumers who may be unable to pay full market price, anxiety-inducing disclosure requirements risk pushing those products and services out of reach by defaulting them to higher baseline rates.

Avoid Scare Labels, Especially When Used for Lower Prices

Consumers will not benefit from a transparency policy that scares them away from better deals and more affordable products. They will also not benefit from lengthy, legal jargon-filled notices that emulate corporate privacy notices few people read. As a compromise, some suggest that the FTC emulate a policy structure similar to New York’s Algorithmic Pricing Disclosure Act, which requires companies to explicitly state: “THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA.” This government-mandated line may be preferable to long-form disclosures insofar as it conveys the use of data to consumers in clear and simple terms. However, in effect, it amounts to little more than a government mandated scare label that dissuades consumers from using products and services that benefit them.

⁴ Hoang Nguyen, “How Loyalty Programs Are Helping to Solve Privacy Concerns in a Cookieless World,” YouGov, May 3, 2021, <https://yougov.com/en-us/articles/35661-loyalty-programs-privacy-cookieless-world-poll>.

⁵ Andrew Rhodes and Jidong Zhou, “Personalized Pricing and Competition,” *American Economic Review* 114 (7): 2141–70. <https://doi.org/10.1257/aer.20221524>.

⁶ Federal Trade Commission’s Proposed Enforcement Policy Statement Regarding Personalized Pricing, Federal Trade Commission, August 18, 2026, https://www.ftc.gov/system/files/ftc_gov/pdf/p034101-ftc-enforcement-policy-statement-re-personalized-pricing-proposed-for-public-comment.pdf.

In some cases, the rules themselves can be misleading. Under New York’s disclosure rule, the rideshare company, Uber, printed New York’s transparency line because it uses consumer location data to determine trip length and fare prices.⁷ Uber maintains that it does not use “personalized” pricing, only dynamic pricing based on geography and customer demand.⁸ New York anticipated this issue and tried to narrowly carve out rideshare by excluding location data that a transportation network company vehicle uses solely to calculate mileage and trip duration.⁹ Unfortunately, “solely” is a vague and thin legal criterion. The likely result is that Uber defaulted to a conservative legal disclosure to avoid conflict and future disputes over state enforcement of the law.

Meanwhile, New York Attorney General Letitia James used the state’s personalized pricing law as a reason to advocate a ban on using personal data to inform pricing decisions. In the FTC’s policy statement requesting comment, the Commission clearly stops short of endorsing a ban on personalized pricing, citing a lack of Congressional authority.¹⁰ However, if the FTC were to use its existing powers to force overly broad transparency disclosures, it risks feeding a cycle where state policymakers who are already skeptical of personalized pricing practices use those disclosures as evidence of a need for statewide bans. That scenario must be avoided.

The many downsides from these supposedly pro-consumer disclosures should give the FTC pause from imposing broad transparency and disclosure mandates for personalized pricing practices. Should the Commission proceed despite these warnings, it should keep its focus narrow: prioritize flexibility, keep disclosures clear and short, and permit messaging to accurately convey discounted rates and promotions. Ideally, it would also tailor the personalized pricing disclosure requirements to instances where consumers are likely to be deceived or otherwise harmed. It should avoid jargon the average consumer would not understand—such as “estimated willingness to pay”—or mandated verbiage that assumes consumer harm as default. Consumer transparency notices are nice in theory, but abusable and costly in practice.

Conclusion

Despite the criticisms, personalized pricing often reaches consumers in the form of discounts, one-time offers, loyalty programs, and other promotional programs that save them money. The temptation for the Commission to require disclosures when companies engage in personalized pricing is understandable but easily abusable. If poorly designed, these disclosures will amount to little more than scare lines that dissuade consumers from using products and services that will save them money and improve their lives, while opening the door to sweeping mandates that will do more harm than good. To avoid that outcome, the Commission should keep its decisions narrow and targeted to cases of deception or consumer injury.

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⁷ Alex Bitter, “Uber and DoorDash now Disclose When Algorithms Set Prices. There’s Still One Big Question,” *Business Insider*, November 12, 2025, <https://www.businessinsider.com/uber-doordash-notify-if-apps-use-customer-data-set-prices-2025-11>.

⁸ “Uber’s Principles on Pricing and Promotions,” Last visited September 23, 2026, https://tb-static.uber.com/prod/uber-static/uber-sites/_pdf/ai-on-uber/Pricing_Principles_one-pager.pdf.

⁹ Article 22-A, § 349(d), Last visited September 23, 2026, <https://www.nysenate.gov/legislation/laws/GBS/349-A>.

¹⁰ Federal Trade Commission’s Proposed Enforcement Policy Statement Regarding Personalized Pricing, Federal Trade Commission, August 18, 2026, https://www.ftc.gov/system/files/ftc_gov/pdf/p034101-ftc-enforcement-policy-statement-re-personalized-pricing-proposed-for-public-comment.pdf.