

NATIONAL TAXPAYERS UNION

Center for Emerging Technologies

Before the

FEDERAL TRADE COMMISSION

Office of the Secretary

600 Pennsylvania Avenue NW

Washington, DC 20580

Revisions Urged for FTC Personalized Pricing Proposal

Docket FTC-2026-1057

**COMMENTS OF NATIONAL TAXPAYERS UNION
AND THE FOLLOWING ORGANIZATIONS:**

SOUTHWEST PUBLIC POLICY INSTITUTE

CENTER FOR FREEDOM AND PROSPERITY

PINPOINT POLICY INSTITUTE

MARKET INSTITUTE

THE AMERICAN CONSUMER INSTITUTE

COMPETITIVENESS COALITION

SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL

The FTC's approach to personalized pricing can affect consumer prices and market competition. National Taxpayers Union and the undersigned organizations urge the Federal Trade Commission to substantially revise its proposed enforcement policy statement. The final statement should define covered conduct precisely and require proof of deception or unfairness, including evidence linking personal data to an individualized price and any claimed injury. It should encourage useful disclosure without discouraging legitimate discounts or ordinary price changes. Each party should remain responsible for conduct it controlled or knowingly adopted. Any remedy should remain within the authority Congress has provided and address proven injury.

NTU is a nonpartisan taxpayer advocacy organization founded in 1969. Southwest Public Policy Institute advances data-driven policy in the American Southwest, including work on financial inclusion and economic opportunity. The Center for Freedom and Prosperity promotes competitive markets and limited government, while Pinpoint Policy Institute focuses on economic growth, free markets, and the rule of law. Market Institute advances market-based policies through research and public education. The American Consumer Institute studies how public policy and regulation affect consumer welfare in a free market. The Competitiveness

Coalition advocates for light-touch regulatory policies that put consumers first and encourage investment in American innovation. The Small Business & Entrepreneurship Council is a nonpartisan advocacy, research and education organization dedicated to protecting small business and promoting entrepreneurship. We do not collect consumer data for use in personalized pricing or operate a pricing platform. We are commenting because unclear enforcement standards can raise compliance costs and discourage discounts. They can also weaken lawful price competition. Undisclosed use of personal data can harm consumers. The Commission should address actual deception and unfair injury without treating every price difference as evidence of unlawful personalization.

The Commission has a legitimate responsibility to enforce Section 5. A deception case requires a representation, omission, or practice likely to mislead a reasonable consumer about a material fact. An unfairness case must satisfy each element of Section 5(n). The practice must cause or be likely to cause substantial injury that consumers cannot reasonably avoid. Countervailing benefits to consumers or competition cannot outweigh that injury.¹ The use of personal data may be relevant evidence, but it cannot substitute for those statutory requirements.

The public record shows that pricing intermediaries can draw on location, browsing behavior, purchase history, demographics, and inferred traits. The FTC's Section 6(b) study found that intermediaries had worked with at least 250 clients.² Because the study materials are confidential, the FTC published only aggregated or anonymized findings and hypothetical examples. The proposed statement also recognizes that the prevalence and effects of personalized pricing remain unclear.³

Those limitations make precise definitions and case-specific evidence especially important. Evidence of price variation may justify investigation, but it does not establish personalized pricing unless the Commission can connect personal data to the price shown to a particular consumer. That distinction protects ordinary pricing decisions while preserving enforcement against proven deception or unfairness.

Peer-reviewed economic research also shows why the Commission should avoid categorical assumptions. In a field experiment, Jean-Pierre Dubé and Sanjog Misra found that personalized pricing reduced aggregate consumer surplus compared with uniform pricing, even though more than 60% of consumers received lower prices.⁴ In a separate economic model, Andrew Rhodes and Jidong Zhou found that consumer effects varied with market coverage, competitive

¹ FTC Policy Statement on Deception, 103 F.T.C. 174, 175-76 (1984). 15 U.S.C. § 45(n).

² Federal Trade Commission, Surveillance Pricing 6(b) Study: Research Summaries, A Staff Perspective 6 (Jan. 2025).

³ Federal Trade Commission, Proposed Enforcement Policy Statement Regarding Personalized Pricing 3 (Aug. 19, 2026).

⁴ Jean-Pierre Dubé and Sanjog Misra, Personalized Pricing and Consumer Welfare, 131 Journal of Political Economy 131, 131-89 (2023).

conditions, and whether all or only some firms could personalize prices.⁵ Together, the studies support case-specific analysis rather than a presumption that personalized pricing always helps or harms consumers.

The Commission should define personalized pricing as an individualized transaction price based on data specific to the consumer receiving that price. This definition would distinguish the practice from coupons, loyalty rewards, points programs, retention offers, negotiated prices, geographic differences, time-limited promotions, and inventory-based changes. Electronic shelf labels can speed price changes, but they are not personalized-pricing systems unless they identify a consumer and vary the price for that person.

A price difference may justify investigation. It cannot support an allegation or enforcement action by itself. Before alleging misconduct or bringing an enforcement action, the Commission should require evidence that connects the consumer data used to the price charged, the challenged representation or omission, and the claimed injury. For unfairness, the Commission should use a realistic uniform-price alternative as the baseline. The lowest price another consumer received may be the wrong comparison. Liability should follow only when the evidence shows that personal data affected the price and the conduct satisfies every element of the applicable deception or unfairness standard.⁶

Clear disclosure can protect consumers without undermining genuine discounts or competitive pricing.

Consumer expectations may inform the Commission's analysis, but an expectation alone should not create a legal duty to disclose. The Commission should identify the representation, omission, or practice that is likely to mislead a reasonable consumer and explain why the omitted information is material. Any disclosure remedy should address that misleading impression without requiring a business to reveal its complete pricing model or data architecture.⁷

Disclosure should be required only when it is needed to prevent a deceptive representation or omission. Any recommended notice must fit the sales channel. An online checkout may permit a brief statement before purchase. A physical store may require a different method. Before prescribing where or how notice must appear in a physical-store transaction, the Commission should identify the misleading statement or omission that the notice would correct. The Commission should test any model notice for consumer understanding and usefulness. Accurate

⁵ Andrew Rhodes and Jidong Zhou, Personalized Pricing and Competition, 114 American Economic Review 2141, 2141-70 (2024).

⁶ See Alden Abbott, The Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing, Mercatus Center (Sept. 2, 2026).

⁷ See FTC Policy Statement on Deception, 103 F.T.C. 174, 175-83 (1984). See also *In re International Harvester Co.*, 104 F.T.C. 949, 1058-59 (1984).

use of the model may count in a business's favor. Declining to use it should not create liability, and disclosure should not excuse conduct that otherwise satisfies the unfairness standard.

The final statement should protect genuine coupons, loyalty rewards, points programs, retention offers, negotiated prices, and discounts that do not misrepresent the ordinary price or mask a personalized increase. It should also protect ordinary changes tied to supply, demand, inventory, time, or documented costs. These practices can lower prices for some consumers and help firms compete. The Commission should examine concealed increases based on personal data when the evidence indicates that the practice may satisfy the statutory standard.

Responsibility should follow what each party controlled and knew. Personalized-pricing systems may involve merchants, marketplaces, data brokers, and pricing vendors. A merchant should answer for representations it made and pricing practices it directed or knowingly adopted. A marketplace or pricing vendor should answer for the data it supplied and the pricing logic or recommendations it controlled. Using a contractor should not shield a party from responsibility for a pricing decision it made or directed. The Commission should assess each party under existing law based on that party's own conduct and knowledge. Contracts and transaction logs may help show who controlled the relevant conduct and what each party knew. Their absence should not create liability by itself.

In assessing reasonable avoidability, the Commission may consider whether a consumer could identify and correct inaccurate information that materially affected the price. When the Commission proves unlawful conduct and actual injury, the available remedy should address that injury. When existing law authorizes monetary relief, the Commission should identify affected consumers and tie any recovery to proven injury. The final statement should say plainly that it creates no new legal duty, independent basis for liability, monetary authority, or private right of action.⁸ The Commission should use the remedies Congress has provided and identify any material gap separately.

NTU and the undersigned organizations ask the Commission to define personalized pricing narrowly and require proof of every element of deception or unfairness. The final statement should protect ordinary price changes and bona fide discounts. Responsibility should follow what each party controlled and knew. The statement should create no new legal duty or independent basis for liability. Broader presumptions could chill lawful discounts and market competition. We take no position in these comments on a broader national privacy framework or a new private right of action. Those questions require a separate legislative record.

Thank you for the opportunity to comment.

⁸ See *AMG Capital Management, LLC v. FTC*, 593 U.S. 67, 72-81 (2021). See also Federal Trade Commission, Proposed Enforcement Policy Statement Regarding Personalized Pricing 7 (Aug. 19, 2026).

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