

September 25, 2026

Submitted via regulations.gov

The Honorable Andrew N. Ferguson
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Dear Chairman Ferguson and Commissioner Meador:

The National Retail Federation (NRF) respectfully submits these comments on the “Proposed Enforcement Policy Statement Regarding Personalized Pricing” (Proposed Policy Statement) announced by the Federal Trade Commission (FTC or Commission) on August 19, 2026.¹

NRF, the world’s largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail succeed. NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$5.3 trillion to annual GDP and supporting one in four U.S. jobs — 55 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

Executive Summary

The Proposed Policy Statement is premised on an important consumer-protection concern: businesses should not secretly use a consumer’s personal information to determine if they can pay more and then charge that consumer a higher price for that reason. But the Commission should distinguish that putative deceptive practice from the fundamentally different and distinct ways retailers set prices and use consumer data to deliver value and lower prices to customers.

Increases to retail prices are not driven by the use of personal data to determine a specific individual’s willingness or ability to pay. Retailers operate in an intensely competitive marketplace in which consumers can readily compare prices and shop among competing sellers. Prices are driven by a wide range of legitimate business operational costs, competition, and market factors. The Proposed Policy Statement does not identify empirical evidence demonstrating that retailers commonly use a particular consumer’s personal information to determine that consumer’s willingness or ability to pay and then charge that consumer a higher price on that basis. The claim that this practice is theoretically or technologically feasible is not evidence that the practice is prevalent in retail or causing actual consumer harm.

¹ Federal Trade Commission, “FTC Seeks Comment on Enforcement Policy Statement Regarding Personalized Pricing,” Federal Trade Commission, Aug. 19, 2026, <https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-seeks-comment-enforcement-policy-statement-regarding-personalized-pricing>.

Just as importantly, personalized *discounts* are not personalized pricing. Retailers routinely use consumer information to provide discounts, coupons, rewards, loyalty benefits, targeted promotions, and other benefits that save consumers money. These practices should be expressly excluded from the Commission’s definition of “personalized pricing.” One consumer receiving a personalized discount from a set price does not lead to another consumer being subjected to an individualized price increase. Further, the use of data to determine the availability, amount, or relevance of a discount, promotion, reward, or other benefit does not transform an ordinary, long-standing and beneficial retail practice into “surveillance pricing.”

The Commission therefore should draw a clear line between using personal information to impose an individualized higher price based on a consumer’s willingness or ability to pay and the legitimate use of data in a competitive retail marketplace. Dynamic pricing based on inventory, costs, supply and demand, timing, or other market conditions is not the same as individualized “willingness-to-pay” pricing. Neither are loyalty programs, personalized discounts, targeted promotions, or other consumer benefits.

Finally, any disclosure requirement should be carefully tailored to the consumer harm the Commission seeks to address. Requiring disclosure sufficient to prevent consumer deception is fundamentally different from requiring retailers to reveal “all relevant information” used in pricing decisions. Broad disclosure of proprietary pricing inputs, algorithms, weighting factors, customer-segmentation methodologies, and competitive strategies could expose competitively sensitive information, reduce competitive uncertainty, chill innovation, and ultimately undermine the competition that drives lower prices and greater value for consumers.

NRF therefore urges the Commission to:

- **Define the practice precisely and narrowly.** The definition of “personalized pricing” should be clearly defined and limited to the use of personal information concerning a specific consumer that causes *that* consumer to be offered or charged a higher price based on an inference regarding that consumer’s willingness or ability to pay.
- **Expressly exclude discounts and consumer benefits.** The use of personal information to provide a discount, promotion, coupon, incentive, loyalty benefit, reward, or other consumer benefit should not constitute personalized pricing merely because personal information is used to determine the availability, amount, or relevance of that benefit.
- **Avoid sweeping disclosure mandates.** To the extent the FTC concludes that disclosure is necessary or appropriate to deter or prevent a deceptive pricing practice, the required disclosure should be limited to informing consumers if and when a price increase is individualized to a specific consumer based on that consumer’s ability to pay. The FTC should clearly exclude personalized discounts and promotions and should not require disclosure of competitively sensitive business information or pricing strategies. Any required disclosure also should avoid generalized statements where the disclosure itself could confuse or mislead consumers.

The Commission can address genuine consumer concerns about individualized willingness-to-pay pricing without sweeping in ordinary retail pricing, loyalty programs, discounts, and other

consumer-beneficial practices into the same regulatory framework. The relevant consumer harm for the Commission's policy is not personalization or the use of data itself; it is using personal information about a specific consumer to determine whether that the consumer can or will pay more and using that information to impose a higher individualized price.

NRF's comments below are divided into three topics to provide insights into the pricing practices within the highly competitive U.S. retail industry and how responsible retailers use data to build customer trust and loyalty to deliver affordable and relevant products to consumers:

- I. Retailers build trust with customers as they operate in a highly competitive market that delivers consumers *lower* prices and does not involve "personalized pricing," as defined by the FTC's Proposed Policy Statement and its press release on August 19, 2026;
- II. The FTC's analysis of retail pricing is based on inaccurate or misinformed presumptions about the retail industry and retail customer expectations about pricing that rely on anecdotal examples to express the Commission's speculative concerns with *possible* pricing behavior by retailers; it is not based on scientific research or evidence of *actual* consumer harm; and
- III. The FTC's Proposed Policy Statement proposes broad disclosures of "all relevant information" that could create antitrust risks and have potential anticompetitive effects and/or chill competitive innovation that may undermine the very competitive processes in the retail industry today that drive lower prices and greater value for consumers.

I. Retailers Build Customer Trust as They Operate in a Highly Competitive Market that Delivers Consumers Lower Prices

Every retailer's number one priority is building and maintaining customer trust and loyalty. No other industry or organization is closer to the consumer than retail. Retailers spend every day of every week interacting with, communicating with, and listening to their customers. Our members provide numerous ways for customers to shop – in store, online, or through a mobile application.

We appreciate the FTC's attention to practices that may unfairly or deceptively use information about a particular consumer to charge that consumer a higher price than another consumer under similar transaction and market conditions. We are supportive of enforcement when companies misuse consumer data in ways that violate Section 5 of the FTC Act, including deceptive practices that exploit a consumer's circumstances, willingness to pay, or lack of alternatives.

At the same time, there is an ongoing public debate that unfortunately features significant misinformation and overly broad claims that any use of individual consumer data to set or discount prices means companies are manipulating prices against the consumer at the individual level. That is not the case. Businesses routinely use data, analytics, and technology to understand markets, manage inventory, respond to competition, administer discounts, improve operations, and lower their operational costs. Retailers leverage these capabilities to serve consumers by providing lower pricing through discounts, promotions, and loyalty programs. Those legitimate practices should not be conflated with the Commission's stated concerns about personalized pricing.

In its announcement, the FTC stated it is seeking public comment on the Proposed Policy Statement regarding “personalized pricing, which is the use of personal data to set prices according to the amount that a company believes an individual consumer is willing to spend.” And we note the FTC’s focus on harm when discussing the FTC Act—an act or practice is deceptive if it operates to consumers’ detriment, or unfair if likely to cause substantial injury to consumers.

Retailers use data to discount prices and make goods more affordable for consumers, including through loyalty plans. Increases to retail prices are not driven by the use of personal data to determine a specific individual’s willingness or ability to pay. Retailers operate in an intensely competitive marketplace in which consumers can readily compare prices and shop among competing sellers. Prices are driven by a wide range of legitimate business operational costs, competition, and market factors.

As further explained below, retailers have little control over the cost of goods and the prices set for the goods they sell to consumers. They use data-driven discounts to offer goods at the lowest price possible in a highly competitive industry where the failure to attract customers with lower prices will reduce profitability as they lose sales to competitors.

Customers may choose to shop with a particular retailer and make purchases from that retailer anonymously. Or the customer may be comfortable receiving communications about new product launches, discounts, rewards and other incentives from their favored retailers, often by choosing to share some of their personal information with that retailer. These customers expect that retailers will offer them information on new product launches, extend discounts, how to utilize rewards, and other incentives or experiences. They further expect these communications and offers to be relevant to their individual desires.

Considering the highly competitive retail market in the U.S. economy, as discussed below, retailers work to build long-term relationships with their customers based on trust and loyalty. For retailers large and small, responsible receipt and use of customer data is an important factor in building that trust and loyalty. Individual retailers use their customers’ data to extend discounts to them on more items more often in a highly competitive market.

A. Retailers’ Highly Competitive Environment Drives Lower Prices for Consumers

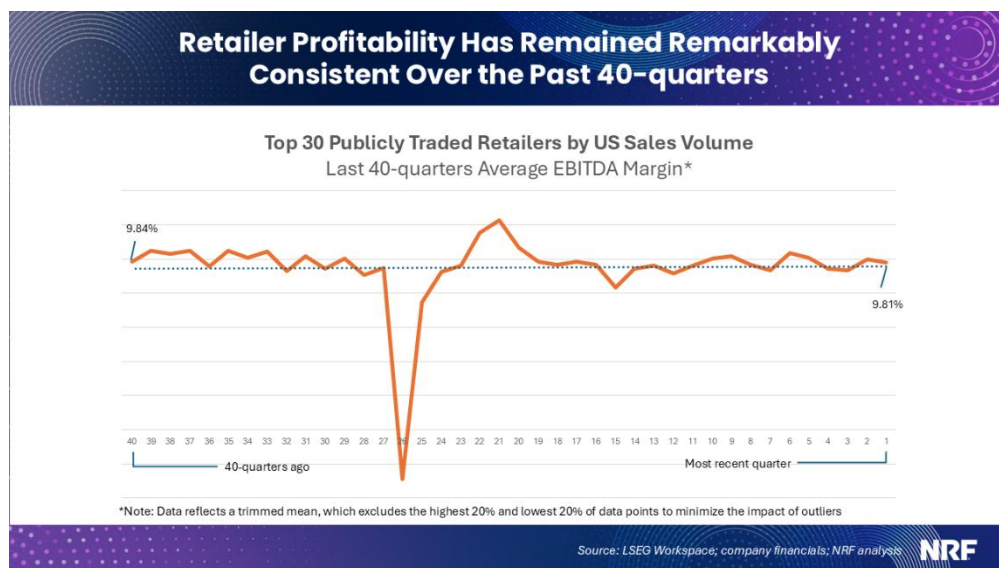
Retailers conduct business in a vigorous, competitive environment with over 600,000 different businesses in the United States operating approximately 1,045,890 retail establishments across the nation – more than any other industry sector. It is misleading for policymakers to equate pricing practices in retail to those in other sectors with far fewer competitors and vastly different business models.²

² U.S. Census Bureau, *Statistics of U.S. Businesses (SUSB)*, U.S. Department of Commerce, <https://www.census.gov/programs-surveys/susb.html>, (accessed Sept. 9, 2026).



Perhaps the least applicable statement in the FTC’s Proposed Policy Statement to retailers is this point made by the Commission: “As a theoretical matter, perfect personalized pricing *without business competition* would allow a *monopolist* to capture the entire consumer surplus by charging each consumer the highest amount he is willing to pay for a product or service.” (*emphasis added*)

These hypothetical concerns are entirely misplaced when applied to the retail industry, which is highly competitive using a range of metrics provided in these comments. As the table below shows, profitability of the top 30 publicly traded retail businesses has remained consistent over the past 40 quarters.³



³ London Stock Exchange Group, *Home Page*, <https://www.lseg.com> (accessed Sept. 9, 2026).

Another mischaracterization is the Commission’s suggestion that retailers’ profitability is derived from data-driven, or algorithmic, *price* maximization. Unlike industries with a small number of competitors, nearly every retailer seeks to maximize *revenues* by selling more products at *lower* prices, rather than selling fewer items at higher prices.

Based on the Commission’s own statements about “personalized pricing”, the FTC should be most concerned with industry sectors that are highly concentrated with very few market-dominant competitors, where personalized pricing is potentially being used (in the FTC’s words) to “charge each consumer the highest amount he is willing to pay for a product.”

As discussed further below, an array of factors impact retail pricing in this competitive marketplace, which is regulated by a multi-layered legal framework.

B. Retail Industry Pricing is Determined by Diverse Array of Real-World Factors

As the FTC considers comments on its Proposed Policy Statement regarding personalized pricing, it is important for the Commission to understand how pricing in a retail environment functions, and how retailers are meeting the challenge of the increasing cost of living for American households. Retailers play an essential role in helping consumers manage their budgets in an increasingly dynamic economic environment. The information provided below should be fully understood before the FTC adopts a policy statement that could have the unintended effect of creating potential anticompetitive effects or chilling innovation that would only make goods sold by retailers less affordable to American consumers.

In the retail industry, the pricing of products is established through a competitive and complicated process that reflects a wide range of factors, often affected by geography, including wholesale costs, transportation and logistics expenses, labor, operating costs, inventory levels, and consumer demand. Individual retailers continually evaluate these factors to ensure their prices remain competitive while still sufficient to sustain business operations. Retailers that are not able to achieve that balance do not survive.

Unlike some other industry sectors, competition in the retail sector constrains retailers’ ability to raise prices and creates strong incentives to respond to costs, inventory, supply and demand, competitive conditions, and other legitimate market factors. For these reasons, retailers generally do not set their prices based on the time of day⁴ or the number of shoppers in a store, or fluctuate pricing frequently or without notice. Instead, merchants set prices based on the cost of goods, competitor prices, and consumer demand.

In this respect, individual retailers are more often price “takers,” than price “makers,” as the price they offer consumers are shaped by external factors within the supply chain beyond the control of retailers, including:

- Cost of goods, including wholesale prices charged by manufacturers or other producers;

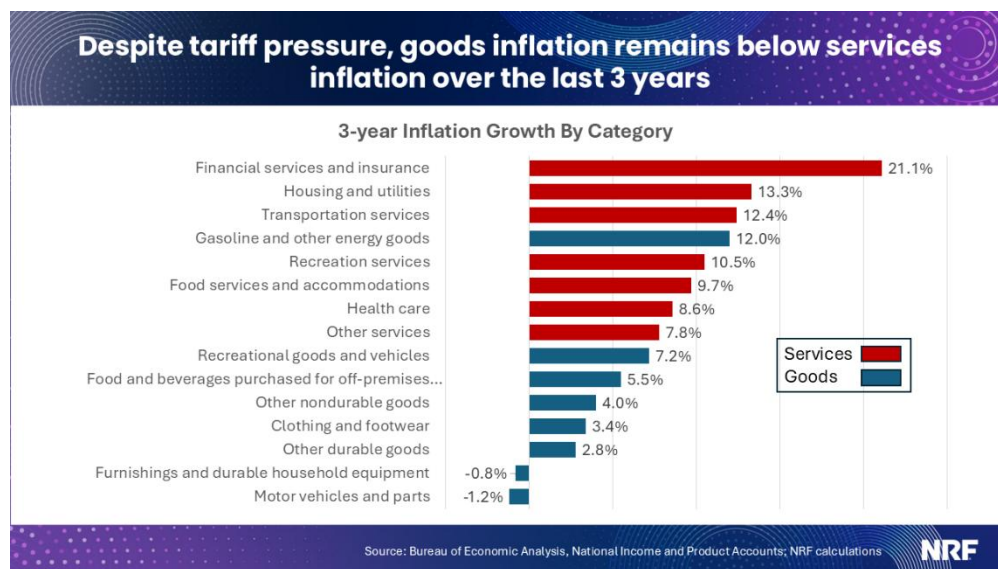
⁴ Notably, restaurants and bars may discount food and drinks for certain portions of the day to drive sales, but as discussed below, these are *discounts* from an already established set price on a printed or displayed menu.

- Costs of product inputs, finished goods, energy, taxes, labor, and regulatory costs;
- Transportation costs to move goods to market directly affected by the cost of diesel fuel;
- Seasonality affecting the supply and demand for consumer goods and services;
- Regional or geographic differences – real-world factors impacting all of the above; and
- Government regulations, tariffs, complex global supply chains, and geopolitical risks.

With respect to global events and government policy, retailers have been greatly impacted in recent years in ways that make it challenging to maintain attractive pricing. For example, global conflict has resulted in volatility for diesel and fuel oil, where producers and market analysts admit it is too difficult to determine prices and assumptions are that prices will remain elevated over the next 12 months.⁵ This volatility and uncertainty are making the task of determining prices by retailers, and their suppliers, increasingly challenging. Natural disasters, public health emergencies, and labor shortages also disrupt production and distribution networks, creating additional unanticipated cost pressures.

In the face of these external challenges, individual retailers look for efficiencies to keep prices as low as possible as they compete with other retailers. The highly competitive nature of the retail marketplace creates an economic incentive for retailers to keep their prices as low as possible while continuing to provide consumers with quality products.

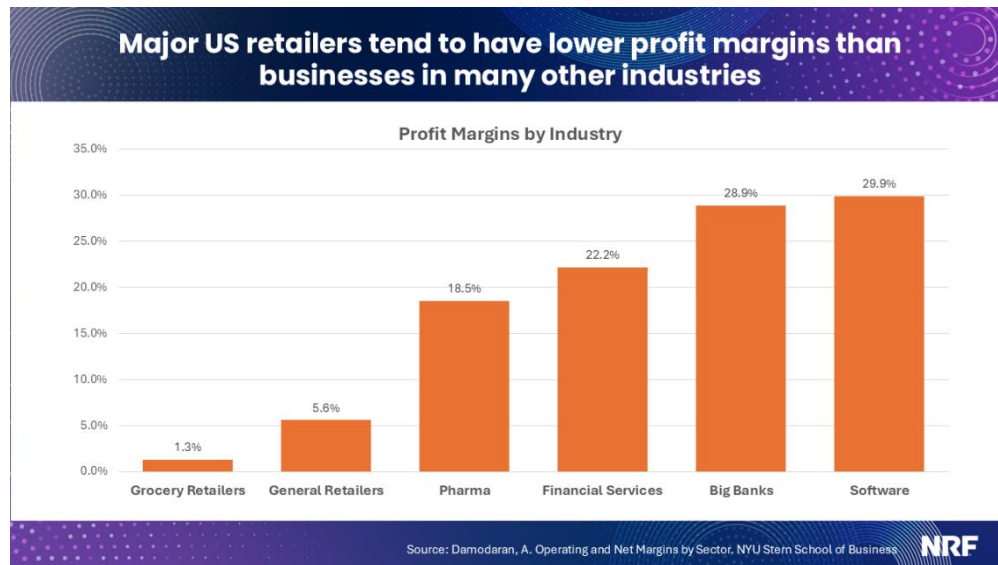
As shown in the table below, the retail industry generally has kept prices affordable for consumers. Other than gasoline, all major categories of goods lag services in terms of inflationary contribution over the last 3 years.⁶



⁵ Owen Tucker-Smith, *American Businesses Have No Idea How to Set Prices Right Now*, The Wall Street Journal, Sept. 15, 2026, <https://www.wsj.com/business/american-businesses-have-no-idea-how-to-set-prices-right-now-061274e0?st=cWQTet>

⁶ U.S. Bureau of Economic Analysis, “[Table 2.8.4 Price Indexes for Personal Consumption Expenditures by Major Type of Product, Monthly](#)” (accessed Sept. 9, 2026).

Additionally, due to the vigorous competition within the retail industry, profit margins are significantly lower in the retail industry, especially in grocery, than many other businesses in the United States. This leaves retailers little room to absorb increased cost of goods in the supply chain that are impacted by the diverse array of real-world factors outside their control.⁷



C. Retail Pricing Practices Governed By Existing Multi-Layer Legal Framework

Retail pricing is already extensively regulated by an existing, multi-layered legal framework that includes federal and state laws and regulations, and, notably, is subject to FTC enforcement under Section 5 of the FTC Act:

- Under state and federal law, displayed prices must match what a customer is charged at the point of sale. Fluctuating prices, or incorrect prices, would be considered a deceptive action under both the FTC Act and states' consumer protection acts.
- The FTC and many state laws regulate former price advertising and other price comparisons, which require that any discount be based on a bona fide former price, which is the actual price at which the product was openly and actively offered to the public for a reasonably substantial period in the recent, regular course of business.⁸
- Consumer protection statutes require that advertising be truthful and that the price on the shelf matches the price at the register, in addition to separately prohibiting deceptive practices.

⁷ Aswath Damodaran, *Operating and Net Margins by Sector (US)*, N.Y.U. Stern Sch. Bus., https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html (last updated Jan. 2026).

⁸ See 16 C.F.R. § 233.1(a) (2026) (eCFR), <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-233/section-233.1>

- More than 40 states and territories have price gouging laws on the books specifically to shield consumers from exorbitant price increases during emergencies or spikes in demand.
- Civil rights laws prohibit pricing or service discrimination based on protected characteristics like race, sex or age.
- Federal antitrust laws bar price fixing, anti-competitive coordination among competitors, and monopolization.
- Furthermore, 23 states now have comprehensive privacy statutes that directly regulate how businesses may collect, use and disclose consumers' personal information.

Retailers must comply with all applicable federal and state laws and operate within this highly regulatory legal framework that already protects consumers when retailers set and advertise prices for goods. Because retail pricing and use of personal data is already comprehensively regulated, it is essential for retailers to remain competitive by continuing to offer data-driven discounts and promotions to their customers as already permitted within this multi-level regulatory framework to keep prices affordable.

D. Retailers Use Data to Offer Customers Discounts and Make Goods More Affordable

Within this highly competitive industry subject to a multi-layered legal framework regulating pricing practices, retailers primarily rely on both the information they observe and the information their customers choose to share with them to run their businesses. For example, the data generated as customers browse items on a website, leave items abandoned in checkout carts, or sign up for marketing emails and announcements are valuable data points for a retail business. Such data allows a retailer to optimize inventories, determine staffing, and personalize promotions and offers that are most relevant to the customer, while alerting them to upcoming sales and events. As the FTC has acknowledged over the years, these are all customer service-oriented best practices that are reasonably expected by consumers and not at all a surprise.

Discounts that are informed by such data lower the costs for consumers rather than raise them. Research has found that data-driven discounts tend to generate a lower average price per unit sold and higher sales volume than static pricing.⁹ Being able to offer data-driven discounts also allows retailers to keep even non-discounted prices low, and to move slow-selling or perishable inventory rather than leaving it stuck on the shelves at a static price, thereby reducing waste.

Some policymakers, particularly in the state of New York, have argued that prices and discounts should be uniform throughout the retail industry. This is a misinformed policy that would likely lead to consumers paying overall higher prices rather than lower prices. For example, if a retailer is prohibited from offering select discounts, then the retail business must guess the right price upfront by factoring in all potential causes of cost increases, creating the risk of overcharging and driving customers away. Data-driven discounts help remove guesswork and enable retailers

⁹ Ioannis Stamatopoulos, Naveed Chehraz, and Achal Bassamboo, "Welfare Implications of Inventory-Driven Dynamic Pricing," *Management Science* 65, no. 12 (December 2019): 5449–5956, <https://doi.org/10.1287/mnsc.2018.3176> (published online Oct. 24, 2019).

to sell more for less. They also build repeat shoppers and loyal customers that support the retailer's overall sales plan.

Data-driven discounts are particularly beneficial for consumers. The Progressive Policy Institute report on algorithmic pricing makes the broader case that data-driven personalization expands consumer choice and affordability, rather than creating the conditions to maximize individual prices on products.¹⁰ Restricting personalized discounts would diminish the ways that retailers compete and likely result in fewer choices at higher prices.

Data-driven discounts on prices are tools that retailers use to extend savings to more customers more often. The insights retailers can draw from the data about their operations enables retailers to attain savings from all areas of their business, and these savings are shared with customers in the form of lower prices through discounts and promotions. In this way, personalized, data-informed discounts are a net benefit to the American consumer.

By contrast, *raising* prices based on the personal characteristics of individual consumers is already prohibited by existing laws and would damage a retailer's relationship with its customers *irreparably*. With limitless choices in a highly competitive environment, consumers will assuredly vote with their wallet and take their business elsewhere in an industry with over 600,000 retailers and a million establishments, whether it is one tap away on a mobile app, one click away online, located next door in a shopping center, or around the corner in a city or town.

History has taught retailers how difficult it is to win back a consumer's trust once it's lost, and retailers' efforts to reduce costs and improve efficiencies to offer discounts and promotions to customers is paramount to maintaining a successful business in this highly competitive industry.

At the end of the day, consumers have agency and price information from thousands of retailers at their fingertips. As retailers continue to innovate the customer experience, shopping has become easier than ever before. In a competitive business such as retail, consumers will shop elsewhere if a retailer is not delivering on the prices, services, and choices American families expect.

E. Loyalty Programs and Discounts Lower Prices and Save Consumers Money

Loyalty programs and discounts help consumers save money. Consumers choose to join loyalty programs because they value discounts and rewards on the products they purchase. Recent research shows participation remains near record highs, which is evidence that consumers see these programs as beneficial.

Loyalty programs help retailers attract and retain customers by providing offers, discounts and other benefits that deepen customer relationships. Many loyalty program benefits do not alter a product's price, but instead provide additional value to customers through rewards, points, free

¹⁰ Michael Mandel, "Algorithmic Pricing, Increased Variety, and Less Waste: The Much-Awaited End to the One-Size-Fits-All Economy," Progressive Policy Institute, May 2026, <https://www.progressivepolicy.org/wp-content/uploads/2026/05/PPI-Algorithmic-Pricing.pdf> (PDF).

products, member experiences, and similar benefits. Bond Brand Loyalty, Inc. reports that the average consumer participates in 19 different loyalty programs, with 79% of them more likely to recommend brands with solid loyalty programs, and 85% more likely to continue buying from brands offering programs.¹¹

These programs offer customers the choice to participate in exchange for identified loyalty program discounts, rewards, or other benefits. Because consumers have an abundance of shopping choices within the retail industry, whether online or in a physical store, consumers will find what they want elsewhere if they do not trust a retailer's prices or quality of service.

Over 600,000 unique retail businesses attempt to earn the trust of consumers across the United States on a daily basis. Whether part of a loyalty program or part of an overall strategy on providing discounts to consumers, every pricing decision a retailer makes to offer discounts on perishables, seasonal items, or popular goods, is made in service of the same goal — earning repeat business from customers who have endless options for where to shop.

Loyalty programs and personalized promotions and discounts are among the most direct and effective tools retailers have to lower costs for consumers, particularly at a moment when household budgets are stretched thin by rising costs of services and fuel. These popular discount programs work because they are voluntary and transparent: a consumer weighs the offer and benefits, chooses whether to join, and receives a discount, direct advertising of upcoming sales prices, or other benefits. Retailers use these programs to earn consumers' loyalty, provide savings and discounts on items relevant to specific consumers, and compete with other retailers.

These *personalized* discounts, as opposed to the “personalized pricing” defined by the FTC, come in many forms to consumers. They may be a discount provided to a category of consumers (e.g., participants in a store loyalty program; students; teachers; first responders; military personnel; etc.) who receive the same discounted price as other consumers in those categories. They may be more personalized coupons, including both store and manufacturer coupons, either printed at the register or provided on a mobile app, that are more relevant to a consumer based on their current or past purchases. They also may be much more personalized, designed for an individual consumer based on that consumer's relationship with the retailer, such as when a retailer offers a discount to effectively match a lower price found by that consumer at another merchant. It is important to emphasize that these are all examples of *personalized discounts* from an established product price that has been set and displayed to consumers, and therefore do not constitute personalized pricing as defined by the FTC in the Proposed Policy Statement.

The critical distinction between the personalized pricing the FTC is concerned with in the Proposed Policy Statement and personalized discounts employed by retailers is that the former is focused on the use of consumer-specific data to extract a higher price from customers whereas the latter is use of data to offer customers a discount as an incentive to transact.¹²

¹¹ The Bond Loyalty Report 2024 Press Release, Bond Brand Loyalty, Inc., July 25, 2024, <https://info.bondbrandloyalty.com/the-loyalty-report-2024-press-release>

¹² For example, if a customer places a product in an online shopping cart and leaves it there, a retailer may determine that a targeted 10% discount could convert a sale that otherwise might not occur. If the retailer is not

II. FTC's Analysis is Based on Unfounded Concerns over Retail Pricing Practices

The FTC's analysis in the Proposed Policy Statement with respect to retail pricing is based on inaccurate statements, misinformed presumptions, and mischaracterizations about the retail industry and retail customer expectations about pricing that rely almost entirely on anecdotal examples to express the Commission's speculative concerns with *possible* pricing behavior by retailers; the analysis is not based on scientific research of, or evidence of consumer harm from, *actual* retail industry pricing practices.

A. FTC Raises Speculative Concerns Over Retailers' "Possible" Pricing Behavior that Ignores Marketplace Realities

The Proposed Policy Statement is rooted in *speculation* that retailers are using personal data to set unique prices for individual consumers based on their ability to pay. There is no evidence or allegation that any such activity has occurred, and indeed, as described in these comments, any retailer that tried to do so would lose the trust and loyalty of its customers.

The FTC's analysis is replete with statements, much like those of other policymakers at the federal and state level who are *not* responding to actual evidence of harm in the retail market, that the Commission is "increasingly concerned" about data collection and the use of modern technology that "is making it *possible* for merchants to personalize prices for goods and services," despite failing to identify any specific practices where retailers have set individualized prices or sought to base prices on customers' ability to pay.

The analysis includes similar statements that "data collected and generated when consumers use modern technology *may* give merchants the tools to personalize prices for goods and services that traditionally have not varied from person to person." Once again, the Commission relies on anticipatory statements expressing concern about behavior that is possible but has not manifested within the retail industry. For the many reasons indicated above, retailers' need to compete by *lowering* prices through use of discounts and promotions, including loyalty programs.

Further, the FTC's quoted statement here introduces another inaccurate presumption about the retail marketplace with respect to prices paid by consumers. Loyalty programs offering customers discounted prices have been in existence for "hundreds of years,"¹³ and consumers can reasonably be expected to be aware that discounted prices are available if they voluntarily participate in such programs that are open to all customers.

Certainly, based on its long history of loyalty programs and other methods to provide consumers with discounts off of the set price—through department store stamps¹⁴ that appeared in the late 1890s and newspaper-based coupons clipped by consumers since the 1930s Great Depression,

allowed to offer this type of personalized discount, both parties are worse off: the consumer does not have the opportunity to buy the product at the discounted price, and the retailer loses a potential sale.

¹³ Philip Shelper, *The True History of Loyalty Programs*, Loyalty & Reward Co. (Oct. 23, 2025), <https://loyaltyrewardco.com/the-true-history-of-loyalty-programs/>.

¹⁴ The History of Customer Loyalty Programs: 250 Years of Getting You to Come Back, Qualtrics (Apr. 22, 2026), <https://www.qualtrics.com/articles/customer-experience/history-of-customer-loyalty-programs/>.

which gained even greater popularity in the 1940s with the rise of supermarkets¹⁵—have sensitized many generations of Americans to the numerous opportunities available to receive a “discounted” price that is lower than the standard price. As technology has advanced, the economic function remains familiar: retailers use promotions to induce incremental purchases, reward engagement, manage inventory, and compete for customers.

In fact, a research report published by Capital One Shopping and last updated on July 7, 2026 found that “most online shoppers (64%) search for coupons or discount codes before making a purchase and 94% of all Americans use coupons or have used a coupon in the last year.”¹⁶ As coupons have migrated from newspapers to apps, they are popular with younger generations that did not grow up reading newspapers. According to the same report, “coupons are especially popular among consumers born between 1997 and 2012 [as] 78% use coupons” while “86% of online shoppers are more likely to try a new business due to a coupon.”¹⁷

Consumers are well-acquainted with these programs. They are voluntary, and in the modern era, data-driven retail practices allow these businesses to market programs and savings to the consumers that find them relevant. For example, not everyone owns pets. These programs allow consumers to customize their preferences so that pet owners can sign up for savings programs that extend frequent and available discounts on the products they need for their pets. While non-pet owners may likewise customize their preferences to receive similar offers on products relevant to their lifestyle or needs.

Data powers this customization that benefits both the consumer and the retailer, so that the consumer receives information relevant to their interests, while the retailer can optimize their product assortment, compete for market share, and ensure savings are delivered to their consumers. These relationships, and the data shared by them, are strongly protected by the multi-layered consumer protection framework across both federal and state laws discussed above.

We urge the FTC to study or at least familiarize itself with the hundreds of years of history on how retailers have innovated with the times to provide discounts to consumers and make goods for Americans more affordable through a variety of mechanisms popular with consumers at the time they were introduced, from the 18th century through the 21st century. As the latest studies cited in these comments show—the average consumer participating in 19 different loyalty programs as of 2024, and 94% of them using coupons in the past year—consumers are well aware that goods can be obtained at discounted costs and there are no static prices for all goods everywhere. This evidence undermines the principal basis of the FTC’s section 5 analysis in the Proposed Policy Statement, which lacks credibility when it comes to the retail industry.

¹⁵ Yara Simón, *How Americans Started Clipping Coupons*, History (last updated May 27, 2025), <https://www.history.com/articles/coupons-united-states-great-depression> (accessed Aug. 31, 2026).

¹⁶ Capital One Shopping, *Coupon Statistics (2026): Usage & Behavior Change Data* (last updated July 7, 2026), <https://capitaloneshopping.com/research/coupon-statistics/> (accessed Aug. 31, 2026).

¹⁷ *Id.*

B. FTC Relies on Misinformed Presumptions that Disregard Long-Standing Retail Discounting Practices and Consumer Awareness and Reasonable Expectations

The Proposed Policy Statement also relies on several misinformed presumptions and inaccurate statements that are not applicable to the pricing practices of the retail industry versus other industry pricing practices. Further, the Commission appears to disregard the historical and long-standing practices of retailers to discount goods and consumers' awareness and expectations about lower prices that they can take advantage of in the marketplace.

Failing to consider this data about historical practices and broad consumer participation in discounted offerings leads to the Commission's reliance on incorrect presumptions to build its case for deception in personalized pricing and, in its broadest interpretation, potentially impacting personalized discounts and promotions. When considered fully, however, it is clear the net benefits to consumers from data-driven discounts and promotions requires the FTC to clarify its use of terminology and to be more precise in its analysis before adopting a new enforcement policy that could harm consumers by inadvertently curtailing the very benefits they have come to expect from a myriad of programs offering them discounts.

The FTC analysis asserts, for example, that ride share services and insurance companies that offer different prices for consumers are engaged in the "long-established norm" in those markets, while suggesting that retailers who have used loyalty program and other discounts for hundreds of years would "run contrary to longstanding practice and consumers' reasonable expectations" if prices varied based on personalized pricing. Statements such as these indicate that the Commission did not engage in either historical or scientific research to holistically understand the retail market and its long tradition of investing in innovations — from loyalty programs to today's digital coupons — to provide Americans discounts and promotions to *lower* prices of goods and make them more affordable.

It is important to note here, as explained above, that the FTC's definition of "personalized pricing" highlighted in its press release and explained further in its Proposed Policy Statement is pricing that is principally based on "estimates of how much an individual consumer is willing to pay for a product or whether that consumer is likely to engage in comparison shopping." The Proposed Policy Statement is not precise or consistent in all places it references personalized pricing. If the broader language the FTC uses to suggest that personalized pricing includes the "analysis of consumers' personal data and resulting conclusions," then the broadest possible interpretation of that language would mean that *all* data-driven discounts and promotional offers to customers offering lower prices could potentially fall within the Commission's definition of "personalized pricing" despite their beneficial effect on consumers.

If personalized pricing is defined in a far-reaching way to include discounts related to personal data (a term which most state privacy laws define as *any* data that is *linked or linkable* to a specific consumer), then the mere fact a customer participates in a store's loyalty program or uses a digital coupon or code on an app or web account, could then be considered by the FTC to be a "personalized" price instead of a data-driven discount. We do not understand this to be the intention of the FTC, as it would work against consumers, and therefore urge the FTC to be more precise in its proposed definition of "personalized pricing" to ensure that personalized discounts

are not restricted, as that would diminish the ways that retailers compete and likely result in fewer choices at higher prices for consumers. As discussed in greater detail in part I above, the use of personalized, data-informed discounts is a net benefit to the American consumer.

The responsible use of first-party data a retailer has from its retail operations, including consumer data voluntarily shared with the retailer by a customer when she or he opts in to participate in a loyalty program, are common and legitimate uses of data in the retail industry that should be excluded from any definition of personalized pricing. The FTC has principally defined personalized pricing as the practice of raising prices for individual consumers based on the amount that such consumer is willing or able to pay. The FTC should provide greater certainty to retailers that it is *that* type of pricing conduct with which it is concerned, and not the well-established and historical practice¹⁸ of discounting prices, as today's consumers know well and expect in the marketplace. It is critical that any policy statement adopted by the FTC will preserve competitive pricing by excluding discounts that benefit consumers.

C. FTC's Section 5 Deception Analysis Mischaracterizes Retailers' Pricing Practices

Without citing any identified harm in the market or evidence upon which it bases its statement, and clearly lacking a full understanding of retail pricing practices as explored above in these comments, the Proposed Policy Statement calls out the retail industry (and no other industry) by asserting that “retailers *may deceive* consumers in violation of Section 5 [of the FTC Act] *when they* represent, expressly or by implication, that a price is static or widely offered when in fact it is personalized.”¹⁹ The FTC further asserts that “retailers *may violate* Section 5 *when they* *mislead* consumers as to the basis for the personalization of a price or the effect of that personalization.” These statements not only are speculative on their face but also mischaracterize the retail industry's pricing practices, especially in the FTC's use of the italicized phrases when applied exclusively to “retailers” (vs. other industry participants far more likely to engage in personalized pricing).²⁰

These presumptive statements from the FTC, which lack evidence of deceptive practices occurring, signal uncertainty to consumers that could cause economic harm to retail businesses. Further, presenting hypotheticals that are not based on actual evidence risks having the final policy statement adopted by the FTC based on theories or possibilities rather than facts.

As the FTC's describes the Commission's Policy Statement on Deception in footnote 16 of the Proposed Policy Statement, a violation of Section 5 of the FTC Act for “all deception cases’

¹⁸ The FTC asserts, for example, that ride share services and insurance companies that offer different prices for consumers are engaged in the “long-established norm” in those markets, yet it fails to consider that retail loyalty programs have existed in the U.S. for over 230 years. By contrast, app-based rideshare services began 17 years ago.

¹⁹ The FTC includes in footnote 18 of the Proposed Policy Statement that examples are not “intended to be definitive statements of the Commission relating to the legality of the identified practices” and are instead “presented for discussion purposes only,” but then why only focus on the most competitive industry and not industries with fewer competitors where personalized pricing is potentially being used.

²⁰ The italicized phrases “*may deceive...when they*” and “*when they mislead*” are unsubstantiated in their application to retailers as opposed to other industries, and the FTC's use of them mischaracterizes actual retail practices by suggesting that retailers are more likely than other industries to engage in deceptive pricing even though examination of the facts and history of retail competition and pricing to date strongly demonstrate the opposite.

consists of three elements:” 1) “a representation, omission or practice that is likely to mislead the consumer;” 2) “[examining] the practice from the perspective of a consumer acting reasonably in the circumstances;” and 3) “the representation, omission, or practice must be a material one” such that it is “likely to affect the consumer’s conduct or decision with regard to a product or service” and “injury is likely.”²¹

Using this three-part test, and incorporating by reference the comments above, retailers’ general pricing and discounting practices would not meet the requirements for deception under Section 5 when applied to the facts about such practices. First, retail prices are fully disclosed to consumers at the store and in advertisements, in compliance with the multi-layered legal framework described above. Similarly, retail price discounts – whether in the form of loyalty plan discounted prices or a directed discount indicating a percentage or a fixed-amount (or “flat”) discount – are similarly displayed to customers in a variety of ways, including on shelf labels, printed or digital coupons, or displayed discounted prices in emails, apps or websites. These disclosed prices and discounts are representations that are *not likely* to mislead a consumer.

Second, from the perspective of a consumer acting reasonably, these comments above cited well-established and verifiable reports from third-party researchers (and not from retailers or retail trade associations) that the average consumer participates in 19 different loyalty programs and that 94% of consumers have used a coupon in the past year. This data indicates robust consumer knowledge and awareness of retail industry pricing and discounted prices, confirming that the vast majority of consumers are acting reasonably and actively to take advantage of the data-driven discounts and offers retailers provide to them. Taken together, these reports indicate that reasonable consumer expectations are being met by retailers’ practices and that customers are, *in fact*, not being misled by the prices and discounts retailers disclose.

Third, as described above, increases to retail prices are not driven by the use of personal data to determine a specific individual’s willingness or ability to pay²² Instead, merchants adjust prices in response to changing economic conditions, cost of goods, inventory, competitor prices, and consumer demand. Consumers are aware that prices fluctuate in the retail market due to these conditions and the evidence shows most consumers actively “comparison shop” across many retail businesses, whether on mobile apps, online, or at different stores they frequent. With limitless choices and ample competition, consumers will decide which stores to shop from in an industry with over 600,000 retailers and over 1 million establishments, by tapping on a different app, checking a different website, or going to a different store on Main Street or in a shopping center.

In all these respects, retail pricing and discounts do not reflect a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances, and the Proposed Policy Statement errs in suggesting, or at least implicitly implying, that retailers may

²¹ FTC Policy Statement on Deception, 103 F.T.C. 174, at 176 (1984).

²² Retailers may examine *aggregated* consumer data, geographic data, and demographic data, as well as other data such as competitors’ pricing, for a particular region or area to determine whether or not product prices for are likely to result in purchases of the goods to help forecast inventory needs, sales, and margins.

be engaging in deceptive practices when the Commission presents no identified harm or evidence on which it bases its speculative concerns.

III. Antitrust Risks Created by Mandatory Disclosure of Pricing Methodologies

NRF respectfully urges the FTC to consider the potential tension between an overly granular disclosure regime for personalized pricing and the FTC’s antitrust mission to preserve vigorous competition that is raised by certain aspects of the Proposed Policy Statement. The Proposed Policy Statement references President Trump’s executive orders focusing on issues that affect the cost of living for American families including the Executive Order No. 14267, Reducing Anti-Competitive Regulatory Barriers, 90 Fed. Reg. 15629 (Apr. 9, 2025). Section 3 of that Executive Order orders the FTC and the DOJ to identify regulations that: “limit competition between competing entities or have the effect of limiting competition between competing entities,” or “otherwise impose anti-competitive restraints or distortions on the operation of the free market.”²³ NRF cautions the FTC that imposing certain disclosure requirements may well have the unintended consequence of limiting competition and distorting the operations of a free market.

Retail markets are among the most competitive sectors of the American economy. The Herfindahl-Hirschman Index (HHI), a common measure of market concentration used to determine market competitiveness, indicates that retail is one of the most competitive industry sectors in the United States.²⁴

The retail industry is highly competitive

The retail industry is characterized by:

- Low barriers to entry
- Intense competition – both at a national level and a local level
- Efficient and highly transparent pricing
- Rapid innovation

Herfindahl-Hirschman Index (HHI)

The HHI Index is a common measure of market concentration used to determine market competitiveness.

Various academic studies show that retail’s large number of firms, strong local competition and low barriers to entry mean that many segments in retail have extremely low HHI scores, making it one of the most competitive industries in the US

NRF

²³ Exec. Order No. 14,267, § 3(a)(iii), (vi), Reducing Anti-Competitive Regulatory Barriers (Apr. 9, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/reducing-anti-competitive-regulatory-barriers/>

²⁴ U.S. Department of Justice, Antitrust Division, *Herfindahl-Hirschman Index*, <https://www.justice.gov/atr/herfindahl-hirschman-index> (last updated Jan. 17, 2024).

As explained in greater detail above, retailers compete vigorously on price, promotions, markdown strategies, loyalty programs, inventory management, and other aspects of commercial strategy. Competition often depends on retailers' ability to keep confidential their pricing methods, discounting practices, promotional strategies, and other proprietary commercial information.

To the extent the FTC contemplates requiring businesses not only to disclose the existence of personalized pricing but also to disclose the specific inputs, models, methodologies, or factors used in pricing decisions, such requirements could unintentionally reduce competition. Information about how a retailer prices products is among the most commercially sensitive information a firm possesses. Antitrust law has long recognized that disclosure of competitively sensitive pricing information can, in some circumstances, make coordination easier by reducing uncertainty about rivals' behavior.

The FTC itself understands the exchange or public dissemination of detailed pricing information may create antitrust concerns when it increases rivals' ability to predict, monitor, or align competitive behavior.²⁵ A regulatory regime that effectively compels disclosure of detailed pricing methodologies could create similar risks if it reveals information that allows rivals to infer how a firm will respond to market conditions. Competitors could use mandated disclosures to gain insight into rivals' pricing strategies, promotional approaches, customer segmentation methods, and demand forecasts. This information could lessen strategic uncertainty in the marketplace, making it easier for competitors to anticipate each other's conduct and more difficult for consumers to benefit from aggressive, independent competition.²⁶

A. Examples of Potential Anticompetitive Effects

For example, if retailers were required to disclose the specific data inputs or weighting factors used to determine promotional discounts, competitors could reverse engineer how rivals respond to inventory levels, seasonal demand, competitor pricing, customer loyalty, or other market conditions. Armed with such information, competitors may be able to predict aspects of rivals' pricing behavior without relying solely on independent market analysis. Instead, they could more readily predict rivals' future pricing behavior and adjust their own conduct accordingly.

²⁵ Michael Bloom, *Information exchange: be reasonable*, COMPETITION MATTERS (December 11, 2014) <https://www.ftc.gov/enforcement/competition-matters/2014/12/information-exchange-be-reasonable> ("The FTC concluded that the exchange could facilitate coordination or endanger competition by reducing uncertainty about a rival's product offerings, prices, and strategic plans, and served no legitimate business purpose."); *see also* Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶¶ 1400-1410 (information exchanges) (explaining that disclosures of competitively sensitive information may facilitate coordination by reducing uncertainty regarding competitors' conduct and enabling firms to predict rivals' responses).

²⁶ *United States v. Container Corp. of America*, 393 U.S. 333, 337 (1969) ("The inferences are irresistible that the exchange of price information has had an anticompetitive effect in the industry, chilling the vigor of price competition.").

Similarly, if a retailer were required to disclose detailed information regarding the circumstances under which it provides targeted discounts to loyalty program members, competing retailers could use those disclosures to coordinate their own promotional timing or strategically avoid competing for certain customer segments. Even absent any express agreement, that increased transparency could soften competition by making rivals' conduct more predictable.²⁷

If retailers are required to disclose key features of their discounting or pricing models, competitors may gain unprecedented visibility into how rivals react to market conditions. Such transparency could diminish incentives to invest in pricing innovation, reduce their ability to differentiate themselves, and lead to more uniform competitive behavior. Consumers benefit when retailers independently experiment with different pricing and promotional approaches; mandatory disclosure of competitively sensitive pricing methodologies risks producing the opposite result.

B. Chilling Competitive Innovation

The FTC should also consider the impact on innovation. Retailers invest substantial resources in developing pricing systems, loyalty programs, forecasting tools, and promotional strategies that allow them to compete more effectively and offer savings to consumers. Mandatory disclosure of detailed pricing methodologies could require firms to reveal proprietary information that functions as a source of competitive advantage and, in some cases, valuable intellectual property.

Faced with that prospect, retailers may be less willing to invest in new technologies that improve pricing accuracy, reduce waste, improve inventory management, or generate discounts for consumers. In this respect, an overly prescriptive disclosure obligation could undermine the very competitive processes that drive lower prices and greater value for consumers.

C. FTC Should Avoid Anti-Competitive Harm

As the FTC considers whether it should adopt a new enforcement policy, at a minimum, it should distinguish between disclosures necessary to prevent actual consumer deception and disclosures that reveal competitively sensitive business information. The FTC should avoid requiring disclosure of specific pricing formulas, weighting factors, strategic objectives, customer-segmentation methodologies, competitive responses, or other proprietary details that could facilitate coordination among rivals or otherwise harm competition.

The FTC should also ensure that efforts to promote transparency in pricing do not inadvertently weaken the competitive marketplace in the retail sector that delivers lower prices, innovation, and consumer choice. A disclosure framework that informs consumers without requiring

²⁷ *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978) ("The exchange of price data and other information among competitors does not invariably have anticompetitive effects; however, such exchanges can increase price uniformity and stabilization.").

revelation of retailers' competitively sensitive pricing strategy could advance consumer protection while minimizing unnecessary competitive harm within the retail industry sector.

Conclusion and Recommendations

As the FTC examines pricing practices across all industries, we urge the Commission to proceed cautiously and with more precision in its description and analysis of pricing and discounting practices, particularly with respect to the retail industry, and not stifle innovation that sustains a viable retail sector with businesses vigorously competing to keep prices as low as possible. Moreover, we also urge the Commission to remember that the basic incentives in a truly competitive market like retail align very closely with the interests of retailers' customers. Retailers are in the business of building consumer trust and loyalty and utilizing data to serve customers better. When retailers compete, consumers win.

To the extent the FTC concludes that disclosure is appropriate, any requirement should be limited to informing consumers if and when a price *increase* is individualized to a specific consumer based on her or his ability to pay, using a clear definition of what constitutes a potentially deceptive individualized price increase absent a disclosure. Such disclosure requirements should clearly exclude personalized discounts or promotions as well as any competitively sensitive business information or pricing strategy that could lead to anti-competitive harm. Furthermore, any disclosures required by the FTC should avoid requiring overly generalized prescriptive statements that potentially mislead customers by creating the misimpression that personal data is being used to possibly increase prices if in fact the data is being used to provide discounted or lower prices to consumers.

It is therefore critical for the FTC to ensure that any new enforcement policy statement it adopts accomplishes the following:

- Defines "personalized pricing" narrowly to be the use of personal information concerning a specific consumer that causes such consumer to receive a higher price based on the consumer's willingness or ability to pay.
- Expressly excludes the use of personal information to provide a discount, promotion, coupon, incentive, loyalty benefit, reward, or other consumer benefit, which should not be treated like the upward pricing the FTC is concerned about merely because personal information is used to determine the availability, amount, or relevance of that benefit.
- To the extent the FTC concludes that disclosure is necessary to prevent a deceptive practice, requiring it to inform consumers if and when a price increase is individualized to a specific consumer based on that consumer's willingness or ability to pay. The FTC should not require disclosures of competitively sensitive business information or pricing strategies that could undermine the very competitive processes in the retail industry today that drive lower prices and create greater value for consumers. The FTC should also avoid mandating prescriptive, generalized disclosure statements that could themselves confuse or mislead consumers about pricing.

By narrowly tailoring the definition of personalized pricing, excluding the use of personal data to provide discounts and promotions, and preserving competitive retail pricing by avoiding disclosure of sensitive business information or generalized statements that could mislead consumers, the FTC can adopt a policy statement that will ensure that legitimate retail practices that benefit consumers by lowering prices will continue as they have across the United States for hundreds of years. These legitimate practices are routinely utilized by retailers to compete in the marketplace for a customer's trust and loyalty. Therefore, the FTC should work carefully to design a clear definition that preserves and promotes the competitive nature of retail pricing and discount programs, which are a net benefit to the consumer.

Lastly, the Commission should avoid adopting any enforcement framework that creates disincentives to use data to lower costs, compete on price, or offer consumers discounts and benefits. Clear guardrails should preserve businesses' ability to innovate around savings while allowing the FTC to focus enforcement on practices that use consumer-specific information to increase prices for an individual consumer based on their willingness or ability to pay. Importantly, the Commission should prioritize enforcement where consumer-specific information is used to raise prices by exploiting urgency, information asymmetry, constrained consumer choice, or a lack of reasonable alternatives, which are indicative of potential consumer injury.

Thank you for your consideration of NRF's comments. We appreciate the opportunity to share the retail industry's perspective as you further examine personalized pricing and assess your proposed enforcement policy statement. We look forward to working constructively with the Chairman, Commissioners, and Commission staff to ensure the FTC can avoid any unintended consequences that could negatively impact the retail industry and harm consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "David French", with a stylized, cursive script.

David French
Executive Vice President
Government Relations