



September 25, 2026

The Honorable Andrew Ferguson
Chair, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Comment on FTC Enforcement Policy Statement Regarding Personalized Pricing (August 19, 2026)

Dear Chair Ferguson:

The undersigned organizations write on behalf of small businesses across the country to comment on the Federal Trade Commission's Enforcement Policy Statement Regarding Personalized Pricing. We support the Commission's goal of stopping businesses from secretly charging some customers more than others based on what a business knows about them. The statement as drafted will not achieve that goal. It will instead create confusion that falls hardest on the businesses least equipped to resolve it.

The statement does not distinguish between a markup and a discount. A win-back offer to a customer who has not shopped in two months. A coupon triggered by a prior purchase. A code emailed to someone who left items in a cart. A free dessert on a birthday. Each is a lower price, set for one person, using what the business knows about them, and each fall within the statement's own definition of personalized pricing.

The statement does not say whether these practices are covered, and if they are, what a compliant disclosure would say. A business trying to act in good faith cannot answer that question from the Commission's own document.

Nor does the statement describe a disclosure most businesses can build. The model disclosure is a full sentence identifying the fact of personalization, its basis, and the data relied upon, not a short label, and it would need to appear everywhere a price does: a text message, an emailed code, a printed coupon, a point-of-sale screen, a price quoted by phone. Most businesses rent this infrastructure rather than build it.

Compliance depends on email platforms, storefronts, and payment terminals adding a field that does not currently exist in any of them. Until a vendor builds that field, no amount of good-faith effort makes compliance possible.

This is not a hypothetical concern. New York's Algorithmic Pricing Disclosure Act, the first state law of its kind, has been in effect since November 2025. It requires a specific disclosure at or near every price set using a consumer's personal data, and it draws no distinction between a price raised and a price lowered, the distinction the Commission also declines to draw. The National Retail Federation is challenging the law in federal court on the basis that the disclosures it requires are misleading and disparage pro-consumer discounts. California, a deep blue state where one might expect the strongest appetite for regulation, failed to pass pricing legislation for the second year in a row. 2026's AB 2564 would have prohibited personalized pricing outright, subject to narrow exemptions whose conditions the California Chamber of Commerce and other business groups found unworkable to protect many pro-consumer discounting practices, against civil penalties of up to \$12,500 per violation.

Among the states that have enacted laws, the approaches vary significantly. Maryland's 2026 Protection From Predatory Pricing Act, the first state law to go beyond disclosure, was deliberately limited to price increases on tax-exempt grocery items. Connecticut enacted a pricing law that includes discount exemptions preserving pro-consumer practices. New York and New Jersey have enacted broader pricing bans that have yet to take effect and continue to face significant opposition from industry.

And, in Colorado, the Legislature passed a surveillance pricing ban, only for the Governor to veto it, concluding that its scope could unintentionally restrict legitimate consumer discounts. When pricing rules fail to adequately target exploitative price increases, the safest advice a business can receive is to stop offering personalized discounts altogether, and the cost falls on the customer who no longer receives them.

We recognize this statement is not a formal rule and that the Commission retains enforcement discretion. But policy statements shape behavior before any enforcement action occurs, and this is the first time the federal government has spoken on personalized pricing. We ask the Commission to revise the statement so that it turns on whether a business is concealing a price increase, not on whether a business used any customer data at all, and to withdraw or narrow the disclosure requirement until it can be met with tools that actually exist.

Respectfully submitted,



National Small Business Association (NSBA)



Association of Women's Business Centers (AWBC)



Health & Fitness Association



Heating, Air-conditioning, & Refrigeration Distributors International (HARDI)



National Association of Women Business Owners (NAWBO)



National Apartment Association (NAA)



National LGBTQ+ & Allied Chamber of Commerce (NGLCC)



Society of Collision Repair Specialists (SCRS)



U.S. Black Chambers, Inc. (USBC)



Wireless Internet Services Providers Association (WISPA)