CLIENT ALERT

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FTC Personalized Pricing Disclosure Enforcement

On August 19, 2026 the Federal Trade Commission ("FTC") issued a new Proposed Enforcement Policy Statement Regarding Personalized Pricing (the "Policy Statement")[1]. Building on prior commission findings, the FTC identified personalized pricing as posing substantial injury to consumers, and a possible violation of the FTC Act, when the personalized pricing is implemented without adequate disclosures or consent.

What is Personalized Pricing?

Personalized pricing is the pricing for goods or services based on data about an individual consumer in addition to the context of supply and demand. While some industries, such as insurance and credit, have longstanding practices of using individualized pricing to capture individualized risk, these industries are tightly regulated and require certain disclosures to consumers. For example, under the Fair Credit Reporting Act, consumers must be notified both when an adverse action occurs based on a credit report and on the specific basis.

Modern data practices expand the possible reach of personalized pricing. As data brokers, merchants and other parties amass expansive data sets, for example, including data tied to the habits of individuals, it is common to build personal profiles of consumers. Merchants that access a shopping profile of an individual user or IP address can personalize prices for consumers in new industries based on personal data, making personalized pricing possible in virtually any online store.

FTC Policy Statement

The FTC acknowledges that it does not have the authority to prohibit personalized pricing. Nevertheless, the FTC announced its intention to "aggressively" enforce Section 5 of the FTC Act against any personalized pricing practices that are deceptive, misleading or unfair to consumers. The FTC specifically notes that businesses should provide adequate disclosures or obtain consumer consent to collect, use or disclose personal data for personalized pricing. The FTC signaled it intends to enforce these requirements for goods and services that traditionally have not varied from person to person.

For goods and services where a consumer could reasonably believe they are offered the same price as other consumers, the FTC instructs: "**To be effective, personalized pricing disclosures should be clear and conspicuous and include all relevant information, such as the fact that the price is personalized, the basis of that personalization, and the type of data used.**" Additionally, the FTC notes that businesses might also violate Section 5 if they do not sufficiently verify that consumers consented to data collection for the purpose of personalized pricing. This notice and consent are important to improve a consumer's ability to avoid substantial injury, or higher prices, arising from incorrect data or changeable behaviors.

At present, the FTC is seeking public comments on this Policy Statement. Comments are due by September 18, 2026.

Key Takeaways

The following considerations are critical for businesses evaluating their online practices in light of the FTC's proposed enforcement approach:

- This is an important development to keep in mind if your business is involved in the sale of goods or services online. While there is no federal law regulating personalized pricing, Connecticut, Maryland and New Jersey have enacted laws banning the practice, and numerous other states have introduced bills to prohibit, restrict or increase transparency around personalized pricing.

- Expect increased consumer and regulator expectations around consent for the use of tracking technology, and the proper disclosure of that use, including in your website privacy policy. You will need to have mechanisms in place to separately track consent for marketing and for personalized pricing if your business decides to engage in this practice. It will become imperative to properly document consent and opt-outs if your practices are challenged by a regulator or in a court of law.

- Personalized pricing could be advantageous to your company, but the reputational risk must also be weighed against the potential benefit. This is especially true in an era where viral scrutiny of your website could lead to irreversible reputational harm and loss of consumer trust.

Ultimately, businesses that choose to implement personalized pricing should ensure that their disclosure practices are clear, conspicuous and provide consumers with meaningful information about the basis for price variations to align with the FTC's standard for enforcement. Contact a member of Kutak Rock's Privacy and Data Security team with any questions.

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[1]Fed. Trade Comm'n, "Proposed Enforcement Policy Statement Regarding Personalized Pricing" (Aug. 19, 2026) https://www.ftc.gov/system/files/ftc_gov/pdf/p034101-ftc-enforcement-policy-statement-re-personalized-pricing-proposed-for-public-comment.pdf.