FTC SIGNALS INCREASED SCRUTINY OF PERSONALIZED PRICING PRACTICES

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US Litigation and Dispute Resolution Alert

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The Federal Trade Commission (FTC) recently issued a proposed enforcement policy statement signaling increased scrutiny of businesses that use consumers' personal data to set different prices for different consumers.[1] Although the FTC acknowledges that it cannot prohibit personalized pricing in all circumstances, the proposed statement warns that businesses may violate the Federal Trade Commission Act (FTC Act) if they use personal data to personalize prices without clearly telling consumers.

The proposal is particularly relevant for retailers and brands that sell direct-to-consumer and other businesses that use data analytics or artificial intelligence (AI) to help set prices. The FTC is accepting public comments on the proposed statement through 25 September 2026.

THE FTC'S PROPOSED APPROACH

The FTC describes “personalized pricing” as using personal data to set a price based on what a business knows or predicts about a particular consumer—for example, how much that consumer may be willing to pay. This is different from prices that change for everyone based on factors such as supply and demand or regional market conditions.

According to the FTC, consumers generally expect people shopping for the same product at the same place and time to see the same price. A business therefore may mislead consumers if it presents a price as generally available when the price actually varies from person to person based on personal information.

Simply telling consumers that prices may vary may not be enough. The FTC states that when consumers would not ordinarily expect prices to vary based on their personal information, businesses should clearly explain that the price is personalized, why it is personalized, and what types of consumer data are being used.

The FTC is also focused on how businesses obtain and use the personal data behind personalized pricing. Collecting, using, or sharing personal information for this purpose without proper disclosure or consumer consent may itself violate the FTC Act. Businesses that obtain data from third parties also may face scrutiny if they do not take reasonable steps to confirm that consumers agreed to the relevant collection and use of their information.

KEY TAKEAWAYS FOR BUSINESSES

The proposed statement is not a final rule and does not create new legal obligations. It does, however, provide insight into how the FTC may approach personalized pricing going forward. Businesses that use consumer data to set prices, discounts, promotions, or other personalized offers should consider:

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- Reviewing pricing practices to determine whether and how personal data affects the prices or offers consumers receive;
- Reviewing consumer disclosures to ensure they clearly explain when and how prices are personalized;
- Assessing data and consent practices, including for information obtained from third parties; and
- Reviewing third-party pricing and AI tools to understand what consumer data they use and how that data affects pricing.

The proposal is part of broader regulatory attention to personalized and data-based pricing. Businesses using these technologies should continue to monitor developments at both the federal and state levels.

The firm will continue to monitor the FTC's proposed policy statement and other related developments.

FOOTNOTES

[1] Federal Trade Commission, *FTC Seeks Comment on Enforcement Policy Statement Regarding Personalized Pricing* (Aug. 19, 2026), available here: https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-seeks-comment-enforcement-policy-statement-regarding-personalized-pricing.

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