

May 14, 2026

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
District of Columbia, 20580

Re: Food Delivery Fees ANPRM (Project No. P267101)

The Electronic Privacy Information Center (“EPIC”) and the National Consumers League (“NCL”), joined by Consumer Action, the Consumer Federation of America, the Demand Progress Education Fund, the National Association of Consumer Advocates, and Travelers United, strongly support efforts by the Federal Trade Commission (“FTC” or “Commission”) to eliminate unfair and deceptive fees in online food delivery services. In addition to these companies’ fee practices, the FTC should examine menu pricing differences in-app compared to in-person, and mandate greater transparency into the price differential. Public interest advocates have long championed FTC action to address the harms associated with unfair and deceptive fee practices¹ and surveillance-driven personalized pricing.² Fee practices found in other industries that are identical to the subject of this and recent rulemakings are certainly unlawful as well. To effectively protect consumers, the FTC should expand its rulemaking efforts to prohibit all unfair and deceptive hidden or dripped fee practices economy-wide. The Commission should also prohibit personalized pricing in food delivery services and economy-wide. Lastly, the FTC should release the full results of its 6(b) inquiry into personalized pricing to better inform policymakers at all levels of government.³

The Commission Should Examine Menu Pricing

While this advance notice of proposed rulemaking on unfair or deceptive fees in online food delivery services (“ANPRM”) focuses on fees, the Commission should also be aware that the direct menu pricing of food items often differs when ordering via an app compared to purchasing in-person. For example, one journalist found a family-portion item priced at \$39 in person had a

¹ National Consumers League comment in support of petition for FTC rulemaking on drip pricing, *National Consumers League*, January 26, 2022. <https://www.regulations.gov/comment/FTC-2021-0074-0019>; “52 Advocacy Groups Endorse FTC’s Ban on Junk Fees,” *Consumer Federation of America*, February 8, 2024. https://consumerfed.org/press_release/52-advocacy-groups-endorse-ftcs-ban-on-junk-fees/; “NCL hails FTC ban on hidden junk fees in ticketing and lodging,” *National Consumers League*, December 17, 2024. <https://nclnet.org/ncl-hails-ftc-ban-on-hidden-junk-fees-in-ticketing-and-lodging/>

² Comment of 15 organizations including EPIC and NCL in support of petition for FTC rulemaking on personalized pricing. *NCL and EPIC et al.*, February 23, 2026. <https://www.regulations.gov/comment/FTC-2026-0034-0008>

³ After voting to authorize the inquiry, then-Commissioner Andrew Ferguson expressed a desire to see the full results released, beyond staff research summaries. See “Dissenting Statement of Commission Andrew N. Ferguson,” *Federal Trade Commission*, January 17, 2025. https://www.ftc.gov/system/files/ftc_gov/pdf/surveillance-pricing-6b-research-summaries-ferguson-dissent-final.pdf

menu price of \$47.10 on a delivery app before fees, tax, or tip.⁴ That same reporter found a \$12.58 in-person sandwich order had a menu price of \$14.78 on one app and \$11.98 on another. There are legitimate business costs associated with food delivery, however the lack of transparency into these pricing formulas can cause consumer confusion, injury, and deception. There is a growing body of evidence that businesses may dynamically price their menu based on the perceived willingness of an individual buyer to pay, also known as personalized pricing.⁵ This comment discusses that issue in greater detail in a later section.

Consumers often do not know that the menu price is inflated or dynamically determined. Requiring apps to disclose the in-person menu price next to the in-app price (when different) would easily inform consumers, reducing injury or deception and promoting competition. Shoppers would be able to make an educated decision and have greater ability to avoid potentially personalized pricing by making the purchase in person. Alternatively, they may use this information to choose a competitor app, since menu prices may also differ from app to app.

Delivery Service Fees Have Been a Continued Vector for Unlawful Conduct

Regarding fees specifically, delivery app fees commonly include service charges, delivery fees, and small order fees. These have been a source of confusion and injury for consumers for years. Apps now commonly disclose the delivery fee upfront, while other fees like service charges and small order fees remain hidden until checkout or are even bundled with taxes. Variable fees are especially difficult for consumers to anticipate. For example, it is not often clear until checkout what the threshold is to waive a small order fee and when the buyer may be subject to one.

Law enforcement across all levels of government have sued food delivery companies for a range of unfair and deceptive practices related to fees and pricing. These include actions from the

⁴ “Up to 92% More Expensive: How Delivery Apps Eat Up Your Budget,” *The New York Times*, November 13, 2020. <https://www.nytimes.com/2020/02/26/technology/personaltech/ubereats-doordash-postmates-grubhub-review.html>

⁵ “Instacart’s AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds,” *Consumer Reports*, December 9, 2025. <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

FTC,⁶ Illinois,⁷ Chicago,⁸ and the District of Columbia.⁹ The FTC and 11 states,¹⁰ as well as local governments like the District of Columbia,¹¹ have also brought enforcement actions for certain worker-related practices, like failing to properly distribute tips (which are functionally another type of fee).

While some companies have already faced law enforcement action for certain conduct relating to fees and menu pricing, most of these lawsuits and settlements were brought by specific localities or states with limited scope. Millions of Americans still live in jurisdictions that have not brought enforcement actions or implemented policies addressing these unfair and deceptive practices, highlighting the need for a federal rule.

The Commission Should Prohibit Unfair and Deceptive Fees in All Industries

The undersigned public interest organizations strongly support the FTC’s enforcement of its Congressional mandate to proscribe unfair and deceptive practices, including the use of hidden fees and similar drip pricing strategies. After overwhelming evidence and public demand, the Commission has already made this pricing scheme unlawful for live-event ticketing and short-term lodging.¹² The FTC now appears poised to take comparable steps for rental housing¹³ and online food and grocery delivery services. Consumer advocates commend all of these efforts.

⁶ “Instacart to Pay \$60 Million in Consumer Refunds to Settle FTC Lawsuit Over Allegations it Engaged in Deceptive Tactics,” *Federal Trade Commission*, December 18, 2025. <https://www.ftc.gov/news-events/news/press-releases/2025/12/instacart-pay-60-million-consumer-refunds-settle-ftc-lawsuit-over-allegations-it-engaged-deceptive>

⁷ “FTC, Illinois Attorney General Take Action Against Grubhub for Harming Diners, Workers, and Small Businesses,” *Federal Trade Commission*, December 17, 2024. <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-illinois-attorney-general-take-action-against-grubhub-harming-diners-workers-small-businesses>

⁸ “City of Chicago Files Consumer Protection Lawsuits Against DoorDash and Grubhub For Engaging In Deceptive and Unfair Business Practices,” *City of Chicago Office of the Mayor*, August 27, 2021. <https://web.archive.org/web/20221124234656/https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2021/August/ConsumerProtectionLawsuits.pdf>

⁹ “AG Racine Sues Grubhub for Charging Hidden Fees & Using Misleading Marketing Tactics During the COVID-19 pandemic to Increase Profits at the Expense of Consumers & Restaurants,” *District of Columbia Office of the Attorney General*, March 21, 2022. <https://oag.dc.gov/release/ag-racine-sues-grubhub-charging-hidden-fees-using>

¹⁰ “Walmart Agrees to \$100 Million Judgment to Settle FTC, States’ Charges Over Deceptive Earnings Claims Related to the Company’s Spark Driver Delivery Service,” *Federal Trade Commission*, February 26, 2026. <https://www.ftc.gov/news-events/news/press-releases/2026/02/walmart-agrees-100-million-judgment-settle-ftc-states-charges-over-deceptive-earnings-claims-related>

¹¹ “AG Racine Sues DoorDash For Deceiving District Consumers By Taking Tips From Food Delivery Workers,” *District of Columbia Office of the Attorney General*, November 19, 2019. <https://oag.dc.gov/release/ag-racine-sues-doordash-deceiving-district>; “AG Schwalb Secures \$3.95 Million from Amazon to Resolve Lawsuit Over Stolen Tips Intended for Delivery Workers,” *District of Columbia Office of the Attorney General*, February 7, 2025. <https://oag.dc.gov/release/ag-schwalb-secures-395-million-amazon-resolve>

¹² “Federal Trade Commission Announces Bipartisan Rule Banning Junk Ticket and Hotel Fees,” *Federal Trade Commission*, December 17, 2024. <https://www.ftc.gov/news-events/news/press-releases/2024/12/federal-trade-commission-announces-bipartisan-rule-banning-junk-ticket-hotel-fees>

¹³ “Unfair or Deceptive Rental Housing Fee Practices ANPRM, Project No. R207011,” *Federal Trade Commission*, March 13, 2026. <https://www.federalregister.gov/documents/2026/03/13/2026-04907/rule-on-unfair-or-deceptive-rental-housing-fee-practices>

However, it is critical that the Commission ban all unfair and deceptive fee practices economy-wide, not just the select industries covered by these narrow rulemakings.

Since the FTC has correctly determined that hidden and dripped fee practices are unfair and deceptive, there is no justification to allow some businesses to perpetrate these exact same practices while holding others accountable. The Commission’s approach may even penalize the same business for an identical practice conducted over one medium but not another. For example, a restaurant’s in-person, hidden “service charge” should not remain unaddressed by FTC policy while that same restaurant’s delivery fee is captured by this rule. Other businesses within the Commission’s jurisdiction, like automobile dealers,¹⁴ rental car agencies,¹⁵ gyms,¹⁶ and certain financial lenders¹⁷ also charge unfair and deceptive fees, yet the FTC’s two active rulemakings on fees would not address these industries.

Importantly, there may be businesses or entire industries in the future that decide to engage in drip pricing after never doing so before and be therefore outside the scope of existing Commission rulemakings. An economy-wide rule, particularly in light of the U.S. Supreme Court’s narrowing of 13(b) remedies via *AMG Capital Management v. FTC*, would provide the Commission with a reliable avenue for relief for consumers harmed by new applications of already unlawful unfair and deceptive fee practices.

If certain businesses believe that their fee practices are not unfair or deceptive, Section 18(g) of the FTC Act provides a mechanism for these entities to petition for an exemption. The statute places the burden on businesses to justify their unscrupulous charges and request an exemption; it does not require the Commission to initiate several redundant rulemakings all centered on the same unlawful conduct.

The Commission Should Prohibit Personalized Pricing

Unfair and deceptive fees in online food delivery services are one component of the harmful practice of surveillance-driven personalized pricing. Menu pricing itself can also be manipulated

¹⁴ “FTC Warns 97 Auto Dealership Groups About Deceptive Pricing,” *Federal Trade Commission*, March 13, 2026. <https://www.ftc.gov/news-events/news/press-releases/2026/03/ftc-warns-97-auto-dealership-groups-about-deceptive-pricing>

¹⁵ Comment of Consumer Federation of America et al. in support of Notice of Proposed Rulemaking on Unfair or Deceptive Fees, Appendix B, pages 1, 31, 37, 40, 42, 45, 46, 48, 53, 54, 60, 67, 75, 88, 96, 97, 124, 126, 128, 130, etc., *Consumer Federation of America et al.* February 7, 2024. <https://www.economicliberties.us/wp-content/uploads/2024/02/Consumer-Coalition-Junk-Fees-NPRM-Comment-Letter-Final-2.7.24-1.pdf>.

¹⁶ “Ways Hidden Gym Membership Fees Can Surprise You,” *Achieva Credit Union*, February 5, 2020. <https://achievalife.com/hidden-gym-membership-fees/>; “The Hidden Gym Membership Fees People Say To Ask About Before You Join,” *MoneyLion*, April 19, 2026. <https://www.moneylion.com/trending/money/discover-hidden-gym-membership-fees-people-say-ask-about-before-join>

¹⁷ “AMG Services, Inc.,” *Federal Trade Commission*, May 19, 2022. <https://www.ftc.gov/legal-library/browse/cases-proceedings/112-3024-x120026-amg-services-inc>

by sellers and personalized. As a recent study on Instacart found, the company conducted pricing experiments on individual shoppers, and its personalized pricing algorithm could lead to \$1,200 more spent on groceries each year for a typical household.¹⁸ Further, DoorDash has disclosed under the New York Algorithmic Pricing Disclosure Act that it uses consumers' personal data to determine prices.¹⁹ We welcome the FTC's attention to these practices to protect consumers from being deceived into paying more or from unfairly having these systems used against them, including the Commission's probe into Instacart amid the public backlash to its practices which resulted in Instacart halting its pricing experiments.²⁰

However, the FTC must be aware from its own Surveillance Pricing 6(b) study²¹ that the broader practice of personalized pricing harms consumers across the economy, not just in food or groceries ordered through online delivery platforms. There are myriad examples²² of surveillance-driven personalized pricing, including in booking hotels,²³ purchasing home electronics,²⁴ or ordering rideshares.²⁵ Firms collect vast amounts of data about consumers, making inferences about their likelihood of purchasing certain products or services at different price points, and exploiting that data to charge some consumers more than others.²⁶

Consumers have no easy way of knowing what personal data about them is collected or sold (including by data brokers), what inferences are made, and how those hidden data flows inform the prices they see. This makes the practice impossible to reasonably avoid. In fact, firms benefit from the information asymmetry to gauge how much individual consumers are willing to pay,

¹⁸ "Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds," *Consumer Reports*, December 9, 2025.

<https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

¹⁹ "Uber and DoorDash Now Disclose When Algorithms Set Prices. There's Still One Big Question," *Business Insider*, November 12, 2025. <https://www.businessinsider.com/uber-doordash-notify-if-apps-use-customer-data-set-prices-2025-11>

²⁰ "Instacart Ends AI-driven Price Experiments After Criticism," *Reuters*, December 22, 2025.

<https://www.reuters.com/business/instacart-ends-ai-driven-price-experiments-after-criticism-2025-12-22/>

²¹ "FTC Surveillance Pricing 6(b) Study: Research Summaries," *Federal Trade Commission*, January 2025.

https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf

²² "Surveillance Price Gouging," *Consumer Watchdog*, December 2024. <https://consumerwatchdog.org/wp-content/uploads/2024/12/Surveillance-Price-Gouging.pdf>

²³ "Hotel booking sites show higher prices to travelers from Bay Area," *SFGATE*, February 3, 2025.

<https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>

²⁴ "The Target app price switch: What you need to know," *Kare 11*, February 6, 2019.

<https://www.kare11.com/article/money/consumer/the-target-app-price-switch-what-you-need-to-know/89-9ef4106a-895d-4522-8a00-c15cff0a0514>

²⁵ "Is your friend getting a cheaper Uber fare than you are?" *The Guardian*, April 13, 2018.

<https://www.theguardian.com/commentisfree/2018/apr/13/uber-lyft-prices-personalized-data>; "Uber Accused of Charging People More If Their Phone Battery Is Low," *Vice*, April 11, 2023. <https://www.vice.com/en/article/uber-surge-pricing-phone-battery/>

²⁶ "Surveillance Pricing," *EPIC*, accessed May 8, 2026. <https://epic.org/issues/consumer-privacy/surveillance-pricing/>

extracting maximum consumer surplus and inflicting substantial injury even when firms make deceptive statements promising to save consumers money.

Conclusion

To fully address harms from unfair and deceptive pricing practices:

1. The FTC should examine online menu pricing practices as well and require the disclosure of the in-person menu price when it differs from the in-app menu price. Doing so would allow consumers to make maximally informed decisions and potentially choose to shop in person or switch to a competitor with a lower online price;
2. The FTC should expand the scope of this rulemaking to address all unfair and deceptive fees perpetrated by businesses under its jurisdiction. The agency should incorporate the parallel project on violative fees in rental housing within such an expanded rulemaking to avoid duplicative and otherwise unnecessary efforts. Regulated entities that believe their fee practices should not be covered by this economy-wide rule may petition for an exemption under Section 18(g) of the FTC Act, although such requests should be heavily scrutinized;
3. The FTC should formalize a prohibition on personalized pricing. Such a prohibition should certainly cover online food delivery services, but it should not be limited to only that specific implementation of the practice. Similar to unfair and deceptive fees, personalized pricing has become a multi-sector issue warranting economy-wide intervention by the agency; and
4. The FTC should release the full results of its 6(b) study on surveillance-driven personalized pricing so that policymakers and law enforcement at all levels of government can better investigate and address the economy-wide consumer injuries. Last year, then-Commissioner Andrew Ferguson issued an opinion alongside Commissioner Holyoak stating the importance of agency staff to issue a “final, fact-based report.”²⁷

²⁷ “Dissenting Statement of Commission Andrew N. Ferguson,” *Federal Trade Commission*, January 17, 2025. https://www.ftc.gov/system/files/ftc_gov/pdf/surveillance-pricing-6b-research-summaries-ferguson-dissent-final.pdf

Thank you for your attention to these important consumer protection issues.

Sincerely,

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Consumer Federation of America
Demand Progress Education Fund
Electronic Privacy Information Center (EPIC)
National Association of Consumer Advocates
National Consumers League
Travelers United

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