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Millions of Americans are struggling to make ends meet and to afford basic necessities.¹ On top of tariffs jacking up prices for consumers, increasing inflation, and surging gas prices due to Trump’s reckless war of choice, Americans now have to worry their personal data may be used to charge them higher prices. I am very concerned about companies potentially using Americans’ personal data to determine what prices they see and pay, and I am opening an inquiry into just how widespread this practice is. Consumers deserve to know if businesses are using their personal information to manipulate the prices they pay or experiment with algorithms to set the prices they see.

While many industries have long used “dynamic pricing” or geographical distinctions to justify different costs for the same products in response to changes in supply and demand, more and more companies appear to be relying on technological advances to maximize profit at the expense of consumers who are already stretched thin financially.² Now, a growing number of companies are implementing or considering “surveillance pricing” where they acquire extensive personal data about individual consumers and feed it into algorithms to curate different prices dependent on the customer.³ Americans seem completely unaware that the prices they are paying, particularly and most notably when shopping online, might have been set using their own personal data.⁴

These actions by companies also exploit the lack of comprehensive consumer privacy regulation.⁵ Existing federal law does not sufficiently protect Americans’ data from misuse or adequately address consumer privacy concerns in surveillance pricing.⁶ In an effort to better understand the extent of surveillance pricing in the market, the Federal Trade Commission (FTC)

¹ Brookings Institution, *In Every Corner of the Country, the Middle Class Struggles with Affordability* (Dec. 2, 2025).

² *Surveillance Pricing: When Algorithms Charge You More Because of Who You Are*, Compens.ai (Dec. 7, 2025).

³ *Data-Driven Pricing: Key Technologies, Business Practices, and Policy Implications*, Future of Privacy Forum (July 14, 2025).

⁴ Cornerstone Research, *Personalized Pricing: Antitrust and Policy Considerations in the Age of Personalization* (July 2025).

⁵ *Experts Warn Congress of ‘Surveillance Pricing’ Fueled by Lax Privacy Laws*, Broadband Breakfast (July 31, 2025).

⁶ American Economic Liberties Project, *Prohibiting Surveillance Prices and Wages* (Feb. 2025).

conducted a study and in January 2025 released initial findings.⁷ The study examined eight companies and found that consumers' characteristics and behaviors, like location, browser history, demographics, and shopping history, all could be tracked and exploited by retailers to tailor consumer pricing.⁸ These consumer characteristics are compiled from a variety of sources, including third-party profiling techniques and inferred data.⁹ For example, companies can infer "aspects such [as] a shopper's emotional state, purchase intent, or financial sensitivity" from actions as small as "placing an item in a cart, but not purchasing, or sorting a feed of products from 'lowest' to 'highest' price" and then use these inferences to set different prices.¹⁰ Former FTC Chair Lina Khan concluded that "[t]he FTC should continue to investigate surveillance pricing practices because Americans deserve to know how their private data is being used to set the prices they pay and whether firms are charging different people different prices for the same good or service."¹¹

According to a recently released investigation from Consumer Reports and Groundwork Collaborative, Instacart allegedly used an artificial intelligence (AI) tool to conduct pricing tests so retailers could gauge online shoppers' reactions to higher or lower prices across a variety of products.¹² Instacart called this practice "smart rounding" in a letter to Costco, explaining that "by thoughtfully pricing certain items with high or low price sensitivity, retailers have seen customers' overall price perception improve and their engagement increase as a result. For some of our major grocery partners, this has led to millions of dollars in annual incremental sales."¹³ Although these pricing tests were randomized, and Instacart claimed that they did not involve users' individual data, criticism erupted over the privacy and competition concerns leading to customer distrust and erosion of brand loyalty.¹⁴ More recently in December 2025, the FTC opened an investigation concerning Instacart's AI pricing tool.¹⁵

New York recently passed a state law requiring transparency, mandating that businesses display the following disclosure on algorithmically set prices: "This price was set by an

⁷ Federal Trade Commission, *FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices* (Jan. 17, 2025) (press release).

⁸ Federal Trade Commission, *FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing* (July 23, 2024) (press release).

⁹ Federal Trade Commission, *FTC Surveillance Pricing 6(b) Study: Research Summaries: A Staff Perspective* (Jan. 2025).

¹⁰ *Id.*

¹¹ *See note 7.*

¹² Consumer Reports, *Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds* (Dec. 22, 2025).

¹³ *Id.*

¹⁴ *The Cost of Instacart's Price-Testing Experiment Continues to Mount*, EMarketer (Jan. 9, 2026); *Instacart's AI-Drive Pricing is Being Investigated by the FTC—Here's What You Need to Know*, Investopedia (Dec. 18, 2025); Office of the New York State Attorney General, *Attorney General James Demands Answers from Instacart About Algorithmic Pricing* (Jan. 8, 2026) (press release).

¹⁵ *Exclusive: FTC Probes Instacart's AI Pricing Tool, Source Says; Shares Drop*, Reuters (Dec. 17, 2025).

algorithm using your personal data.”¹⁶ In an apparent attempt to comply with this new law, Target’s website displays the disclosure at the very bottom of the pop-up that appears when customers click on the “i” icon next to the price of an item.¹⁷ Regardless of whether this meets the “clear and conspicuous” requirement of the law, the admission of this form of surveillance pricing is an alarming exposure of potentially harmful actions against consumers.

To better understand the scope of the surveillance pricing ecosystem and any information your company is collecting, purchasing, using, selling, or aggregating, I am requesting information and answers to the following questions by no later than May 26, 2026. For purposes of responding to these questions, please provide all information for the period of time beginning January 1, 2025. Your responses should correspond to the numbering system below, including a distinct response to each subpart question.

In addition, the term “data element” should be understood to include personal information about the identity, gender, age, race, employment, income, spending history or patterns, participation in any loyalty or discount programs, browsing behavior, or location, and device characteristics including, but not limited to unique device ID, IP address, battery percentage, and device type of your customers. Further, all references to customers should be understood to include potential or actual customers.

1. Please identify all data elements related to customers collected by your company that are used to inform or set prices.
 - a. Please specifically describe how each data element is collected, from what source, and how often it is collected.
2. Does your company purchase, license, or otherwise acquire data elements from any third party that are used in any way to inform or set prices for customers? If so, please list each third party and, for each:
 - a. What data elements are provided?
 - b. How many data elements are provided?
3. Do you disclose to customers what data you collect about them and what customer data is used to inform or set prices for products?
4. Are customers able to opt-out or revoke permission to collect or acquire data about them for the purpose of setting prices? If so, what happens to any existing data previously collected or acquired about them?
5. Does your company operate any customer loyalty or discount membership programs? If so:

¹⁶ New York General Business Law, Chapter 20 Article 22-A, Section 349-A.

¹⁷ *Your Data Might Determine How Much You Pay for Eggs*, Wired (Dec. 2, 2025).

- a. Are these programs open to all consumers, or just those that meet specific criteria?
 - b. What terms or policies must consumers agree to in order to participate?
 - c. What additional data is collected or otherwise acquired, whether directly or from third parties, about participants in the program?
 - d. What data is used to inform or set prices for participants?
 - e. Do you disclose to participants what data you collect about them and what data is used to inform or set prices for products?
 - f. Are participants in these programs all offered the same price, or do they vary by individual or other criteria that do not apply to non-participants?
6. How are the data elements your company collects or possesses about your customers used to inform or set prices?
- a. Are the data elements used to inform or set prices from all or only a portion of customers? If only a portion, which ones, and how is that determined?
 - b. Are the data elements used to inform or set prices for all or only a portion of products? If only a portion, which ones, and how is that determined?
 - c. Please provide any studies or beta testing related to using data to inform or set prices, including any future plans to do so.
7. How are the data elements your company collects or possesses about your customers used to offer discounts, coupons, rebates, or other potential or actual savings to customers outside the context of loyalty or discount membership programs?
- a. Are the data elements used to provide discounts, coupons, rebates, or other potential or actual savings to all or only a portion of customers? If only a portion, which ones, and how is that determined?
 - b. Are the data elements used to provide discounts, coupons, rebates, or other potential or actual savings for all or only a portion of products? If only a portion, which ones, and how is that determined?
8. Does your company use AI or machine learning algorithms—either directly or through a third party—to inform or set prices? If so, and to the extent this information is not already provided in response to Question 6, please provide a description of the AI or algorithms, including whether and how they use customer data.

- a. What data elements from customers are used in the AI or algorithm?
 - b. Are data elements weighed differently by the AI or algorithm in determining how to set prices for individual customers or categories of customers? If so, which data elements, and how?
 - c. What is the process for reviewing the prices calculated by the AI or algorithm? Who is responsible for the review? How often are these outputs reviewed?
 - d. How often are prices changed by the AI or algorithm?
 - e. What parameters are used to regulate the scope and scale of AI or algorithms? For example, is there an upward limit to how high a price may be set for a customer?
 - f. Who decides if those prices go into effect or do they occur automatically?
 - g. When did your company begin using AI or algorithms to inform or set prices? If your company has used more than one AI system or algorithm, please provide a timeline for their adoption.
 - h. Does your company share the data used in this algorithm or any results of the algorithmic price setting with other entities or third parties? If so, please identify which data is shared with which entities and describe how much you charge to share or sell this information.
9. Does your company use data elements of customers to develop customer segments based on income, sex, age, race, or other similar criteria? If so, please provide a list of such categories and which data elements are used to place customers in each category.
 10. Do any third parties that provide you with data elements for customers provide categories of customers based on income, sex, age, race, or other similar criteria? If so, please provide a list of such categories.
 11. Does your company use data elements of customers to develop categories based on race, age, income, behavior on a website or app, presence or activity within a store, features or type of device used, or similar criteria? If so, please provide a list of such categories.
 12. Do any third parties that provide you with data elements for customers provide categories of customers based on behavior on a website or app, presence or activity within a store, features, or type of device used for purchase, or similar criteria? If so, please provide a list of such categories.
 13. Please provide all analyses, reports, studies, promotional materials, and any other documentation that evaluate, analyze, or describe the actual, evaluated, or projected

revenue, volume, or effects of any use of data elements from consumers to inform or set prices.

14. How is customer data stored by your company?
15. What safety precautions does your company employ to maintain the confidentiality of this customer data, including to prevent data breaches involving this data?
16. Does your company have any policy or prohibition on data acquisition, use, retention, deletion, or any other data handling? What additional steps, if any, does your company take to protect the data of customers who are under 18?
17. How, if at all, does your company verify that the customer information that you purchase, collect, aggregate, license, sell, or otherwise share is accurate?
18. Was your company impacted by any tariffs implemented since January 21, 2025?
 - a. If so, please describe to what extent and how much the tariffs cost your company financially.
 - b. If so, please describe how your company offset the costs, including specifically how your company's price-setting was affected.
19. If your company was specifically impacted by the tariffs at issue in the Supreme Court's February 2026 decision in *Learning Resources, Inc. v. Trump* and *Trump v. V.O.S. Selections, Inc.*, do you plan to alter prices as a result of that decision?¹⁸
 - a. Do you plan to request a refund on those tariffs?
 - b. If so, do you intend to distribute refunded tariffs to customers that paid higher prices on products as a result of those tariffs?

If you have any questions about this request, please contact the Committee Democratic staff at (202) 225-2927.

Sincerely,



Frank Pallone, Jr.
Ranking Member

cc: The Honorable Brett Guthrie
Chairman

¹⁸ *Id.*