HUDSON COOK

A Bigger Bite: FTC Personalized Pricing, Seems Like Risk-Based Pricing in Reverse

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This is the first in a series of "Bigger Bite" articles, where the authors will add some additional thoughts and commentary to one of the "Bites of the Month" from their webinar and article series. In this one, Justin Hosie and team address the FTC's proposal addressing personalized pricing.

When federal regulators first proposed the Fair Credit Reporting Act's Risk-Based Pricing Rule in 2008, I thought the whole idea was a little unfair. Why should someone with a lower credit score pay more for credit?

At the time, I was young, idealistic, and building what could generously be called an "emerging" credit profile. The thought that a lender could look at my score and decide I should pay more than another consumer felt personal, almost insulting.

Twenty-three years of working with creditors has provided some perspective. People and institutions that lend money want it returned. They have employees to pay, families to support, shareholders to answer to, and capital to inject into the next transaction. If creditors cannot assess and price risk, they may respond by charging everyone more, or by offering it to fewer people altogether.

Risk-based pricing is the compromise. A creditor may offer more favorable terms to consumers it views as lower risk, helping attract consumers who are likely to repay. Those repayments help keep credit available across a wider range of consumers.

The regulatory answer was not to prohibit risk-based pricing. Instead, federal agencies required disclosures. Consumers had to be told when their credit profile resulted in materially less favorable pricing, what information contributed to the decision, and how they might improve their standing over time. In short: lenders could price for risk, but consumers deserved to know when risk-based pricing affected them. Now, in 2026, the Federal Trade Commission is confronting a similar practice: personalized pricing.

A different kind of pricing signal

Personalized pricing uses consumer data to set a price based on what a business believes a particular person is willing or likely to pay. Unlike ordinary dynamic pricing, which might raise a rideshare fare because marketplace demand is high or increase airfare as seats disappear, personalized pricing focuses on the specific customer.

Consider airline tickets. I tend to be loyal to one carrier. I have a certain bejeweled status, I know the app, and I generally prefer the comfort of familiar boarding procedures to the thrill of bargain hunting. My 20-year-old daughter, by contrast, shops almost entirely based on price. She compares carriers, checks multiple sites, and will cheerfully abandon a brand over a modest fare difference. If an airline notices those habits and charges me more for the same flight because it thinks I will pay more, while offering her a lower price because it thinks she will walk away, that is personalized pricing.

We saw something like that while comparing fares from our respective laptops. Her "emerging status" appeared to be a financial advantage. My loyalty, credentials, and hard-earned airline status seemed less like rewards and more like evidence that I could be charged a premium. After 23 years, a decent credit score, and a modestly successful law practice, I was feeling targeted again. Woe is me.

The FTC's emerging framework

The FTC's proposed 2026 enforcement policy statement does not prohibit personalized pricing outright. The FTC lacks a specific statutory mandate to ban the practice. But it has made clear that it will enforce Section 5 of the FTC Act and other laws against personalized-pricing practices that are deceptive or unfair. That distinction matters. Personalized pricing itself may be lawful. Personalized pricing that is hidden, misleadingly described, or unfairly implemented may attract scrutiny.

According to the FTC, a retailer could land in hot water if it expressly or implicitly represents that a price is static, standard, or widely offered when the price is actually personalized. In the airline example, a customer who believes that the displayed fare is the same fare available to everyone may have been misled if the price instead reflects assumptions about that individual's loyalty, income, location, browsing behavior, or willingness to pay.

The FTC also warned against misleading consumers about the basis for personalization or its effect. Its proposed policy says effective disclosures should be clear and conspicuous and should explain that the price is personalized, the basis for personalization, and the types of data used. Put plainly, the FTC is signaling that consumers should not have to guess whether a business is charging them more because it thinks they can afford it, or because the business believes they are too loyal, rushed, or disengaged to shop around.

Risk based pricing turned upside down?

Personalized pricing resembles risk-based pricing, but it can feel like its mirror image. Risk-based pricing asks: "How likely is this borrower to repay us?" Personalized pricing asks: "How much can we get this customer to pay?" Both practices use data, predictive models, and consumer variation. Both can lead two people to receive different prices for the same product or service. And neither is necessarily unlawful simply because the prices differ.

The key questions are similar: What data is being used? Did the consumer reasonably expect that use? Is the model producing unlawful disparities? And does the consumer have enough information to understand and respond to the result? A company's generic statement that it "uses data to improve the customer experience" is unlikely to tell a consumer much if the real effect of that data use is a higher price. If browsing history, device type, prior purchases, location, inferred urgency, or loyalty patterns influence an individualized price, the FTC appears to expect more

meaningful transparency.

A new compliance challenge

The differences between these two pricing systems are significant. Risk-based pricing operates within a mature legal framework: the FCRA, the Risk-Based Pricing Rule, model notices, and decades of compliance and enforcement experience. Personalized pricing spans far more markets, not only credit and insurance, but also travel, retail, groceries, delivery platforms, entertainment, and online commerce. Plus, the FTC is relying primarily on its broader authority to police deception and unfairness. That leaves considerable uncertainty. However, one thing is clear, businesses that personalize prices should understand the data, test whether their advertising implies uniform prices, evaluate deception, unfairness (including unlawful discrimination risks), and develop disclosures consumers actually see and understand.

The FTC is not saying that every tailored price is illegal. It is saying that a company cannot quietly treat personalized pricing as ordinary pricing. And for some consumers who suspect their loyalty is costing them money, that may be a welcome development.

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