Comments of Consumer Reports
In Response to the
Federal Trade Commission
Proposed Enforcement Policy Statement Regarding Personalized Pricing

By
Grace Gedye, Senior Policy Analyst
Justin Brookman, Director of Technology Policy

September 25, 2026

Consumer Reports[1] appreciates the opportunity to provide feedback on the Federal Trade Commission's proposed Enforcement Policy Statement Regarding Personalized Pricing. We thank the Commission for initiating this proceeding. Personalized pricing is a pressing consumer protection issue; it can harm consumers and break the way that markets for consumer goods and services are supposed to function.

Algorithmic pricing has been an area of focus for Consumer Reports in recent years. In an investigation of Instacart's algorithmic pricing tactics, CR, Groundwork Collaborative, and More Perfect Union found that nearly three quarters of all grocery items tested showed different prices to different shoppers at the same store at the same time.[2] The investigation drew on live shopping data from more than 400 shoppers across four U.S. cities, and found differential pricing at several of the nation's largest grocery retailers including Albertsons, Costco, Kroger, Safeway, Sprouts Farmer's Market, and Target.[3] Some items carried up to five different price points simultaneously, and the average price variations observed in the study could cost a household of four about $1,200 per year. In the wake of the investigation, Instacart said it was ending its AI pricing experiments,[4] several members of Congress wrote letters to the company and to the Commission,[5] and Reuters reported that the Commission was investigating Instacart.[6]

A CR investigation of Uber and Lyft found that both companies leverage AI-driven pricing tactics to routinely charge different customers significantly different prices for the same rides ordered at similar times. (We define the same ride as a trip from the same starting point to the same ending point priced at almost the same time—generally within a few minutes of one another and, in many cases, within the same minute).[7] The median difference between the lowest and highest price groupings across tested routes was 42.4 percent. Both apps also regularly entice

---

[1] Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests, including their interest in securing effective privacy protections. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

[2] Derek Kravitz, "Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds" Consumer Reports, Dec. 9, 2025, https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experimentinflating-grocery-bills-a1142182490/

[3] *Id.*

[4] Derek Kravitz, "Instacart Stops Pricing Tests on Its Platform Amid Outrage from Customers", Consumer Reports, Dec. 22, 2025, https://www.consumerreports.org/money/questionable-business-practices/instacart-stops-ai-pricing-experiments-a1176475852/

[5] *Id.*

[6] Jody Godoy, "FTC probes Instacart's AI pricing tool, source says; shares drop", Reuters, Dec. 17, 2025, https://www.reuters.com/legal/litigation/ftc-investigating-instacarts-ai-pricing-tool-source-says-2025-12-17/

[7] Derek Kravitz, "Different Prices for the Same Ride: How Uber and Lyft Use AI to Get More Money Out of You", June 16, 2026, https://www.consumerreports.org/money/questionable-business-practices/uber-lyft-different-prices-for-same-ride-and-fake-discounts-a1093538909/

customers to book rides by offering supposed discounts off what appeared to be inflated original prices; 12.4 percent of all discounts advertised on both platforms fell into this category.

In the past couple of years, the issue of personalized pricing has gained increasing attention from policymakers too. CR's policy advocates have provided technical assistance and support to lawmakers in more than 10 states and localities. In 2024, no state introduced a bill to prohibit personalized pricing;[8] in 2026, more than 40 bills were introduced[9] and three were enacted.[10] Additionally, the first city-level bill is currently awaiting Seattle Mayor Katie Wilson's signature,[11] and a New York state-level bill is pending before Gov. Hochul.[12] In Congress, policymakers on both sides of the aisle have identified this issue as a pressing problem for consumers.[13]

In this comment, we will argue that disclosures alone will not protect consumers from personalized pricing. We urge the Commission to go beyond requiring disclosures and to ban the practice; it has broad legal authority to prohibit novel harmful practices under Section 5 of the FTC Act. The Commission should also place safeguards on how companies can use personal data to set discounts. More than 23,000 Consumer Reports members signed on in support of the Commission prohibiting personalized pricing; their signatures are submitted with this comment.

I. Disclosure alone will not protect consumers from surveillance pricing.

The proposed Enforcement Policy puts forth disclosures as the sole mechanism to protect consumers from the harms of personalized pricing. Ample evidence from past disclosure regimes—along with empirical evidence about how consumers actually engage with mandated disclosures—suggest that this will be an ineffective way to protect consumers.

In order to understand why disclosures don't work in practice, it's worth briefly discussing how they are meant to work in theory. First, regulators pass rules or offer guidance on what needs to be disclosed and how and where it needs to happen. Next, companies figure out how to comply with that requirement, often erring on the side of overinclusivity and vagueness

---

[8] Cheyenne Tan, "How U.S. States are Tackling Algorithmic Pricing: 2025 Bill Tracker and Analysis" Aug. 1, 2025, bill tracker accessed here: https://innovation.consumerreports.org/how-u-s-states-are-tackling-algorithmic-pricing-2025-bill-tracker-and-analysis/

[9] Lindsey Tonsager, Jayne Ponder, Natalie Maas, "State Lawmakers Introduce New Wave of Personalized Algorithmic Pricing Bills," Inside Privacy, March 26, 2026, https://www.insideprivacy.com/artificial-intelligence/state-lawmakers-introduce-new-wave-of-personalized-algorithmic-pricing-bills/

[10] See New Jersey: *Fair Price Protection Act*, A.B. 4085, 222d Leg., Reg. Sess. § 3 (N.J. 2026) (enacted July 23, 2026); Connecticut: Conn. Pub. Act No. 26-130, § 11(c)(1) (2026); Maryland: *Protection From Predatory Pricing Act*, 2026 Md. Laws ch. 154, § 1 (codified at Md. Code Ann., Com. Law § 13-321(b)(2);

[11] Seattle, Wash., Ordinance CB 121267, https://seattle.legistar.com/LegislationDetail.aspx?ID=8166554&GUID=050CEA54-3AED-44AE-899E-D5A4573543E2&Options=ID%257CText%257C&Search=121267&FullText=1

[12] New York: *One Fair Price Act*, S. 8623-B & A. 9349-B, 2025–2026 Leg. Sess. § 1 (N.Y. 2026)

[13] See, for example, the Senate hearing convened by Sen. Josh Hawley (R-MO) on August 4th, "Your Data, Their Profit: The Consumer Cost of Surveillance Pricing," and the One Fair Price Act, introduced by Sen. Ruben Gallego (D-AZ), which would prohibit the practice.

where possible, to protect themselves from liability. After that, the consumer has to encounter the disclosure somewhere in the real world, decide that it is worth their while to read it, actually make sense of what the disclosure says, and understand how that compares to their other options (perhaps they need to go to competitors' websites or stores to read their disclosures too). If they don't like what they see in the disclosure, they need to have other options that are meaningfully different. If every step of this process works well, they are then able to make an informed choice that protects their own interests.

In practice, however, each step of this process can and often does break down. Consumers often simply do not read disclosures. Researchers followed the clickstreams of more than 48,000 visitors to dozens of software company websites, and found that fewer than .2% clicked through to the license agreement.[14] Of that subset of consumers, most only read a small portion of the agreement. This may be a rational choice for individuals; reading complex policies is time consuming. A 2008 study found that it takes people roughly 10 minutes to read a privacy policy.[15] That year, the average American visited nearly 1,500 unique websites per year.[16] Based on these numbers, if individuals were to actually read the privacy policies of the websites they visited it would take them 244 hours per year or roughly six 40-hour work weeks. It is unreasonable to expect consumers to do this.

Even when consumers do read disclosures, they may misunderstand, misinterpret, or incorrectly weigh what they have read—especially when the disclosures are describing complex business practices or include jargon. Social science and legal scholars at Carnegie Melon University and Harvard Law school found, in their review of economic literature on disclosures, that, "limited attention, motivated attention, and biased assessments of probability on the part of information recipients can significantly diminish, or even reverse, the intended effects of disclosure requirements."[17] When law professors at the University of Chicago Law School and the University of Michigan Law School conducted a review of the efficacy of legally mandated disclosures—from loan terms, to informed consent before medical procedures, to insurance, Miranda warnings, disclosures around car sales, and even disclosures for caskets—they found that "not only does the empirical evidence show that mandated disclosure regularly fails, failure is inherent in the technique."[18] Take, for example, the Truth in Lending Act, which was given deep thought while Congress debated it for 8 years, and where the bill's supporters got most of

---

[14] Yannis Bakos, Florencia Marotta-Wurgler, and David R. Trossen, "Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts", Journal of Legal Studies, Vol 43 No. 1, Jan. 2014, https://www.journals.uchicago.edu/doi/10.1086/674424?utm

[15] Aleecia M. McDonald and Lorrie Faith Cranor, "The Cost of Reading Privacy Policies," I/S: A Journal of Law and Policy for the Information Society 2008 Privacy Year in Review issue, https://lorrie.cranor.org/pubs/readingPolicyCost-authorDraft.pdf

[16] *Id.*

[17] George Loewenstein, Cass R. Sunstein & Russell Golman, Disclosure: Psychology Changes Everything, 6 Ann. Rev. Econ. 391 (2014). https://www.annualreviews.org/content/journals/10.1146/annurev-economics-080213-041341

[18] Ben-Shahar, Omri and Schneider, Carl E., "The Failure of Mandated Disclosure" (2010). Law & Economics Working Papers. 9. https://repository.law.umich.edu/law_econ_current/art9

the provisions they wanted.[19] If disclosure works anywhere, it should work under this law, the authors argue. Decades after its passage, consumers remained confused about using APRs, and 90% of consumers continued to misunderstand the relationship between the quoted interest rate and the APR.[20]

One could argue that more people would read and understand lending documents and privacy policies if they were somehow far simpler, and that a simplified disclosure of surveillance pricing would be more likely to have the intended effect. In practice, however, transparency about complex business practices is inherently in tension with clear and understandable textual disclosures.[21]

In the context of surveillance pricing, disclosures would need to convey several complicated pieces of information. For example, the disclosure would need to include which exact pieces of information about the individual consumer were used to set the price (e.g., their real-time location, the fact that they are searching from an Android phone, the fact that they have hovered over similar products, inferences about their gender, or that they have a college degree, or three kids), so that the consumer could assess whether they are comfortable with being profiled based on that data. The disclosure would also need to include the sources of that data (eg. data purchased from company A, or data broker B, or first-party data from pixels, which would need to be translated into layman's terms). If that information is inaccurate, the consumer would probably need a process through which to correct it, and that process would also need to be explained or linked in the disclosure. In order for the consumer to assess whether their personal data is being used to charge them a higher or lower price than they would otherwise receive, the disclosure would also need to include whether the price they are seeing is the lowest price anyone is seeing, or if it’s higher, how much higher it is, and what the distribution of prices are. If the price could change, or if the personal information used could change, the notice would probably need to include information about that too.

This is a lot of information to convey, and explaining it requires describing data collection and sale practices that many consumers are unfamiliar with. If you are a consumer comparison shopping online for a carton of milk via online grocery delivery services and alongside each product there is a multi-sentence or multi-paragraph disclosure, is it reasonable to expect you to read and understand a handful of disclosures just to make your $5 purchase? Based on evidence from other mandated disclosure regimes, it seems unlikely that this would result in consumers making informed choices that best protect their interests.

---

[19] *Id.*

[20] Ben-Shahar, Omri and Schneider, Carl E., "The Failure of Mandated Disclosure" (2010). Law & Economics Working Papers. 9. https://repository.law.umich.edu/law_econ_current/art9

[21] Helen Nissenbaum, “A Contextual Approach to Privacy Online,” Daedalus, Vol 140, Issue 4, Fall 2011, https://nissenbaum.tech.cornell.edu/papers/Contextual%20Approach%20to%20Privacy%20Online.pdf

II. The Commission must go beyond requiring disclosures and should ban surveillance pricing

In the draft enforcement policy, the Commission states that it does not have the legal authority to ban surveillance pricing. But Congress gave the Commission broad unfairness authority for a reason; when discussing the FTC Act, members of Congress in fact explicitly considered enumerating unfair business practices, but decided against it, instead opting to "leave it to the commission to determine what practices were unfair," in part because they realized even a long list of practices would not be comprehensive.[22]

Indeed, the Commission has continued to identify new unfair practices and, in some cases, ban them. Of particular relevance to the question of the Commission's authority to ban personalized pricing is the Commission's 1985 Credit Practices Rule, which prohibited certain credit practices and terms *despite the fact that creditors were disclosing their practices to consumers*.[23] Creditors could no longer include in their contracts waivers of exemptions, use household goods (like wedding rings, beds, etc) as security interests, or seek repayment from a consumer's employer directly, among other prohibitions.

While creditors were disclosing these terms in consumer contracts, the Commission reasoned that these disclosures were insufficient for several reasons.[24] One was that most consumers cannot understand credit contracts to begin with, which makes shopping around for better terms difficult (much like it is difficult for consumers to "shop around" for companies with better privacy practices by reading their privacy policies). Another was the fact that consumers were not actually able to bargain over these contract terms in practice, since they were boilerplate contract terms and were relatively standard across creditors in local markets. Consumers also were not highly motivated to read and compare the terms of default in credit contracts because default is relatively infrequent and often for reasons outside of the consumer's control. The Commission considered an alternative rule that would have required a simplified plain English disclosure, to address the issue of complex jargon, but decided against it in part because it realized that comparing competing contracts is difficult and costly, and remedies aimed at lowering that cost were unlikely to succeed. Therefore, it reasoned, the harms of these contract clauses could not reasonably be avoided, even though the creditors were disclosing the practices.

This reasoning is relevant because the overall thrust of the Commission's policy statement is that personalized pricing is only unfair absent disclosure, but with adequate disclosure consumers are not being deceived and can also reasonably avoid the harm of paying a higher price. However, several of the shortcomings identified by the Commission in the Credit Rule apply to personalized pricing disclosures too. Disclosures around the collection, source, and

---

[22] Senate Report, 63-597, Federal Trade Commission, June 14, 1914 https://www.govinfo.gov/app/details/SERIALSET-06553_00_00-068-0597-0000/summary

[23] Trade Regulation Rule; Credit Practices, Federal Register, Vol. 49, No. 42, Thursday March 1, 1984, https://archives.federalregister.gov/issue_slice/1984/3/1/7708-7793.pdf#page=33

[24] *Id.*

use of personal data tend to be difficult for consumers to understand. Consumers cannot bargain directly with large retailers over the manner in which their personal information is used to set a price. Consumers also won't be highly motivated to read and compare personalized pricing disclosures, though for a different reason: For each individual small-dollar transaction, the possibility of receiving a marginally higher price may not seem worth the time cost of reading and comparing disclosures, even if the cost of personalized pricing over the course of dozens of transactions adds up to a significant sum. Lastly, while personalized pricing disclosures may be shorter than credit disclosures, the time cost of reading and comparing them will be similarly high, because consumers shop for goods and services far more often than they shop for credit. Much like with the Credit Rule, the Commission can prohibit personalized pricing because disclosure alone will not, in practice, enable consumers to reasonably avoid the harm.

Under the agency's three-part test for assessing unfairness, the Comission is empowered to act when a practice causes or is likely to cause substantial injury, it is not reasonably avoidable by consumers, and it is not offset by countervailing benefits to consumers or competition. Certainly, many consumers may be materially and monetarily harmed by the practice of surveillance pricing. Based on our investigation into Instacart alone, the price of a basket of goods on Instacart varies by an average of about 7% from customer to customer. If this pricing is applied consistently from consumer to consumer, some would end up paying $1,200 more for groceries for a household of four over the course of a year—for the same exact products. Consumers in general are likely to be materially worse off because of this practice as well, if companies' pricing algorithms are increasingly able to capture proportionately more of the consumer surplus from each transaction.

Adverse personalized pricing is not reasonably avoidable by consumers: because prices are secret, consumers have no way of knowing if they're getting worse deals or not, and cannot reasonably avoid paying a secret premium for the same items as someone else. And while *companies* may benefit from personalized pricing that extracts higher revenues from consumers, Section 5 only countenances countervailing benefits to *consumers or competition*. While in some cases both a consumer and a company may benefit from a personalized price, overall consumers are likely to be net losers from personalized pricing (though the Bureau of Economics should conduct a comprehensive analysis of this question). Finally, personalized pricing is actively harmful to competition; it impairs market transparency as it becomes more difficult for the public to consistently compare prices between different vendors. Word of mouth recommendations, or online roundups of the best deals available online are one way that consumers shop around for the best value; if everyone is seeing different prices, those price discovery tactics will fail to work.

III. Should the FTC proceed with a ban, it must place safeguards on how companies can use personal data to personalize discounts

If the Commission does proceed with a ban on personalized pricing, it must also place safeguards on how companies can use consumers' personal data to set personalized discounts. Highly personalized discounts can function just like personalized pricing, taking advantage of desperate consumers. For example, if Retailer A observes that certain customers often are searching for baby medicine and other products in middle of the night, not sorting by lowest price, ordering rush delivery, and their real-time location is not near competitor stores, Retailer A might charge them $65 for a large pack of diapers, reasoning that those customers will tolerate a higher price, while charging most other shoppers $50. Similarly, Retailer A could price the diapers at $65, and then run a discount for consumers it infers are parents that reduces the price to $50, but omit from that discount parents that it infers to be desperate. The upshot is the same: The store is able to charge parents more if it infers they are particularly in need of a product.

The same factors that have enabled personalized pricing in recent decades—increased ability to track and collect data on individual consumers; a large market for buying and selling consumer data; the increased ease of making individualized predictions based on that data with artificial intelligence; and the rise of online and app-based shopping that make it easier to show different prices to different consumers—have also altered the way that businesses can offer discounts and administer loyalty and rewards programs. Rather than offering sales to all shoppers (20% off strawberries), or discounts to broad groups (teachers, veterans), or transparently offering deals to certain shoppers (20% off a certain gaming console if you buy a specific TV), retailers can now take advantage of what they know about individual consumers to target discounts much more narrowly, based on undisclosed personal attributes or behaviors. Data analytics firms now offer services to major retailers, promising that AI "determines the optimal incentive level for each consumer, avoiding over-discounting customers who would have purchased anyways," and enabling retailers to shift from mass promotions to personalized offers that "boost redemption, often with *lower rewards.*"[25]

Reasonable safeguards could provide retailers with flexibility to pursue a wide range of discounting practices, including many discounts that use personal data, while ensuring that personalized discounts are not a vector for personalized pricing. One baseline measure would be public disclosure of the specific eligibility criteria, as well as any conditions for earning or receiving a specific discount, along with the discount itself. This idea is reflected in state legislation[26] and city-level ordinances.[27] Transparency could disincentivize companies from narrow targeting based on invasive metrics that their customers or the public would react

---

[25] Eagle Eye, accessed at https://eagleeye.com/personalized-promotions?hsCtaAttrib=204792597687
[26] AB 2564, 2025-2026 Reg. Session, (Cal 2026) https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB2564
[27] Seattle, Wash., Ordinance CB 121267, https://seattle.legistar.com/LegislationDetail.aspx?ID=8166554&GUID=050CEA54-3AED-44AE-899E-D5A4573543E2&Options=ID%257CText%257C&Search=121267&FullText=1

negatively to. This could be paired with a requirement that each discount be available on equal terms to all consumers who meet the disclosed eligibility criteria. The Commission should also require data minimization for setting and offering discounts based on consumers' personal data. If a retailer wants to offer a discount to all shoppers who recently purchased a specific brand of strawberries, it should rely on the fact that the shopper has purchased strawberries, but should not pair, cross reference, or combine that data with information about the consumer's income, inferred family size, or inferred occupation, or other information.[28]

In order to disincentivize retailers from marking up "original prices," and then offering a plethora of personalized discounts to different niche groups of consumers, the Commission should consider robustly enforcing its existing guidance on fake discounts.[29] This guidance is longstanding, but the Commission has seemingly not enforced it for decades.[30] Unfortunately, versions of this practice seem to persist. In an investigation of Amazon's Prime Day pricing, a journalist tracked almost 50 products he'd bought on Amazon throughout the year, and compared the prices he paid to the products' Prime Day prices.[31] A pack of coronavirus tests was advertised as 39% off on Prime Day, but the post-discount price was the same as the "full" price he'd paid less than a month before. Same with an Oral-B toothbrush, right down to the supposed 39% off. Some products actually *jumped* in price, like a TV console that was $275 before Prime day and $379 during the sale event.

In Consumer Reports' investigation of Instacart, researchers found something similar. Instacart showed different customers different "original" prices for an item with the same post-"discount" price.[32] Volunteers using Instacart to shop at the same time at a Seattle Safeway, for example, saw several "original" prices for saltines: $5.93, $5.99, or $6.69. But the "sale" price was the same for everyone—$3.99.

Whether or not the Commission pursues a ban on personalized pricing, it should strongly consider placing safeguards on discounts based on personal data and ramping up enforcement against fake discounts. In the absence of such measures, the shift towards increasingly individualized discounts creates inflationary pressure. Why would you lower the price of a good for everyone when you can secretly target customized discounts to the specific people you know are most likely to make a purchase with the exact right incentive?

---

[28] This principle is also seen in AB 2564, in California. See note 26.
[29] Guides Against Deceptive Pricing, 16 C.F.R. § 233.1
[30] David Adam Friedman, "Reconsidering Fictitious Pricing," 100 MINN. L. REV. 921 (2016), https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1196&context=mlr
[31] Geoffrey A. Fowler, "I tracked Amazon's Prime Day Prices. We've been played." *Washington Post,* Oct, 9, 2025, https://www.washingtonpost.com/technology/2025/10/09/amazon-prime-day-prices/
[32] Derek Kravitz, "Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds" Consumer Reports, Dec. 9, 2025, https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experimentinflating-grocery-bills-a1142182490/

In conclusion, we urge the Commission to go beyond a disclosure-only regime and use its power under Section 5 of the FTC Act to prohibit personalized pricing. Additionally, we recommend that the Commission place safeguards on discounts based on personal data. These steps would constitute meaningful action on affordability, in addition to protecting consumers from an unfair business practice.