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September 10, 2026

Ms. April Tabor
Secretary
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex E)
Washington, D.C. 20580

Re: Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing

The Future of Privacy Forum (FPF) welcomes the opportunity to submit comments in response to the Federal Trade Commission's (FTC, or Commission) request for feedback on its Proposed Enforcement Policy Statement Regarding Personalized Pricing.¹ FPF is a global non-profit organization dedicated to advancing principled and pragmatic data protection, AI, and digital governance practices. We convene leaders across industry, academia, and the public sector to provide expert analysis, benchmarking, and best practices that support responsible innovation and regulatory compliance. In this capacity, we have been heavily engaged on the issue of personalized and data-driven pricing, providing analysis that is informed by both privacy and consumer protection considerations as well as the operational realities retailers face.²

To ensure the Commission's enforcement policy is clear to both retailers and consumers, FPF recommends that the FTC:

- I. Clarify whether it will consider *any* undisclosed price personalization deceptive, or only undisclosed personalized pricing that leads to *higher* prices.

¹ *FTC Seeks Comment on Enforcement Policy Statement Regarding Personalized Pricing*, FTC (Aug 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-seeks-comment-enforcement-policy-statement-regarding-personalized-pricing>.

² Jameson Spivack, *The Price is Right: Responsible Uses of Personal Data in Pricing*, FPF (Apr 2026), <https://fpf.org/blog/the-price-is-right-responsible-uses-of-personal-data-in-pricing/>; see also Jameson Spivack, *Data-Driven Pricing: Key Technologies, Business Practices, and Policy Implications*, FPF (Jul. 2025), <https://fpf.org/resource/data-driven-pricing-key-technologies-business-practices-and-policy-implications/>; see also Jameson Spivack, *A Price to Pay: U.S. Lawmaker Efforts to Regulate Algorithmic and Data-Driven Pricing*, FPF (Aug. 2025), <https://fpf.org/blog/a-price-to-pay-u-s-lawmaker-efforts-to-regulate-algorithmic-and-data-driven-pricing/>.

- II. Clarify, if and when relevant, how it assesses whether personalized pricing leads to *higher* prices, including what reference point(s) are used.
- III. Provide guidance to retailers about operationalizing the enforcement policy statement's disclosure requirement, informed by industry best practices.

The FTC should clarify whether it will enforce against any undisclosed price personalization as a deceptive practice, or only when undisclosed price personalization leads to higher prices for a consumer.

The enforcement policy statement indicates that the Commission will consider it a *deceptive* practice under Section 5 when retailers fail to disclose that a price is personalized, the consumer reasonably expects the price to be static or widely offered, and the effect is material.³ The statement also declares that some personalized pricing strategies might be considered *unfair* practices, highlighting “[t]he higher price paid by a consumer” as an unavoidable, substantial injury to the consumer.⁴ It’s not clear, however, whether the FTC considers all undisclosed personalized pricing “material” for the sake of a deception claim, or only if it leads to higher prices. According to the FTC’s Policy Statement on Deception, information relating to the cost of products or services has been found to be “material” in previous FTC cases.⁵ On the other hand, the non-exhaustive list of examples the FTC provides of pricing practices that raise Section 5 concerns exclusively features instances in which personalized pricing led to higher prices.⁶

Clarifying whether the FTC intends to treat all undisclosed personalized pricing—even when it leads to lower prices, such as in the case of discounts—as a deceptive practice will help retailers better understand their legal obligations. This is particularly important considering many retailers engage in personalized pricing with the intention of offering *lower* prices to some consumers, such as through loyalty and reward programs, personalized coupons, and discount programs for groups like students and seniors. However, as addressed below, the Commission should also be clear about what it considers a “higher” price in relation to.

If the FTC focuses on practices in which personalized pricing leads to higher prices, it should clarify how it assesses what constitutes a “higher” price, and in relation to what reference point.

The non-exhaustive list of pricing practices that raise Section 5 concerns only includes those that lead consumers to pay “higher” prices based on their personal data, tying enforcement to a concrete consumer harm. However, this requires the Commission to answer an important follow-up question: “higher” prices in relation to *what*? Other customers? The same customer

³ *Supra* 1, pg 5.

⁴ *Ibid.*, pg 6.

⁵ FTC Policy Statement on Deception (1983),

https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

⁶ *Supra* 1, pg. 7.

over time? A bona fide internal baseline price that the company offers to most customers? Each of these framings creates a different standard for when a pricing practice might be considered unfair or deceptive, and raises unique operational challenges.

FPF recommends the Commission evaluate whether a given price is “higher” by comparing it to a real, internal baseline price established by a retailer. This baseline price should be “bona fide” according to the FTC’s Guides Against Deceptive Pricing, meaning it has been recently offered to the public in good faith, during the regular course of business, for a reasonable amount of time.⁷ The baseline price should not be “fictitious,” such as an artificially inflated price or one the retailer never intended to offer. Thinking of “higher” prices in relation to a bona fide baseline price allows the Commission to evaluate whether the use of personal data has led to prices higher than a customer would have otherwise been offered. It also avoids the ambiguity of comparing prices between customers, in which a lower price for one customer, such as a discount, might necessarily mean a higher price for another.

The FTC should provide further guidance to retailers about how to operationalize the enforcement policy statement’s disclosure requirement, informed by industry best practices.

The enforcement policy statement is clear that failing to clearly and conspicuously disclose not just the fact that a given price is personalized but also the basis of the personalization and the type of data used may be a deceptive, and potentially unfair, practice.⁸ Given some of the logistical and design challenges involved in disclosing in-depth pricing information—such as limited space and user experience considerations—organizations may benefit from guidance on how to do so effectively. As outlined in the FPF report *The Price is Right: Responsible Uses of Personal Data in Pricing*, which is based on input from major retailers, there are a number of pricing transparency best practices organizations can implement in order to build more consumer trust:⁹

- Where feasible, retailers should provide effective notices in multiple locations, including just-in-time or layered notices at the point of sale, disclosing when and how data is used to inform pricing or special offers.¹⁰ These policies should also be published externally, as possible, to allow for ongoing transparency.

⁷ *Guides Against Deceptive Pricing*, FTC, <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-233>.

⁸ *Supra* 1, pg 6.

⁹ Jameson Spivack, *The Price is Right: Responsible Uses of Personal Data in Pricing*, FPF (Apr 2026), <https://fpf.org/blog/the-price-is-right-responsible-uses-of-personal-data-in-pricing/>.

¹⁰ *Ten steps to develop a multilayered privacy notice*, The Center for Information Policy Leadership (Mar 2007), https://www.informationpolicycentre.com/wp-content/uploads/2007/03/ten_steps_to_develop_a_multilayered_privacy_notice_white_paper_march_2007_.pdf.

- Personalized discounts should be disclosed clearly—for example, with strikethrough pricing or individualized discount codes—to denote that a consumer is receiving a special offer in relation to a baseline price.¹¹
- To the extent possible, retailers should also be able to provide contextual insight into how and why the personalized offer has been made; for instance, an explanation that a discount code is a “thank you” for making a recent purchase, or as part of a customer’s loyalty program. In the case of marketplaces and third party advertisements, retailers will need to work with their data partners to determine who is responsible for providing disclosures: the entity setting the price, or the one displaying it.
- Sometimes, retailers use personal data as a proxy for market conditions or legitimate, non-individualized pricing distinctions. For example, retailers in the transportation sector may use a consumer’s geolocation to set fares, but the price is based on more general market factors like supply, demand, or the cost of providing a product or service. In these cases, retailers should be clear that personal data is informing price only to the extent that it reflects broader market conditions, rather than personalization unique to the individual.
- In some cases, such as mobile applications with limited design space, it will be necessary to put more detailed information about pricing in terms of service rather than at the point of sale, to avoid overwhelming consumers with information.
- For dynamic pricing, which may lack a universal baseline price, retailers can still ensure transparency by providing details about how different factors impact a given price, or how prices have changed over time. For example, ride hailing apps can explain that prices increased due to higher demand or lower driver availability, and airline ticket websites can show how a price compares to historical prices.

Attached to this comment you will find a full version of the FPF report *The Price is Right: Responsible Uses of Personal Data in Pricing*, which provides an overview of how data is used to inform pricing; contextualizes personalized pricing practices in existing U.S. law, enforcement activity, and emerging legislation; and recommends a number of best practices for guiding retail platforms in using data responsibly when it affects pricing. These practical recommendations, developed in consultation with companies working to build trustworthy pricing practices, are aligned with how leading organizations have built robust, responsible AI Governance programs based on frameworks like National Institute of Standards and Technology (NIST)’s AI Risk Management Framework (AI RMF).

FPF appreciates the opportunity to comment on these issues, and the Commission’s ongoing efforts to promote fair, consumer-friendly pricing practices. We welcome any further opportunity to provide resources or information to assist in this effort. If you have any questions regarding these comments, please contact Jameson Spivack at jspivack@fpf.org (cc: info@fpf.org).

¹¹ Strikethrough pricing involves visually demonstrating that a price has been discounted by showing both the original price, crossed out, with the new price next to it. See *Strikethrough/markdown pricing*, Talon.One, <https://www.talon.one/glossary/strikethrough-cross-out-pricing-definition>.

Sincerely,

Jameson Spivack - Deputy Director, Artificial Intelligence

Future of Privacy Forum

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