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The Loyalty Trap: How Loyalty Programs Hook Us with Deals, Hack our Brains, and Hike Our Prices

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Introduction

Monopoly is back at McDonald's.[1] Only this time around, the ninety-year-old game comes with a modern digital spin. What began as a paper-based "peel for prizes" promotion — offering everything from free fries and Big Macs to $1 million dollar cash prizes — is now a gateway into McDonald's digital loyalty ecosystem. To play, customers peel physical game pieces from food items and scan them in the app or earn digital pieces by making mobile purchases. In both cases, the app reveals prizes and tracks progress — linking your game play directly to the McDonald's loyalty program, which participants are required to join.[2]

Given the prizes on offer — from a Jeep Grand Cherokee to a $50,000 vacation — joining the company's loyalty program may seem like a small price to pay. But to be eligible for these prizes, customers must agree to be tracked on far more than their Big Mac purchases. McDonald's nearly 10,000-word privacy policy[3] notes how the company can monitor customers' precise geolocation, browsing history, app interactions, and social media activity. The company then uses this data to train its artificial intelligence models and build profiles on its customers — predicting their "preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, or aptitudes."

McDonald's leverages these psychological profiles to drive repeat customer engagement over time. According to a recent earnings call,[4] an average customer visits 10.5 times in the year before joining the program, but 26 times in the year after — a more than twofold increase. The company aims to reach 250 million active loyalty users by 2027 and has already surpassed 185 million users across 60 markets. If it succeeds, McDonald's will hold psychological and behavioral profiles on a quarter of a billion consumers — a scale rivaling that of a national intelligence agency.

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[1] *Get Ready to Pass GO: MONOPOLY Game at McDonald's Returns with More Chances to Win,* McDonald's (Sep. 29, 2025), https://corporate.mcdonalds.com/corpmcd/our-stories/article/monopoly-returns-more-chances-towin.html.

[2] Amy Thielen, *McDonald's Bets on Monopoly Game to Lure in Loyalty Members*, SEEKING ALPHA (Sep. 29, 2025), https://seekingalpha.com/news/4499948-mcdonalds-bets-on-monopoly-game-to-lure-in-loyalty-members.

[3] *See McDonald's Global Customer Privacy Statement*, McDonald's (last updated July 1, 2025), https://www.mcdonalds.com/us/en-us/privacy.html#q7.

[4] *See McDonald's Corporation (MCD) Q2 FY2025 Earnings Call Transcript*, 0:08:03, 0:23:43, YAHOO FINANCE (Aug. 6, 2025), https://finance.yahoo.com/quote/MCD/earnings/MCD-Q2-2025-earnings_call-340791.html.

McDonald's approach epitomizes a broader shift: loyalty programs that once rewarded repeat business now function as surveillance infrastructures, using behavioral data to understand, target, and even determine the prices consumers pay. In this game of Monopoly, the most valuable property isn't on the board — it's you.

It's not only fast food where loyalty programs are being transformed. From airlines and hotels to grocery stores and gas stations, companies are seeking your loyalty in exchange for discounts. These programs look simple: collect your points, get some deals, and save some money. At a time of rising prices[5] and growing anxiety over affordability, they can even feel like a welcome relief. Lawmakers have leaned into that perception — granting loyalty programs special treatment under state privacy laws[6] and broad carveouts under emerging fair pricing proposals.[7]

But today, as seen with McDonald's, loyalty programs have evolved into data-harvesting machines that lawmakers should scrutinize as closely as any other surveillance-based business model. They track not just what consumers buy, but who we are, what we search for, and even how we move our cursors across a screen. Companies then monetize this data — selling it to brokers, building profiles on each of us, and most importantly, learning how much each of us is willing to pay.[8] At the same time, they design the programs to be sticky,[9] murky[10] and confusing,[11] while steadily raising

[5] Christopher Rugaber & Anne D'Innocenzio, *U.S. Inflation Rose Slightly Last Month as Grocery Prices Ticked Higher*, PBS NEWS (June 11, 2025), https://www.pbs.org/newshour/economy/u-s-inflation-rose-slightly-last-month-as-grocery-prices-ticked-higher.
[6] *See, e.g.*, Tex. Bus. & Com. Code § 541.101.
[7] *See, e.g.*, Assemb. Bill 446, 2025–2026 Reg. Sess. (Cal. 2025), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB446.
[8] Derek Kravitz, *Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors*, CONSUMER REPORTS (May 21, 2025), https://www.consumerreports.org/money/questionable-business-practices/kroger-secret-grocery-shopper-loyalty-profiles-unfair-a1011215563/.
[9] *See, e.g.*, Emily Stewart, *Consumer Loyalty Is Dead: Companies Charge Longtime Customers More*, BUS. INSIDER (Aug. 28, 2025), https://www.businessinsider.com/consumer-loyalty-dead-airline-miles-internet-company-car-insurance-prices-2025-8.
[10] See, e.g., Sarah Butler, *Big UK Retailers Accused of 'Dubious Discounts' on Loyalty Card Offers* , THE GUARDIAN (Aug. 22, 2024), https://www.theguardian.com/business/article/2024/aug/22/big-uk-retailers-accused-of-dubious-discounts-on-loyalty-card-offers-boots-superdrug-tesco-which.
[11] u/ash24ash, Reddit (May 22, 2024, 1:30 PM), https://www.reddit.com/r/unitedairlines/comments/1cyahvu/confusion_on_award_availability/ (seeking more information about award availability from users on a United Airlines Reddit page).

prices[12] or cutting back benefits.[13] Today, these programs can generate more profit for companies than their actual business.[14]

In recent years, regulators around the world have been sounding the alarm that firms can use loyalty programs to rip off their most loyal customers.[15] This paper builds on that work by examining the devolution of loyalty programs — from simple coupon programs to major lines of business transforming the retail experience. This devolution is happening in three stages. In the first stage — *the hook* — companies entice consumers by promising generous upfront benefits if consumers enroll. In the second stage — *the hack* — companies use loyalty programs to extract deep insights into our spending habits and willingness to pay, effectively hacking our brains. And in the third stage — *the hike* — companies make these programs worse for consumers — raising fees, devaluing points, limiting redemption options, and curtailing benefits. The result of these three stages is a wholesale transfer of wealth from consumers to corporations, with companies collecting ever-more data while offering ever-diminishing savings.

We use "loyalty programs" as a catch-all term for programs including discount clubs, rewards programs, and other programs in which companies provide rewards, discounts, or other benefits to customers in exchange for repeat business or continued engagement. These programs have a long history — emerging in the late

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[12] Sally Parker, *When Loyalty Programs Are Bad for Consumers*, CHICAGO BOOTH REV. (May 18, 2022), https://www.chicagobooth.edu/review/when-loyalty-programs-bad-consumers.

[13] Melissa Repko & Leslie Josephs, *No More Freebies: Companies Crack Down on Customer Perks and Rewards* , CNBC (Aug. 5, 2023), https://www.cnbc.com/2023/08/05/companies-crack-down-on-customer-perks-and-rewards-like-airline-miles.html.

[14] *How Loyalty Programmes Are Keeping America's Airlines Aloft,* THE ECONOMIST (Aug. 6, 2025), https://www.economist.com/business/2025/08/06/how-loyalty-programmes-are-keeping-americas-airlines-aloft.

[15] *See, e.g., Changes Needed to Protect Consumers Using Customer Loyalty Schemes*, Australian Competition & Consumer Comm'n, (Dec. 3, 2019), https://www.accc.gov.au/media-release/changes-needed-to-protect-consumers-using-customer-loyalty-schemes; Jonathan Bishop, *Customer Loyalty Programs: Are Rules Needed?*, Innovation, Science and Economic Development Can. (2013, modified Sep. 4, 2023), https://ised-isde.canada.ca/site/search-research-database/en/node/14460; *CFPB Report Highlights Consumer Frustrations with Credit Card Rewards Programs*, CFPB (May 9, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-highlights-consumer-frustrations-with-credit-card-rewards-programs/; *USDOT Seeks to Protect Consumers' Airline Rewards in Probe of Four Largest U.S. Airlines' Rewards Practices*, U.S. DEP'T OF TRANSPORTATION (Sep. 5, 2024), https://www.transportation.gov/briefing-room/usdot-seeks-protect-consumers-airline-rewards-probe-four-largest-us-airlines-rewards.

18th century, and evolving to include tokens, coupons, trading stamps, and proprietary currency.[16] Today, they have become backdoor laboratories for the future of pricing — where firms test new ways to watch us, sort us, and ultimately charge each of us the maximum they think we will bear.

States have strong tools to challenge abuses in these programs. Using their consumer protection and privacy laws, they can deter deceptive claims, ensure rewards are transparent, and challenge secret price hikes. The final section of this paper details how states can ensure these programs are truly rewarding for consumers.

At stake is more than the future of loyalty programs — it's the future of pricing and affordability across our economy. Increasingly, firms are moving away from mass pricing to micro-targeted pricing, where vast stores of personal data are used to extract the maximum a consumer will tolerate. Loyalty programs are the ground zero for this shift: they generate rich data, allow firms to track individual behavior over time, and give companies the tools to test and refine surveillance pricing.[17] Compounding the problem, state privacy laws often contain carveouts that exempt "bona fide" loyalty programs from key opt-out protections, providing cover for extensive data collection. And many of the emerging proposals to limit surveillance pricing contain broad carveouts for discounts or rewards programs. By tracing how rewards programs are changing, we gain a window into the future of pricing itself — and the risks that this model poses for affordability and fairness.

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[16] *See* Nada Elnahla & Leighann C. Neilson, *The History of Retail Loyalty Programs in North America (Extended Abstract)*, Proceed. 20th Biennial Conf. on Historical Analysis & Research in Marketing Vol. 20, at 92-95 (Jan. 2021), https://www.researchgate.net/publication/354010438_The_history_of_retail_loyalty_programs_in_North_America_Extended_abstract; Philip Shelper, *The True History of Loyalty Programs*, Loyalty & Reward Co. (Apr. 20, 2020), https://loyaltyrewardco.com/the-true-history-of-loyalty-programs; James J. Nagle, *Trading Stamps: A Long History*, N.Y. TIMES (Dec. 26, 1971), https://www.nytimes.com/1971/12/26/archives/trading-stamps-a-long-history-premiums-said-to-date-back-in-us-to.html; Carl Willis, *The History of S&H Green Stamps and Allied Stamp Corp.*, Interview by John Erling, *VOICES OF OKLAHOMA* (Mar. 5, 2013), https://www.voicesofoklahoma.com/interviews/willis-carl; Mark Colley, *Canadian Tire Stopped Printing Their Own Money in 2020: Inside the Colourful Rise and Fall of Canada's Unofficial Currency*, TORONTO STAR (Jan. 28, 2025), https://www.thestar.com/news/canada/canadian-tire-stopped-printing-their-own-money-in-2020-inside-the-colourful-rise-and-fall/article_f8313e60-d9c1-11ef-affc-bb61d3e04723.html.

[17] See David Dayen, One Person One Price, Am. Prospect (June 4, 2024), https://prospect.org/economy/2024-06-04-one-person-one-price/; *See FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices*, Fed. Trade Comm'n. (Jan. 17, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer.

Part 1: Three Stages of Loyalty Program Exploitation

I. The Hook

It's a familiar scene: you're standing at the checkout counter, and the cashier offers you 10% off your first purchase if you sign up for the store's loyalty program. Enrollment is "free," the savings apply instantly, and, for many shoppers, it feels like an easy win. For retailers, it's even more valuable. In exchange for that discount, they now have your email address, phone number, or other contact information — and often your "consent" to track purchases, target offers and build a profile of your shopping habits over time.[18]

This structure is intentional. "Devise a compelling hook," Harvard Business Review advises, to "attract customers and keep them engaged."[19] The travel sector pioneered this strategy,[20] with airlines like American and Delta offering tens of thousands of bonus miles if consumers enroll in their co-branded credit cards, often enough for a free flight.[21] Similarly, Marriott, Hilton, and Hyatt entice new members with free-night certificates, instant status upgrades, or large point deposits for joining and spending a

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[18] *See* Samuel Levine, *Keynote Remarks of Samuel Levine Director, Bureau of Consumer Protection, Federal Trade Commission*, Cleveland-Marshall College of Law Cybersecurity and Privacy Protection Conference (May 19, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks-Samuel-Levine-Cleveland-Marshall-College-of-Law.pdf (discussing the weaknesses of consent-based privacy regimes).

[19] Maureen Burns et al., *Why Loyalty Programs Fail*, HARVARD BUS. REV. (Sep. 13, 2024), https://hbr.org/2024/09/why-loyalty-programs-fail.

[20] David Robinson, *Customer Loyalty Programs: Best Practices*, HAAS SCH. OF BUS., UNIV. OF CAL., BERKELEY (2011), https://faculty.haas.berkeley.edu/robinson/papers%20dor/customer%20loyalty%20programs.pdf.

[21] AAdvantage® Program, *American Airlines*, https://www.aa.com/web/i18n/aadvantage-program/discover/loyalty-points-status.html (last visited Sept. 20, 2025) ; *Delta SkyMiles Loyalty Program*, Delta Airlines, https://www.delta.com/us/en/skymiles/overview (last visited Sept. 20, 2025).

set amount quickly.[22] Online retailers routinely prompt consumers with offers of instant coupons — a hook so common that it is now being mocked by comedians.[23]

Many companies are becoming more creative with their hooks. Retailers like Nordstrom offer a "Stylist Ambassador Program" in order to invest in its best customers, offering "in-store styling appointments" and the "[l]ooks outfit curator feature at the bottom of every product display page."[24] High-end health club Equinox dangles "must-attend" lifestyle events along with curated brand access across health, nutrition, travel and more.[25] Chipotle offers "free guac on your next order."[26] Many sellers will sweeten the deal further by assuring shoppers that they will be treated fairly. Uber has promised prospective loyalty members they can cancel anytime without fees or penalties.[27] Marriott promised it would protect consumers' personal data.[28] Assurances like these can help consumers feel more comfortable turning over their personal information in exchange for discounts.

In short, these programs are designed to feel irresistible. But too often, they operate like a Trojan horse — the programs look generous at the gate, but once inside, they unload hidden fees, intrusive data extraction, and traps that surface only later. The FTC sued UberOne for trapping people in subscriptions, and burying them in fees.[29] Marriott was sued by 49 states following massive data breaches that left consumers'

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[22] *Marriott Bonvoy Loyalty Program*, Marriott Bonvoy ,https://www.marriott.com/loyalty.mi (last visited Sep. 20, 2025); *Hilton Honors Program*, Hilton, https://www.hilton.com/en/hilton-honors/ (last visited Sep. 20, 2025); *World of Hyatt Program Overview*, Hyatt, https://world.hyatt.com/content/gp/en/program-overview.html (last visited Sep. 20, 2025).

[23] *See, e.g.,* Courtney Michelle, @itscourtneymichelle INSTAGRAM (May 8, 2025), https://www.instagram.com/reel/DJZmr0PODje/.

[24] *Nordstrom Launches Style Ambassador Program To Boost Awareness Of Styling Services*, FORBES, https://www.forbes.com/sites/sharonedelson/2023/01/31/nordstrom-launches-style-ambassador-program-for-best-customers/ (Jan. 31, 2023).

[25] *Introducing Equinox Circle*, Equinox (May 2023), https://www.equinox.com/articles/2023/05/introducing-equinox-circle.

[26] *Chipotle Rewards Program*, Chipotle Mexican Grill, https://www.chipotle.com/rewards (last visited Sep. 20, 2025).

[27] *FTC Takes Action Against Uber for Deceptive Billing and Cancellation Practices*, Fed. Trade Comm'n. (Apr. 21, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-takes-action-against-uber-deceptive-billing-cancellation-practices.

[28] *FTC Takes Action Against Marriott and Starwood Over Multiple Data Breaches*, Fed. Trade Comm'n.(Oct. 9, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-takes-action-against-marriott-starwood-over-multiple-data-breaches.

[29] *See* Complaint, *infra* note 119.

sensitive loyalty information exposed[30] — a growing problem among loyalty programs, which have become a "goldmine for hackers."[31] Fleetcor was accused of charging loyal consumers more than they actually saved in the program.[32] Grubhub was sued for ripping off loyalty members with junk fees, belying promises of free delivery.[33]

Of course, many loyalty programs do deliver real rewards. But as detailed in the following sections, company after company is quietly making these programs worse — cutting benefits, raising fees, and making rewards harder to redeem. The one constant — indeed, the key driver of many of these changes — is the intensive data collection companies undertake as part of these programs.

II. The Hack

Data now plays a massive role in retail strategy, and loyalty programs are among the most powerful tools for collecting it. The purpose of a loyalty program is to attract faithful consumers and keep them coming back.[34] To do so, these programs — often pushing app downloads[35] or digital coupons[36] — can track what consumers buy, how often they shop, when their preferences shift, how much price pain they will tolerate, and how their habits change over time. With that information, firms can experiment with rewards, segment customers by willingness to pay, and steadily ratchet up data extraction.

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[30] See Fed. Trade Comm'n. *infra* note 144.

[31] Herb Weisbaum, *Hackers Are Stealing Loyalty Rewards. Are Your Air Miles or Hotel Points at Risk?,* NBC NEWS (Nov. 12, 2019), https://www.nbcnews.com/better/lifestyle/hackers-are-stealing-loyalty-rewards-are-your-air-miles-or-ncna1080631.

[32] *FTC Sues FleetCor and Its CEO for Fleecing Small Businesses With Mystery Fuel Card Fees*, Fed. Trade Comm'n. (Aug. 11, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-sues-fleetcor-its-ceo-fleecing-small-businesses-mystery-fuel-card-fees.

[33] *Illinois Attorney General Take Action Against Grubhub for Harming Diners, Workers, and Small Businesses*, Fed. Trade Comm'n. (Dec. 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.

[34] *See* Dr. Sima Ghaleb Magatef & Dr. Elham Fakhri Tomalieh, *The Impact of Customer Loyalty Programs on Customer Retention*, 6 INT'L J. OF BUS. & SOC. SCI. 78 (2015).

[35] *See, e.g.,* Amy McCarthy, *How Fast-Food Apps Took Over The Drive-Thru*, EATER (Feb. 27, 2025), https://www.eater.com/24374005/fast-food-apps-deals-loyalty-programs.

[36] Edgar Dworsky & Ruth Susswein, *Stop Digital-Only Coupon Discrimination*, CONSUMER ACTION (Nov. 17, 2022), https://www.consumer-action.org/news/articles/stop-digital-only-coupon-discrimination; *Walmart Plus Frequently Asked Questions*, Walmart, https://www.walmart.com/plus/frequently-asked-questions (last visited Sep. 20, 2025).

The scope of this data collection — and how much companies know about each one of us — would surprise many Americans. A recent *Consumer Reports* investigation of Kroger revealed how the grocery chain collects such vast amounts of loyalty data that it is building profiles of each of its customers.[37] One profile stretched across 62 pages, with inferences about the consumer's income, gender, household size, and education level. And Kroger is not alone. Hertz mines customers' demographic and behavioral data;[38] Home Depot captures "Internet Activity," including browsing history and in-store WiFi usage.[39] Macy's tracks consumers' driver's license number, search history, and even ethnic origin.[40]

Notably, firms use this data for more than in-house analytics — it's become a valuable source of profits. Kroger reportedly sells or otherwise shares loyalty profiles with more than 50 companies, from tobacco firms to fintechs to data brokers;[41] Hertz can pass customer information to insurers and brokers;[42] Home Depot can share browsing history, search history, and even recordings of consumers' on-site or in-store website interactions using "session replay software."[43] Macy's can sell information on customers' internet activities and ethnic origin with data brokers.[44]

The breadth of these practices and the continued development of targeting capabilities stems from systematic and deliberate design. Armies of statisticians, data scientists, AI and machine learning engineers, and researchers have been enlisted and

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[37] Cyrus Rassool, *Consumer Reports Investigation Uncovers Kroger's Widespread Data Collection of Loyalty Program Members to Create Secret Shopper Profiles*, CONSUMER REPORTS (May 21, 2025), https://www.consumerreports.org/media-room/press-releases/2025/05/consumer-reports-investigation-uncovers-krogers-widespread-data-collection-of-loyalty-program-members-to-create-secret-shopper-profiles/.
[38] Hertz Privacy Policy, Hertz Corporation, https://www.hertz.com/rentacar/privacypolicy/index.jsp?targetPage=privacyPolicyView.jsp (last visited Sep. 20, 2025).
[39] *Privacy & Security Statement, Financial Incentive and Loyalty Programs*, The Home Depot, https://www.homedepot.com/privacy/privacy-and-security-statement#FinancialIncentiveAndLoyaltyPrograms (last visited Sep. 20, 2025).
[40] *Macy's and macys.com Notice of Privacy Practices,* Macy's https://customerservice-macys.com/articles/macys-and-macyscom-notice-of-privacy-practices-2#how-we-share-your-information (last visited Sep. 20, 2025).
[41] *See* Kravitz *supra* note 8.
[42] *See* Hertz Privacy Policy *supra* note 38.
[43] *See* Home Depot *supra* note 39.
[44] *See* Macy's *supra* note 40.

embedded into companies to focus on how to hack people's brains.[45] Nearly every major retailer has long had a "predictive analytics" department.[46] In recent decades, research across cognitive science and academic institutions has deepened our understanding of how habits take shape in the brain.[47] An entire field of "Nudge" economics and behavioral science has emerged[48] — showing how defaults influence organ donation[49] to how grocery store layouts affect impulse buying[50] to how app notifications keep people engaged.[51] Additionally, "dark patterns"[52] — interface design choices that benefit an online service by coercing, steering, or deceiving users into making unintended and potentially harmful decisions — have proliferated in countless forms — showcasing the hundreds of strategies designers can influence user actions.[53] This is not a one-off tactic, but a fully-fledged industry built around shaping and monetizing consumer behavior.

Because these troves of information are so valuable, retailers increasingly enlist consultants to devise new ways of extracting data. FasterCapital urges firms to manipulate loyalty pricing through "decoy" options that make the chosen product

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[45] *See* Ken Auletta, *How the Math Men Overthrew the Mad Men*, THE NEW YORKER (May 21, 2018), *https://www.newyorker.com/news/annals-of-communications/how-the-math-men-overthrew-the-mad-men (newyorker.com);* Business Intelligence Reporting & Analytics / Data Science job listings, Target Corporation (last visited Sept. 22, 2025), https://corporate.target.com/careers/job-search?referral=job-search-link&currentPage=1&jobFamily=Business%20Intelligence%20Reporting%20%26%20Analytics%7C%7CData%20Science .

[46] Charles Duhigg, *How Companies Learn Your Secrets*, N.Y. TIMES MAG. (Feb. 16, 2012), https://www.nytimes.com/2012/02/19/magazine/shopping-habits.html.

[47] *See* Zoe Wyatt, The Neuroscience of Habit Formation, 5 *Neurology & Neuroscience* (Mar. 2024); Alana Mendelsohn, *Creatures of Habit: The Neuroscience of Habit and Purposeful Behavior*, Biological Psychiatry, (June 1, 2019), https://www.biologicalpsychiatryjournal.com/article/S0006-3223(19)31149-7/abstract.

[48] RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2009).

[49] *See* Sergio Beraldo & Jurgis Karpus, *Nudging to Donate Organs: Do What You Like or Like What We Do?*, 24 MED. HEALTH CARE & PHIL. 329 (2021).

[50] Leah E. Chapman et al., *Evaluation of Three Behavioural Economics 'Nudges' on Grocery and Convenience Store Sales of Promoted Nutritious Foods*, 22 Pub. Health Nutrition 3250 (2019).

[51] Shana Pilewski, *A Personalized Strategic Approach to Push Notifications*, Dynamic Yield, https://www.dynamicyield.com/lesson/push-notifications-strategy/.

[52] *See* Arunesh Mathur et al., *Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites*, 3 PROC. ACM HUM.-COMPUT. INTERACT. (Nov. 7, 2019).

[53] *See* Arunesh Mathur et al., *What Makes a Dark Pattern... Dark?*, Normative Considerations, and Measurement Methods, CHI Conference on Human Factors in Computing Systems (Jan. 13, 2021), https://arxiv.org/pdf/2101.04843; Johanna Gunawan et al., *A Comparative Study of Dark Patterns Across Mobile and Web Modalities*, 5 PROC. ACM HUM.-COMPUT. INTERACT. (Oct. 18, 2021).

appear like a bargain, or by emphasizing what consumers stand to lose if they leave.[54] Firms can then profile their customers as "bargain hunters" and "premium shoppers" and tailor prices accordingly.[55] Kearney advises "hacking human psychology" by unbundling rewards to maximize the emotional impact of gains, grouping losses to minimize pushback, and linking loyalty accounts to fitness trackers, geolocation, and social media.[56] The payoff is two-fold: more targeted pricing, and more data to "monetize with third parties."[57]

Gamification has also emerged as a favored tool, with sellers importing tactics from casinos[58] and video games[59] to maximize engagement. Mastercard[60] and Nike[61] have pitched "challenges" and "mini-games" to coax more data from loyal customers. Oracle[62] recommends loyalty programs incorporate the element of chance and weaponize time limits to trigger "fear of missing out." Panera[63] promotes bonus

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[54] *Loyalty-Program Pricing: Innovative Pricing Strategies — Loyalty Programs That Work*, FasterCapital (last visited Sept. 21, 2025), https://fastercapital.com/content/Loyalty-program-pricing--Innovative-Pricing-Strategies--Loyalty-Programs-That-Work.html#Pricing-for-Customer-Retention.

[55] *Id.*

[56] *Hacking Human Psychology to Create True Customer Loyalty*, Kearney (Jun. 14, 2022), https://www.kearney.com/industry/consumer-retail/article/hacking-human-psychology-to-create-true-customer-loyalty.

[57] *Id.*

[58] *See* Samuel Levine, Remarks of Samuel Levine, Fourth Annual Reidenberg Lecture: *Toward a Safer, Freer, and Fairer Digital Economy: How Proactive Consumer Protection Can Make the Internet Less Terrible*, Fordham Law School, (Apr. 17, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/20240417-Reidenberg-Lecture-final-for-publication-Remarks-Sam-Levine.pdf (comparing online interfaces to a casino).

[59] Abbasi AZ et al., *Predicting Video Game Addiction Through the Dimensions of Consumer Video Game Engagement: Quantitative and Cross-sectional Study*, JMIR Serious Games 26 JMIR Serious Games (2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8665386/.

[60] *The Impact Of Gamification on Loyalty Strategies*, Mastercard Services, (Aug. 16, 2023), https://www.mastercardservices.com/en/advisors/consumer-engagement-loyalty-consulting/insights/impact-gamification-loyalty-strategies.

[61] *What Are Challenges in the NRC App?*, Nike (last visited Sep. 20, 2025), https://www.nike.com/help/a/nrc-challenges.

[62] *Spark Series: Making Sense of Gamification in Loyalty Programs*, Oracle (2021), https://www.oracle.com/a/ocom/docs/spark-series-making-sense-of-gamification-in-loyalty-programs.pdf.

[63] *Panera Expands MyPanera Loyalty Program*, Panera Bread (Sep. 20, 2025), https://www.panerabread.com/en-us/press/press-room/panera-expands-mypanera-loyalty-program.html.

rewards and freebies for completing short feedback surveys. Peloton[64] often recognizes members through social media badges and shoutouts. Many of these techniques have been identified by the FTC as dark patterns.[65]

These mechanics are not harmless entertainment. Streaks, timed bonuses, and intermittent rewards create the same sunk-cost effects[66] as slot machines: consumers keep "playing" so prior effort is not wasted. The effect is a feedback loop: consumers engage more deeply and surrender more data; companies, in turn, refine the very mechanisms that keep users hooked.

As discussed in Part 2, neither public concern[67] about digital privacy nor the spread of state privacy statutes is slowing this extraction ecosystem. To the contrary, every state privacy law[68] — along with the most recent federal proposal[69] — expressly carves out loyalty programs from key consumer rights, as do emerging bills to limit surveillance pricing. These exemptions make loyalty schemes uniquely attractive to retailers, and the data they generate is now the engine driving ever more sophisticated forms of consumer exploitation. In other words: loyalty programs have become the back door for turning everyday deals into mechanisms for surveillance.

III. The Hike

The final stage of loyalty program exploitation is the hike. These programs are not charities — they require large upfront investment, and companies expect large returns.[70] Especially in recent years, companies are generating these returns by raising fees and cutting benefits — all while making it difficult for consumers to exit.

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64 *Celebrate Your Wins with Peloton Milestones and Badges*, Peloton (July 18, 2025), https://www.onepeloton.com/blog/milestones.

65 *Bringing Dark Patterns to Light*, Fed. Trade Comm'n.Staff Report (Sep., 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800+Dark+Patterns+Report+9.14.2022+-+FINAL.pdf.

66 *See* Katie S. Mehr et al., *The Motivating Power of Streaks: Increasing Persistence is as Easy as 1, 2, 3,* 187 Org. Behav. & Hum. Decision Processes (2025), https://doi.org/10.1016/j.obhdp.2025.104391.

67 Michelle Faverio, *Key Findings About Americans and Data Privacy*, Pew Rsch. Ctr. (Oct. 18, 2023), https://www.pewresearch.org/short-reads/2023/10/18/key-findings-about-americans-and-data-privacy/.

68 Caroline Kibby, *US State Privacy Legislation Tracker*, Int'l Ass'n of Privacy Professionals (last updated July 7, 2025), https://iapp.org/resources/article/us-state-privacy-legislation-tracker/.

69 American Privacy Rights Act of 2024, H.R. 8818, 118th Cong. (2024), https://www.congress.gov/bill/118th-congress/house-bill/8818/text.

70 Patricia Camden & Michael Anders, *How to Unlock Value From, Measure, and Demonstrate Loyalty Program ROI*, Ernst & Young (Dec. 20, 2024), https://www.ey.com/en_us/cmo/how-to-measure-and-demonstrate-loyalty-program-roi.

A. Raising Fees

Companies are increasingly charging consumers fees for the privilege of participating in loyalty programs. Elite travel cards pioneered the trend of charging consumers large fees for participation, and this year they are planning huge increases.[71] But it is not only the travel sector cashing in on fees. Take Amazon Prime. In 2014, Prime cost $79 per year.[72] This year it costs $139, and a big increase is expected[73] next year. CVS recently introduced a two-tiered[74] loyalty program where consumers are required to pay monthly fees to access the most generous rewards. Uber charges $9.99/month for its UberOne program.[75] Target now offers Target Circle 360[76] — enhanced benefits for consumers who shell out $10.99 per month or $99 per year.

For companies, charging consumers to join loyalty programs can help them harvest fee revenue[77] and drive consumer engagement.[78] But for consumers, paying to join loyalty programs means needing to assess whether the rewards they receive — especially if such rewards are deferred — match the price they are paying. And they need to conduct this assessment on an ongoing basis, as companies are routinely cutting benefits.

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[71] Niraj Chokshi, *If You'll Pay $800 for a Credit Card, You're in Demand*, N.Y. TIMES (Aug. 17, 2025), https://www.nytimes.com/2025/08/17/business/airlines-credit-cards-loyalty.html.

[72] Aliah Git, *The Cost of Amazon Prime Membership Just Went Up*, CBS NEWS (Mar. 13, 2014), https://www.cbsnews.com/news/the-cost-of-amazon-prime-membership-just-went-up/.

[73] Aislinn Murphy, *Amazon Prime Members Brace for Sticker Shock as Analysts Predict Imminent Price Hike*, Fox Bus. (July 1, 2025), https://www.foxbusiness.com/retail/amazon-prime-members-brace-sticker-shock-analysts-predict-imminent-price-hike.

[74] Tatiana Walk-Morris, *CVS Pharmacy Introduces 2-Tiered Loyalty Program*, Retail Dive (Jan. 5, 2024), https://www.retaildive.com/news/cvs-pharmacy-two-tiered-loyalty-program/703752/.

[75] Complaint for Permanent Injunction, Monetary Judgment, and Other Relief, *FTC v. Uber Technologies, Inc. & Uber USA, LLC*, No. 3:25-cv-03477 (N.D. Cal. Apr. 21, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/uberonecomplaint.pdf.

[76] Target Circle 360, Target, https://www.target.com/l/target-circle-360/-/N-2rguk (last visited Sep. 20, 2025).

[77] Kelsea Alderman et al., *Members Only: Delivering Greater Value Through Loyalty and Pricing*, McKinsey & Co. (Apr. 3, 2024), https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/members-only-delivering-greater-value-through-loyalty-and-pricing.

[78] Ed Crouch et al., *Loyalty Programs Need Next-Generation Design*, BCG (May 30, 2023), https://www.bcg.com/publications/2023/loyalty-programs-need-to-continue-to-evolve.

B. Cutting Benefits

Across the board, loyalty programs are becoming less rewarding. Major airlines like Delta and United have steadily degraded their programs[79] by restricting lounge access and devaluing miles, drawing scrutiny[80] from federal enforcers. Fast-food giants including Dunkin' Donuts,[81] Starbucks,[82] and Chick-fil-A[83] have cut the value of points, raised redemption thresholds, or added new hoops to jump through. Verizon[84] is trimming loyalty discounts, and hotel chains like Marriott have quietly shifted to "dynamic rewards"[85] that can make free nights far harder to snag. After years without ads, in 2023, Amazon introduced ads into Prime Video and simultaneously rolled out a pricier ad-free tier.[86] Some consumers noted it was not clear that the standard offer included ads.[87]

Some of these changes are obvious and spark customer backlash.[88] Others are elaborately obscured. Program rules and regulations are increasingly convoluted,

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[79] Taylor Rains, *Why Your Airline Miles, Credit Card Rewards Keep Being Devalued*, BUS. INSIDER (May 8, 2025), https://www.businessinsider.com/airlines-credit-cards-loyalty-miles-rewards-profits-delta-united-american-2025-5.

[80] *Circular 2024-07: Design, Marketing, and Administration of Credit Card Rewards Programs*, Consumer Fin. Prot. Bureau (Dec. 18, 2024), https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-07-design-marketing-and-administration-of-credit-card-rewards-programs/.

[81] Angela Watercutter, *Dunkin' Donuts Drama Is the Internet at Its Best*, WIRED (Oct. 14, 2022), https://www.wired.com/story/dunkin-donuts-reddit-customer-loyalty/.

[82] Kelly Tyko, *Why Starbucks 'Free' Drinks Will Now Cost More*, Axios (Feb. 7, 2023), https://www.axios.com/2023/02/07/starbucks-rewards-changes-inflation-free-drink.

[83] *Chick-fil-A Waters Down Rewards and Hopes Customers Stick Around*, PMNTS, Mar. 20, 2023, https://www.pymnts.com/news/loyalty-and-rewards-news/2023/chick-fil-a-joins-qsrs-watering-down-rewards-programs-amid-inflation/.

[84] Jeff Carlson, *Did Verizon Toss Your Loyalty Discount? You Might See Higher Bills in September*, CNET (Aug. 8, 2025), https://www.cnet.com/tech/mobile/did-verizon-toss-your-loyalty-discount-you-might-see-higher-bills-in-september/.

[85] Chris Hassan, *Marriott Bonvoy Moves to Dynamic Pricing, Removing Award Charts*, Upgraded Points (July 18, 2024), https://upgradedpoints.com/news/marriott-bonvoy-dynamic-pricing-award-chart-removal/.

[86] *An update on Prime Video*, Amazon, (September 22, 2023), https://www.aboutamazon.com/news/entertainment/prime-video-update-announces-limited-ads

[87] u/Cinemaphreak, *Warning About Amazon Prime Video deal – it's for the ad version,* Reddit (Oct. 12, 2023), https://www.reddit.com/r/television/comments/1h6q433/warning_about_amazon_prime_video_deal_its_for_the/.

[88] Nathaniel Meyersohn, *Best Buy, Dunkin' and Starbucks changed their rewards programs. Then came the backlash*, CNN (Jan. 14, 2023), https://www.cnn.com/2023/01/14/business/best-buy-rewards-dunkin-starbucks-ctpr

spawning a cottage industry of bloggers[89] and influencers[90] to help consumers decode them, often getting referral kickbacks.[91] Layered point systems, blackout dates, and gamified streaks all make it harder for consumers to ascertain how much, if anything, they are saving. These complex rules and constant changes operate like a hidden tax — forcing people to invest time and energy just to break even — and give companies cover to quietly chip away at perks through red tape.

Point systems are uniquely vulnerable to abuse. As Professor Ganesh Sitaraman of Vanderbilt Law School has written[92] in *The Atlantic*, airlines — the pioneers of loyalty points — conjure them out of nothing, sell them to banks for billions of dollars, and reserve the right to devalue them at will. Today, the leading travel rewards blog warns[93] that points are a poor long-term investment for consumers. But Wall Street loves them — at times valuing mileage programs more than airlines themselves.[94]

Another key driver of benefit cuts is mergers. When Marriott announced[95] it was acquiring Starwood, Starwood loyalty members responded with "anger and dread."[96] Their worry was twofold: Marriott's program was less generous, and the merger would flood membership rolls — forcing existing members to compete with millions of newcomers for the same limited pool of hotel rooms bookable with points. In effect, the merger diluted the value of every member's points: rewards became harder to redeem, waitlists grew longer, and benefits that once felt attainable suddenly felt out of reach.

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[89] The Points Guy, https://thepointsguy.com/ (last visited Sep. 20, 2025).
[90] Chris Dong, *Points Influencers Are Everywhere. Some Trips Look Too Good to Be True*, WASH. POST (May 28, 2024), https://www.washingtonpost.com/travel/tips/travel-credit-card-rewards-points-tiktok/.
[91] *Id.*
[92] Ganesh Sitaraman, *Airlines Are Just Banks Now*, THE ATLANTIC (Sep. 21, 2023), https://www.theatlantic.com/ideas/archive/2023/09/airlines-banks-mileage-programs/675374/.
[93] Sarah Hostetler & Ben Smithson, *Why Points and Miles Are a Bad Long-Term Investment*, The Points Guy (Dec. 11, 2024), https://thepointsguy.com/loyalty-programs/points-and-miles-bad-investment/.
[94] Sitaraman, *supra* note 92.
[95] *Marriott International to Acquire Starwood Hotels & Resorts Worldwide, Inc.,* Marriott International, Inc. (Nov. 16, 2015), https://marriott.gcs-web.com/news-releases/news-release-details/marriott-international-acquire-starwood-hotels-resorts-worldwide.
[96] Josh Barro, *Starwood Devotees Greet Marriott Merger With Dread and Anger*, N.Y. Times (Nov. 18, 2015), https://www.nytimes.com/2015/11/18/upshot/marriott-merger-has-starwood-lovers-nervous.html.

The same dynamic is visible in the airline industry. Last year, the Department of Transportation opened an investigation[97] into whether loyalty program mergers cause customers to "lose value, rewards, or status in the transition." By reducing choices,[98] mergers can also make bad loyalty programs harder to leave, while making it easier for companies to hike prices or cut benefits.

C. Coercive upselling

Benefit cuts and fee increases can also work hand in hand. An increasingly common tactic is to create higher-priced loyalty tiers and migrate meaningful benefits into them, effectively penalizing existing members unwilling to pay higher fees. Airlines once again pioneered this strategy,[99] turning seat selection, checked bags, and legroom — once amenities available to all passengers — into paid extras[100] while reserving the best treatment for higher-fare classes and elite frequent fliers. But now, as *Business Insider* recently reported,[101] these "caste system" tactics are spreading throughout the economy. Earlier this year, Costco began offering early shopping hours[102] for "Executive" members, recasting a basic access benefit as a premium privilege.[103] Disney has taken a similar path by layering on[104] multiple access tiers, and forcing even long-

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[97] *USDOT Seeks to Protect Consumers' Airline Rewards in Probe of Four Largest U.S. Airlines' Rewards Practices*, U.S. Dep't. of Transp. (Sep. 5, 2024), https://www.transportation.gov/briefing-room/usdot-seeks-protect-consumers-airline-rewards-probe-four-largest-us-airlines-rewards.

[98] *Id*.

[99] Eric Rosen, *40 Years Of Miles: The History of Frequent Flyer Programs*, The Points Guy (May 20, 2021), https://thepointsguy.com/loyalty-programs/evolution-frequent-flyer-programs/.

[100] *The Sky's the Limit: The Rise of Junk Fees in American Travel*, U.S. Permanent Subcomm. on Investigations Majority Staff Report (Nov. 26, 2024), https://www.hsgac.senate.gov/wp-content/uploads/2024.11.25-Majority-Staff-Report-The-Skys-the-Limit-The-Rise-of-Junk-Fees-in-American-Travel-1.pdf.

[101] Emily Stewart, Americans' New Consumer Caste System, BUS. INSIDER (Sep. 14, 2025), https://www.businessinsider.com/costco-new-hours-fees-changing-prices-tiers-customer-caste-system-2025-9.

[102] Kelly McCarthy, *New Costco Hours Take Effect, Here's Which Memberships Are Impacted*, ABC NEWS (Sep. 1, 2025), https://abcnews.go.com/GMA/Living/new-costco-hours-executive-membership/story?id=125155654.

[103] While Costco's membership requires an annual fee subscription, the Executive tier's cash-back rewards, tiered benefits, and exclusive perks function as a loyalty program, incentivizing repeat spending and long-term customer engagement. *See*, How Costco Earns Loyalty and a Dedicated Customer Base, ETail Boston https://etaileast.wbresearch.com/blog/how-costco-earns-loyalty-dedicated-customer-base (last visited Sept. 8, 2025); Roger Dooley, *The Secret Sauce That Drives Costco's Customer Loyalty*, FORBES (Jun. 26, 2024) https://www.forbes.com/sites/rogerdooley/2024/06/26/the-secret-sauce-that-drives-costcos-customer-loyalty/.

[104] Daniel Currell, *Disney and the Decline of America's Middle Class*, N.Y. TIMES (Aug. 28, 2025), https://www.nytimes.com/2025/08/28/opinion/disney-world-economy-middle-class-rich.html.

time members and passholders to pay more simply to avoid longer lines. In a similar vein outside the context of loyalty programs, Netflix introduced a lower-priced ad-supported tier,[105] and then raised prices[106] on both that plan and its ad-free option.

As Lindsay Owens of Groundwork Collaborative explains,[107] these changes follow a familiar playbook: take something consumers once took for granted — like the ability to choose a seat on a plane or shop a store's full hours — and "gussy it up" as a premium perk for those willing to pay more. Or put differently, downgrade the baseline experience and then sell back the undiluted version as the new premium tier. This kind of customer stratification, *Business Insider* notes,[108] helps firms "boost revenues and identify exactly how much they can get out of each consumer."

The steady degradation of loyalty program benefits would be less of a problem if consumers could vote with their feet — forcing companies to actually compete for consumers' loyalty. But that's not what's happening. As detailed in a recent *Business Insider* investigation,[109] companies are making it increasingly expensive and difficult for consumers to actually leave these programs.

D. Creating Barriers to Exit

Loyalty programs, once marketed as voluntary bonuses, are now sticky by design — easy to enter, but difficult to leave. From airline miles that vanish if you switch carriers to online retailers that use design tricks to prevent people from cancelling, companies engineer these programs to impose steep costs on consumers who try to walk away. *Business Insider* describes this phenomenon as "coerced loyalty"[110] — retention schemes that entangle customers by making departure prohibitively expensive.

A common way to entangle consumers is through deferred rewards. Point systems often require extended participation before consumers can redeem anything of value, meaning those who leave early lose the benefit of their bargain. Scholars describe this

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[105] Lola Murti, *Netflix Ends Its Cheapest Ad-Free Subscription*, NPR (July 19, 2024), https://www.npr.org/2024/07/19/nx-s1-5046733/netflix-ends-its-cheapest-ad-free-subscription.
[106] *Streaming Services Keep Getting More Expensive: All the Latest Price Increases*, THE VERGE (Aug. 21, 2025), https://www.theverge.com/23901586/streaming-service-prices-netflix-disney-hulu-peacock-max.
[107] Stewart, *supra* note 101.
[108] *Id*.
[109] Emily Stewart, *Consumer Loyalty Is Dead: Companies Charge Longtime Customers More*, BUS. INSIDER (Aug. 28, 2025), https://www.businessinsider.com/consumer-loyalty-dead-airline-miles-internet-company-car-insurance-prices-2025-8.
[110] Stewart, *supra* note 103.

feature as an "exit penalty":[111] a scheme that punishes switching by stripping away accrued but unredeemed benefits. Especially when combined with enrollment fees — seen as a sunk cost[112] — deferred rewards can make exit ever more expensive.

Companies can also inhibit exit more directly by making cancellation difficult, often through the use of dark patterns — design techniques used to manipulate consumers. Amazon recently agreed to pay $2.5 billion to resolve FTC allegations that the company deployed what executives called an "Iliad Flow" — an allusion to Homer's epic poem set over twenty-four books and nearly 16,000 lines about the decade-long Trojan War — to frustrate consumers trying to cancel Prime.[113] A similar lawsuit[114] accused Uber of forcing consumers "to take as many as 32 actions and navigate as many as 23 screens" to cancel a loyalty program subscription. Grubhub[115] erected a series of roadblocks to keep consumers enrolled in Grubhub+. These techniques are often illegal,[116] but — as the FTC has found[117] — they are widespread throughout the economy.

E. Flipping the Bargain: Loyalty Programs that Cost Consumers More

Taken together, these changes — higher prices, reduced benefits, and steep exit penalties — are making rewards programs far less rewarding. Increasingly, the bargain can be flipped: consumers in loyalty programs may pay *more* than they would outside them, with the most loyal consumers within these programs paying the most. The playbook is clear: companies mine loyalty data to gauge how much customers will tolerate and which tactics spur purchases. And then they then design opaque programs that mask whether consumers are saving anything at all — especially in

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[111] *See* Oren Bar-Gill & Omri Ben-Shahar, *No Contract?*, Coase-Sandor Institute for Law & Economics Working Paper, (2013), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1334&context=law_and_economics.
[112] Christy Ashley, et al., *The Effect of Loyalty Program Fees on Program Perceptions*, 69 J. OF BUS. RSCH. 964 (2016).
[113] *FTC Secures Historic $2.5 Billion Settlement Against Amazon, Fed. Trade Comm'n. (September 25, 2025),* https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion-settlement-against-amazon.
[114] Fed. Trade Comm'n, *supra* note 27.
[115] Fed. Trade Comm'n.*supra* note 33.
[116] *See, e.g.,* Jody Godoy, *Amazon Violated Online Shopper Protection Law, Judge Rules Ahead of Prime Signup Trial*, REUTERS (Sep. 18, 2025), https://www.reuters.com/sustainability/amazon-violated-online-shopper-protection-law-judge-rules-ahead-prime-signup-2025-09-18.
[117] *FTC Announces Final 'Click-to-Cancel' Rule Making It Easier for Consumers to End Recurring Subscriptions and Memberships*, Fed. Trade Comm'n. (Oct. 16, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/10/federal-trade-commission-announces-final-click-cancel-rule-making-it-easier-consumers-end-recurring.

markets like air travel, where prices shift constantly and frequent customers often favor a single brand.

There is already evidence of this inversion. In 2021, the FTC sued Fleetcor,[118] alleging that it deceptively marketed its fuel card program as fee-free and cost-saving. In fact, the complaint charged that Fleetcor piled on hidden fees and restrictions that erased the supposed benefits, leaving some customers worse off than if they had bought fuel directly. The FTC brought a similar case[119] against Uber. While many details remain redacted, the complaint quotes consumers who paid monthly fees while never actually using the service — turning Uber's so-called loyalty program into an unmistakably bad bargain. It is not surprising that after years of growth, consumers[120] and researchers[121] are beginning to question whether loyalty programs are worthwhile.

Part 2: Stopping the Cycle of Loyalty Program Exploitation

Introduction to State Consumer Protection & Privacy Tools

Strategic intervention by states can ensure that loyalty programs continue to benefit consumers. This section provides a brief overview of states' privacy and consumer protection tools and then details how they can use these tools to challenge loyalty program abuses at each stage — the hook, the hack, and the hike.

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[118] *Fed. Trade Comm'n supra* note 32.

[119] Complaint for Permanent Injunction, Monetary Judgment, and Other Relief, *FTC v. Uber Technologies, Inc. & Uber USA, LLC*, No. 3:25-cv-03477 (N.D. Cal. Apr. 21, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/uberonecomplaint.pdf.

[120] Mike Dang, *Frequent Fliers Are Rethinking Loyalty Programs and Setting Themselves Free*, N.Y. TIMES (Nov. 28, 2024), https://www.nytimes.com/2024/11/28/business/airline-loyalty-programs-rethinking.html.

[121] Sally Parker, *When Loyalty Programs Are Bad for Consumers*, CHICAGO BOOTH REV. (May 18, 2022), https://www.chicagobooth.edu/review/when-loyalty-programs-bad-consumers.

Consumer Protection Tools

Deception & Unfairness Authority: Most states have consumer-protection laws modeled on the FTC Act that prohibit both deceptive and unfair practices.[122] A practice is generally considered deceptive if it misleads or is likely to mislead consumers in a way that matters to their decisions — whether through a false claim, an omission, or other misleading conduct. A practice is generally considered unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or competition.

For loyalty programs modeled as paid subscriptions, states can also enforce auto-renewal laws. The Restore Online Shoppers' Confidence Act (ROSCA) requires companies to clearly disclose all material terms, prohibits unauthorized charges, and mandates simple cancellation procedures.[123] Both state attorneys general and the FTC can bring actions to enforce ROSCA, and many states have passed their own auto-renewal[124] or "Click-to-Cancel" laws.

Abusiveness Authority: When it comes to financial services firms, every state has an additional tool[125] to safeguard discounts — the federal prohibition on abusive practices, which is enforceable by states. Conduct is considered abusive if it takes unreasonable advantage of consumers' lack of understanding or their reasonable reliance on a company to act in their interest, among other prohibitions.[126] Loyalty programs often rely on exactly this kind of consumer trust, as companies encourage consumers to hand over personal data in exchange for promised savings or benefits.

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[122] Carolyn Carter, *Consumer Protection in the States: A 50-State Evaluation Of Unfair And Deceptive Practices Laws*, National Consumer Law Center at 5 (Mar. 2018), https://www.nclc.org/wp-content/uploads/2022/09/UDAP_rpt.pdf.

[123] Restore Online Shoppers' Confidence Act, 15 U.S.C. 110.

[124] Michael Jaeger, *Automatic Renewal State Laws Charts: Overview*, Thompson Reuters Practical Law (Nov. 30, 2020), https://www.faegredrinker.com/-/media/files/insights/automatic-renewal-state-laws-charts-overview-w0205738.pdf.

[125] *See* Rohit Chopra & Seth Frotman, *State Enforcement As A Federal Legislative Tool*, 62 HARVARD J. ON LEGIS. 1 (2025)

[126] 12 U.S.C. § 5531.

Privacy Tools

Another key tool for states to protect loyalty programs is privacy laws. Over the last half-decade, more than a dozen states[127] have enacted privacy laws to better protect consumers' personal information. State privacy laws vary in strength, but they generally require companies to limit data collection and processing to what is reasonably necessary, and grant consumers the right to opt out of certain types of additional processing, such as targeted advertising or the sale of their personal data. Consumers who exercise this right cannot be penalized, including through higher prices or degraded service.

These non-discrimination rules include carve-outs for "bona fide" loyalty programs. In practice, this means that if a consumer opts out of data sales or targeted advertising in a way that conflicts with a program's operation, a company may withhold certain benefits. But the exception is narrower than it might appear. Other state privacy law provisions — especially data minimization requirements — still apply. Nothing in these laws authorizes companies to categorically exclude consumers from loyalty programs based on broad or unsubstantiated claims that data sales are essential to their operation. Put simply, the carve-out is not a blank check for pervasive surveillance.

I. Stopping Unlawful Hooks

Deceptive Benefits Claims: Companies that entice consumers to join loyalty programs by promising discounts or perks but fail to deliver those benefits are engaging in deceptive practices. In its recent case against Grubhub,[128] for example, the FTC accused the food delivery service of promising free delivery through its loyalty program, only to charge members multiple hidden fees. In a similar vein, the FTC has used its deception authority to challenge misleading pricing[129] and energy savings[130] claims.

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[127] Kibby, *supra* note 68.

[128] *Fed. Trade Comm'n.supra* note 33.

[129] *FTC Order Requires LasikPlus to Pay for Its Bait-and-Switch Eye Surgery Ads*, Fed. Trade Comm'n. (Jan. 19, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-order-requires-lasikplus-pay-its-bait-switch-eye-surgery-ads.

[130] *As Energy Prices Rise, FTC Prevails in Deceptive Energy-Efficiency Case*, Fed. Trade Comm'n. (June 22, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/energy-prices-rise-ftc-prevails-deceptive-energy-efficiency-case.

States that have passed privacy laws can also scrutinize whether programs that deliver little or no[131] real benefit to consumers qualify as bona fide loyalty programs under state privacy laws. These carveouts rest on the premise that consumers receive meaningful value in exchange for the collection and use of their personal data.[132] If the supposed benefits are illusory — consisting of gimmicks, trivial perks, or discounts that are no better than what non-members receive — then the rationale for affording these programs special treatment collapses. In such cases, regulators should treat them not as loyalty programs, but simply as another form of data harvesting subject to the law's full protections.

For loyalty programs structured as paid subscriptions, states can also use click-to-cancel laws to challenge deceptive upfront claims. In its case against Uber,[133] the FTC alleged that the rideshare company marketed its Uber One subscription service as offering consumers "$25 a month in savings," while ignoring the fact that the subscription typically cost $9.99 a month. This practice violates ROSCA, which states can enforce.

Hidden Restrictions: Companies that make big promises while concealing fine print restrictions are also breaking the law. In 2024, the FTC sued CarShield for promising "peace of mind" and "protection" against the cost of car repairs. But according to the FTC's complaint, CarShield failed to disclose key limits on the program.[134] The FTC's case against MoviePass illustrates the same dynamic: while it marketed an "unlimited" movie subscription, the company imposed undisclosed daily limits, account verification hurdles, and other obstacles that prevented subscribers from actually using the

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[131] Robyn Ironside, *Airline Loyalty Members Pay 8 Percent More For Flights On Qantas, Virgin in Status Tier Chase,* HERALD SUN (Aug. 13, 2025), https://www.heraldsun.com.au/business/airline-loyalty-members-pay-8pc-more-for-flights-on-qantas-virgin/news-story/678e09533eab8ef99a69eae0f5350c28.

[132] *See, e.g.,* Martino Testimony — Paul Martino, *Testimony of Paul Martino, General Counsel to the Main Street Privacy Coalition: "Protecting the Virtual You: Safeguarding Americans' Online Data" Before the Subcommittee on Privacy, Technology, and the Law, U.S. Senate Judiciary*, July 30, 2025, 2025-07-30 PM - Testimony - Martino.pdf (urging Congress "to adopt provisions in federal privacy laws similar to the strong consensus of state laws that preserve loyalty programs and benefits where consumers voluntarily participate in bona fide programs offering better prices and services.")

[133] Fed. Trade Comm'n. *supra* note 27.

[134] FTC, *Complaint for Permanent Injunction, Civil Penalties, and Other Relief — FTC v. NRRM, LLC, d/b/a CarShield*, No. 8:24-cv-01750 (M.D. Fla. Dec. 17, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/NRRM-dba-Carshield-Complaint.pdf.

benefits they paid for.[135] States can similarly challenge loyalty programs that bury restrictions in fine print, leaving consumers with far less value than they were promised.

Fake Discount Claims: If companies market loyalty programs by touting discounts that are illusory — either because few consumers pay the "full" price or because the company does not advertise a full price — these "fake discounts"[136] are deceptive under federal law[137] and many state laws.[138] Plaintiffs are already[139] active[140] in this area,[141] reflecting a recognition that a discount off a price that no one pays is not a discount at all.

Deceptive Cancellation and Data Security Claims: False or unsubstantiated claims that subscriptions are easy to cancel — as seen in the FTC's 2025 complaint against Uber[142] over its loyalty program — can be challenged under state law, as can false claims[143] that trial offers are "free." Deceptive data security claims are also actionable, as seen in the FTC's 2024 action against Marriott,[144] brought along with 49 states.

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[135] FTC, *Complaint, In the Matter of MoviePass, Inc., Helios and Matheson Analytics, Inc., Mitchell Lowe, and Theodore Farnsworth*, Docket No. 192-3000, U.S. Federal Trade Commission (filed 2021), https://www.ftc.gov/system/files/documents/cases/192_3000_-_moviepass_complaint.pdf.

[136] See, e.g., Berger et al. v. The Home Depot U.S.A., Inc., No. 1:24-cv-01435 (N.D. Ga. filed Apr. 4, 2024), "Home Depot Pricing Lawsuit Claims Retailer Posts Fake Discounts Online," ClassAction.org (Apr. 9, 2024), https://www.classaction.org/news/home-depot-pricing-lawsuit-claims-retailer-posts-fake-discounts-online.

[137] 16 C.F.R. Part 233 (2025) — Guides Against Deceptive Pricing.

[138] See, e.g., Cal. Bus. & Prof. Code § 17501; Mass. Code Regs. tit. 940, § 6.05 — Price Comparison and Savings Claims.

[139] Catherine Douglas Moran, Grocery Outlet Sued Over Deceptive Pricing Claims, GROCERY DIVE (June 6, 2025), https://www.grocerydive.com/news/grocery-outlet-class-action-lawsuit-deceptive-pricing/750005/

[140] Anne Bucher, Home Depot Pricing Lawsuit Claims Retailer Posts Fake Discounts Online, Top Class Actions (June 27, 2024), https://topclassactions.com/lawsuit-settlements/money/home-depot-class-action-claims-advertises-fake-discounts/.

[141] Lacey Muszynski, Amazon Sued for 'Fake Discounts' Ahead of Busy Holiday Shopping Season, CHEAPISM (Nov. 25, 2024), https://www.cheapism.com/amazon-sued-for-fake-discounts-ahead-of-busy-holiday-shopping-season/.

[142] Fed. Trade Comm'n *supra* note 27.

[143] Fed. Trade Comm'n, Court Temporarily Halts International Operation that Allegedly Deceived Consumers through False Claims of 'Free Trial' Offers and Imposed Unauthorized Continuity Plans, (Nov. 28, 2018), https://www.ftc.gov/news-events/news/press-releases/2018/11/court-temporarily-halts-international-operation-allegedly-deceived-consumers-through-false-claims.

[144] Fed. Trade Comm'n *supra* note 28.

II. Stopping Unlawful Hacks

Excessive Collection: State privacy laws[145] generally require that companies limit data collection to what is reasonably necessary and proportionate to the purposes they disclose. Loyalty programs are not exempt from this core requirement. Under these provisions, some types of collection — such as harvesting geolocation or biometric data, or behavioral data to predict a person's actions or habits — should be carefully scrutinized. At a minimum, states with laws that tie data practices to a company's own disclosures should investigate whether firms can actually substantiate that collecting such data is "reasonably necessary" to administer loyalty program benefits.

Excessive Selling or Sharing: As with data collection, state privacy laws[146] generally require that companies limit data sales to what is reasonably necessary and proportionate to the purposes they disclose. Loyalty programs are not exempt from these requirements and should be carefully scrutinized under these provisions. In some circumstances, sharing data with a third party may be reasonably necessary if that third party is helping to administer the program or is a partner offering discounts as part of the loyalty program. But as detailed earlier, leading programs sell vast and highly sensitive data on their customers — including their location, browsing history, and inferences about consumers' habits and preferences — to companies that have no apparent connection to the provision of services or rewards to consumers. Equally concerning are the purchasers of this data: insurance companies, data brokers, consultants, and more.

States should closely examine whether these sales are permissible under their privacy laws. As noted[147] by the Electronic Privacy Information Center, "companies do not need to sell personal data to scores of third parties in order to operate a loyalty program." And consumers are ill-equipped[148] on their own to assess whether the data they are turning over is actually necessary to loyalty program administration. Ultimately, to

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[145] Kibby, *supra* note 68.
[146] *Id*.
[147] *See* Caitriona Fitzgerald et al., *The State of Privacy: How State "Privacy" Laws Fail to Protect Privacy and What They Can Do Better* (Feb. 2024), https://epic.org/wp-content/uploads/2024/01/EPIC-USPIRG-State-of-Privacy.pdf. There is already movement in this direction, with Maryland's privacy law – which took effect on October 1 – explicitly prohibiting companies from conditioning loyalty program participation on "the selling of personal data." Maryland Online Data Privacy Act, Md. Code Ann., Comm. Law §§ 14-4607 (2024).
[148] *See* Hannah Donahue, *Financial Incentives: The Fault in California's Privacy Framework*, 56 LOY. L.A. L. REV. 411 (2023).

comply with state privacy laws, businesses must be able to demonstrate that the data they share directly serves the program's stated purpose — and nothing more.

States can also examine whether such sales are unfair, deceptive, or abusive under their consumer protection laws. The sale of sensitive consumer data can create risks including profiling,[149] inaccurate inferences,[150] surveillance, blackmail, social engineering campaigns,[151] car insurance denials,[152] discrimination and physical violence, and emotional distress.[153] Over the last four years, the FTC began challenging such data sales as unfair, especially in the context of data brokers.[154] Here, when retailers are themselves acting as de facto data brokers, states should apply the same careful scrutiny.

Lack of Meaningful Consent: Because the notice-and-consent model has repeatedly failed to protect consumers, the strongest privacy laws restrict excessive data collection outright. Many states, however, apply consent-based regimes for collecting sensitive or unnecessary data. But these laws set a high bar: Virginia requires "a clear affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement,"[155] while Colorado adopts a definition that explicitly bars consent obtained through dark patterns, in addition to requiring affirmative consent.[156]

Loyalty programs that mislead[157] consumers about how their data is handled do not

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[149] *FTC Takes Action Against Gravy Analytics, Venntel for Unlawfully Selling Location Data Tracking Consumers to Sensitive Sites*, Fed. Trade Comm'n. (Dec. 3, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-takes-action-against-gravy-analytics-venntel-unlawfully-selling-location-data-tracking-consumers.

[150] *Data Broker Inferences Can Be Wildly Inaccurate*, Today's General Counsel (July 24, 2024), https://todaysgeneralcounsel.com/data-broker-inferences-can-be-wildly-inaccurate/.

[151] *Unpacking Real-Time Bidding through FTC's Case on Mobilewalla*, Fed. Trade Comm'n. (Dec. 3, 2024), https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/12/unpacking-real-time-bidding-through-ftcs-case-mobilewalla.

[152] Andrew J. Hawkins, *GM Banned from Selling Your Driving Data for Five Years*, The Verge (Jan. 16, 2025), https://www.theverge.com/2025/1/16/24345470/gm-banned-selling-driving-data-insurance-ftc.

[153] *FTC Order Prohibits Data Broker X-Mode Social and Outlogic from Selling Sensitive Location Data*, Fed. Trade Comm'n. (Jan. 9, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-prohibits-data-broker-x-mode-social-outlogic-selling-sensitive-location-data,

[154] *See FTC Cracks Down on Mass Data Collectors: A Closer Look at Avast, X-Mode, and InMarket*, Fed. Trade Comm'n. (Mar. 4, 2024), https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/03/ftc-cracks-down-mass-data-collectors-closer-look-avast-x-mode-inmarket.

[155] Consumer Data Protection Act, Va. Code Ann. § 59.1-575 et seq., (2026).

[156] Colorado Privacy Act, Colo. S. B. 21-190 (2021).

[157] Fed. Trade Comm'n *supra* note 28.

meet this standard. Likewise, programs that use manipulative design to trick consumers into "agreeing" — as the FTC alleged in its action against Amazon — are not securing valid consent. States should challenge whether data collection under the guise of loyalty benefits is lawful when the supposed consent is neither informed nor freely given.

Excluding Consumers Who Exercise Privacy Rights: As noted earlier, state privacy laws generally permit companies to exclude consumers from loyalty program benefits if the consumer opts out of data sales or targeted advertising. But these permissions are not unconditional. States generally permit firms to offer a different price, quality, or availability of goods or services if "the offer is related" to a bona fide loyalty program,[158] and in the context of universal opt-outs, certain states require that participation in the program be in "conflict" with the consumer's opt-out.[159] California takes a distinct approach, requiring that any financial incentive, including through a loyalty program, be reasonably related to the value of the consumer's data.[160]

Regardless of the jurisdiction, states should ensure that companies do not exploit these provisions to categorically exclude consumers who exercise their privacy rights from loyalty programs.[161] A program that bundles multiple offerings cannot condition consumers' participation on permitting extensive data sales. Instead, the seller must show that each particular benefit (i.e. offering) is tied to specific data uses. For example, a grocery rewards program offering fuel discounts, digital coupons, and

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[158] *See, e.g.,* Colo. Rev. Stat. § 6-1-1308 (2024) — Duties of Controllers; Indiana Code § 24-15-4-1 (2024) — *Responsibilities of Controller; Discrimination Against Consumer for Exercising Consumer Rights Prohibited; Processing of Sensitive Data*.

[159] *See, e.g.,* Consumer Data Privacy and Online Monitoring, Conn. Gen. Statutes 743JJ (2024); Del. Personal Data Privacy Act, Del. Code § 12D-101 et seq. (2024).

[160] California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.125 (2024)("Consumers' Right of No Retaliation Following Opt Out or Exercise of Other Rights).Scholars have detailed how this requirement creates an internal tension in California's privacy framework: while consumers are promised nondiscrimination for exercising privacy rights, tying financial incentives to "data value" effectively pressures them to surrender privacy in exchange for benefits. *See* Hannah Donahue, *Financial Incentives: The Fault in California's Privacy Framework*, 56 LOY. L.A. L. REV. 409 (2023).

[161] Colorado regulations prohibit this practice explicitly:

> If a Consumer exercises their right to delete Personal Data such that it is impossible for the Controller to provide a certain Bona Fide Loyalty Program Benefit to the Consumer, the Controller is no longer obligated to provide that Bona Fide Loyalty Benefit to the Consumer. However, the Controller shall provide any available Bona Fide Loyalty Program Benefit for which the deleted Personal Data is not necessary.

See Colo. Code Regs. § 4 CCR 904-3, Rule 6.05 (2025).

faster checkout should not withhold all benefits from consumers who opt out of data sales. It should explain concretely which benefits — if any — actually depend on sharing customer data.[162] And when companies raise prices or scale back benefits, they should not rely on outdated justifications but must show anew why ongoing data sales are still warranted when consumers are already paying more and receiving less.

III. Stopping Unlawful Hikes

Confusing Redemption Terms: Companies harm consumers when they design rewards systems so confusing that consumers cannot reasonably understand how to claim their rewards. In its 2024 action[163] against the maker of Genshin Impact, the FTC alleged that the company misled players about the true cost of in-game currency and structured its system to obscure how much players were spending and what benefits they would actually receive. The result was that consumers routinely paid more than they expected and struggled to determine the value of their purchases.

Although the Genshin Impact suit focused on harm to kids and teens, there is no reason adults cannot be harmed by similar practices — and there is evidence[164] this is already happening. By obscuring redemption terms and costs in this way, loyalty and rewards programs can cross the line into unfairness or deception — another area where states can act.

Unilateral Changes: Unilateral changes to loyalty programs that intensify surveillance or reduce, restrict, or revoke benefits can constitute unfair, deceptive, or abusive acts or

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[162] Hertz's privacy policy, for example, would leave even a careful reader wondering which benefits they will need to forgo to protect their privacy, and why:

> A Note About Privacy Rights and Loyalty Information: We may not be able to provide you with all of the benefits of our loyalty program if you choose to exercise your privacy rights. However, we will try to provide benefits that are unrelated to your privacy request. For example, if you request that we delete Personal Information that we have about you, we may not be able to identify your loyalty program activity or history and you may not receive the full scope of program benefits.

See Hertz Privacy Policy *supra* note 38.

[163] *Genshin Impact Game Developer Will Be Banned from Selling Lootboxes to Teens Under 16 Without Parental Consent, Pay a $20 Million Fine to Settle FTC Charges*, Fed. Trade Comm'n. (Jan. 17, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/01/genshin-impact-game-developer-will-be-banned-selling-lootboxes-teens-under-16-without-parental.

[164] Daphne Howland, *Report Finds Tiered Loyalty Programs Confusing to Consumers*, Retail Dive (May 21, 2014), http://www.retaildive.com/news/report-finds-tiered-loyalty-programs-confusing-to-consumers/265466/.

practices,[165] especially when consumers cannot exit the program without losing benefits. One of the most cited cases in consumer protection history — against S&H Green Stamps — illustrates this point. There, the FTC found it was unfair for the company to restrict how consumers could redeem their stamps — the loyalty points of the era.[166] And in more recent years, the FTC has made clear[167] that material retroactive changes to terms of service can be unfair or deceptive. These unilateral changes should be equally actionable under state consumer protection laws, which are often stronger[168] than the FTC Act.

Raising Prices: Promising discounts through a rewards program only to deliver higher prices than consumers would otherwise pay is deceptive. The FTC's case against Fleetcor illustrates the point: the company claimed its fuel cards offered major discounts and no fees, but hidden charges and restrictions often left customers paying more than if they had purchased fuel directly.[169] A federal court agreed with the FTC that this practice was deceptive, granting summary judgment after finding those savings claims unsubstantiated and misleading.[170] States have the authority to bring similar actions under their own UDAP statutes, and such conduct can also be unfair or abusive. And as noted, programs that raise prices on consumers should not be considered *bona fide* under state privacy laws.

Preventing Exit: Consumers who see little value in loyalty programs should be able to leave them as easily as they joined. As noted earlier, ROSCA requires online subscriptions to offer a simple cancellation mechanism, and it authorizes state attorneys general to enforce that right. Many states also impose their own simple cancellation requirements, and the CFPB has opined that subscription traps can also

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[165] Consumer Financial Protection Circular 2024-07: Design, Marketing, and Administration of Credit Card Rewards Programs, Consumer Fin. Prot. Bureau (Dec. 18, 2024), https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-07-design-marketing-and-administration-of-credit-card-rewards-programs

[166] *FTC v. Sperry & Hutchinson Co*., 405 U.S. 233 (1972).

[167] *AI (and other) Companies: Quietly Changing Your Terms of Service Could Be Unfair or Deceptive*, Fed. Trade Comm'n. (Feb. 13, 2024), https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/02/ai-other-companies-quietly-changing-your-terms-service-could-be-unfair-or-deceptive.

[168] Rohit Chopra, *Comment of the Fed. Trade Comm'n. on the U.S. Dep't. of Tranp. Proposed Rule Defining Unfair or Deceptive Practices* (May 28, 2020), https://www.ftc.gov/system/files/documents/public_statements/1576174/chopra_-_comment_to_department_of_transportation_no_dot-ost-2019-0182.pdf.

[169] Fed. Trade Comm'n *supra* note 32.

[170] *FTC v. Fleetcor Techs., Inc.,* 620 F. Supp. 3d 1268 (N.D. Ga. 2022).

be abusive.[171] Recent years have seen major firms, including Uber[172] and Amazon,[173] face lawsuits for trapping people in loyalty programs.

IV. Competition-Related Harms

Although this paper focuses on consumer protection- and privacy-related harms, that is far from the whole story. Loyalty programs don't just extract more from individual shoppers — they can also warp the competitive landscape. Left unchecked, these schemes risk reshaping markets in ways that disadvantage smaller rivals, entrench dominant firms, and blunt the kind of vigorous competition that is supposed to discipline prices. The following section highlights several competition-related harms, including in the business-to-business context, that enforcers should take seriously.

Monopolization via Customer Lock-in: Loyalty programs can trap customers by creating high switching costs, effectively imposing an "exit penalty"[174] that makes it harder for rivals to win business and easier for dominant firms to entrench their power.[175]

Barriers to Entry: Loyalty programs can help incumbents accumulate vast troves of consumer data and large pools of locked-in customers, assets that new entrants cannot easily replicate. This makes it harder for challengers to gain a foothold and sustains market concentration — an argument the FTC advanced as part of its successful challenge to the Kroger/Albertsons merger.[176]

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[171] *CFPB Issues Guidance to Root Out Tactics Which Charge People Fees for Subscriptions They Don't Want*, Consumer Fin. Prot. Bureau (Jan. 19, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-root-out-tactics-which-charge-people-fees-for-subscriptions-they-dont-want/.
[172]Fed. Trade Comm'n *supra* note 27.
[173] Fed. Trade Comm'n. *supra* note 113.
[174] *See* Bar-Gill & Ben-Shahar *supra* note 111.
[175] In addition, in credit card markets, rewards programs can trap cardholders in a particular network, allowing that network to wield its captive audience as leverage against merchants to demand higher fees.
[176]*See* Complaint, *In the Matter of The Kroger Company & Albertsons Companies, Inc.*,No. D-9428, https://www.ftc.gov/system/files/ftc_gov/pdf/d9428_2310004krogeralbertsonsp3complaintpublic.pdf.

Collusion: Detailed purchase and pricing data gleaned through loyalty programs can reveal rivals' strategies, making tacit collusion easier or enabling algorithms to coordinate prices in ways that blunt competition.[177]

Price Discrimination: When business-to-business loyalty rewards like rebates, discounts, or special pricing, give some buyers lower net prices than their rivals, this may violate Section 2(a) of the Robinson-Patman Act by skewing competition among buyers who should be treated equally.[178] Sections 2(d) and 2(e) may be implicated as well if promotional allowances and services are offered on unequal terms.[179]

Exclusionary Pricing: Firms may design bundled discounts or conditional rebates that make it prohibitively costly for customers to do business with rivals, as illustrated by the FTC's allegations against a pesticide manufacturer that used such tactics to foreclose competition.[180]

Race to the Bottom: Consumers cannot easily tell the difference between simple loyalty programs that reward repeat shopping and extractive ones that manipulate consumers and harvest their personal data for resale. Because the extractive model is far more profitable — as leading consultants openly advise[181] — sellers face strong pressure to adopt it. The result is a race to the bottom, where surveillance-driven schemes crowd out straightforward rewards.

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[177] *See, e.g., Justice Department Sues RealPage for Algorithmic Pricing Scheme That Harms Millions of American Renters*, U.S. Dep't. of Just., Aug. 23, 2024, https://www.justice.gov/opa/pr/justice-department-sues-realpage-algorithmic-pricing-scheme-harms-millions-american-renters.

[178] 15 U.S.C. § 13(a). In *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993), the Supreme Court held that Robinson-Patman claims framed as predatory pricing require proof of below-cost pricing and a likelihood of recoupment. However, the Act continues to reach other discriminatory pricing and promotional practices that may harm competition.

[179] *Id*. § 13(d)–(e).

[180] *FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers*, Fed. Trade Comm'n.(Sep. 29, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate.

[181] *See supra* Section II.

Conclusion: On the Frontier of Surveillance Pricing

On a recent earnings call, Delta Airlines told investors it could soon abandon the practice of matching competitors' fares and instead tack on $20 to $40 more — simply because its data suggests passengers will pay it.[182] Ordinarily, one might expect competition to discipline such price hikes. Not so, Delta explained. By mining internal customer data and external market signals, the airline can engage in what its consultant Fetcherr calls "hyper-personalization" — a euphemism for charging each traveler the maximum they will tolerate, without losing share to rivals.[183]

If this sounds like the loyalty program playbook, that is no accident. After all, surveillance pricing relies on the same dynamics as loyalty programs — and will follow the same trajectory. The initial *hook* is the claim — already being made[184] — that access to consumer data is necessary to offer discounts. The *hack* follows, as opportunities for anonymous shopping[185] shrink, and firms use increasingly granular data to test the limits of consumer tolerance — which incentives keep participation high, which penalties deter exit, and which data points most reliably predict willingness to pay. Finally comes the *hike*: once firms have invested heavily in algorithmic pricing infrastructure, they will need to recoup that investment, often relying on consultants[186]

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[182] *See Corrected Transcript of Investor Day, Delta Airlines, Inc.,* (Nov. 20, 2024), https://s2.q4cdn.com/181345880/files/doc_downloads/2024/11/CORRECTED-TRANSCRIPT_-Delta-Air-Lines-Inc-DAL-US-Investor-Day-20-November-2024-8_30-AM-ET.pdf.

[183] Following public outcry, Delta denied planning to engage in individualized pricing, and Fetcherr reportedly scrubbed its website of this reference. *See Delta Responds To Misinformation Around AI Pricing*, Delta News Hub (Aug. 7, 2025), https://news.delta.com/delta-responds-misinformation-around-ai-pricing; Kyle Potter & Jackson Newman, *AI Firm Setting Delta Fares Bragged About 'Hyper-Personalization' of Flight Prices*, THRIFTY TRAVELER (July 23, 2025), https://thriftytraveler.com/news/airlines/delta-personalized-fares-ai/. However, as noted by researchers and experts, including co-author Stephanie Nguyen, Delta's denial "raises more questions than answers." Stephanie T. Nguyen et al., *Tech Brief: Airplane Response*, GEORGETOWN L. INST. FOR TECH. L. & POL'Y, https://www.law.georgetown.edu/tech-institute/insights/tech-brief-airplane-response-2/.

[184] Robert Moutrie, *Cost Driver Creating New Reasons to Sue for Consumer-Friendly Pricing Awaits Assembly Action*, Cal. Chamber of Com. (May 12, 2025), https://advocacy.calchamber.com/2025/05/12/cost-driver-creating-new-reasons-to-sue-for-consumer-friendly-pricing-awaits-assembly-action/.

[185] *See, e.g., Browsing in Incognito Mode Doesn't Protect You as Much as You Might Think*, ASSOCIATED PRESS (Apr. 2, 2024), https://apnews.com/article/private-incognito-browsing-explainer-google-chrome-f8b3dd9ae41c5d9da027454e5c0c92c6.

[186] *See, e.g., Dynamic Pricing in Aviation: How AI is Revolutionizing Airline Revenue Management,* Fetcherr Blog (updated June 3, 2025), archived at *https://web.archive.org/web/20250719055510/https://www.fetcherr.io/blog/dynamic-pricing-in-aviation*.

whose business model depends on demonstrating revenue gains through higher prices.

This is why the debate over surveillance pricing — the use of massive data collection to charge individualized prices[187] — cannot ignore what is already happening to loyalty programs. Industry claims surveillance pricing is still hypothetical, a "speculative fear"[188] for the future. But loyalty programs show it is already here. Firms gather detailed personal data, create opaque pricing and reward systems, and structure "discounts" in ways that penalize consumers who try to leave. What is described as a future risk is happening every day in a growing number of industries.

The importance of scrutinizing loyalty programs is evident in how lawmakers are beginning to respond[189] to surveillance pricing. Most surveillance pricing proposals carve them out, treating loyalty schemes as harmless consumer perks. That assumption is understandable but misplaced. Loyalty programs are not the exception — they are the testing ground. Left unchecked, the tactics refined in these programs will spread, with companies demanding personal data as the hidden price of everyday goods.

The fight for fairer loyalty programs is ultimately a fight for fairer pricing. By putting commonsense guardrails in place — ensuring discounts are real, terms are transparent, and data collection is proportionate — states can protect loyalty programs now and build the framework to confront surveillance pricing before it becomes entrenched across our economy.

[187] Nguyen et al., *supra* note 183.
[188] Jonathan Stempel, *New York Sued by National Retail Federation Over Surveillance Pricing Law*, REUTERS (July 2, 2025), https://www.reuters.com/legal/litigation/new-york-sued-by-national-retail-federation-over-surveillance-pricing-law-2025-07-02/.
[189] Alfred Ng, The Fight Over Unfair Pricing Goes National, POLITICO (May 28, 2025), https://www.politico.com/news/2025/05/28/trump-surveillance-pricing-00370566.

Appendix A: Unlawful Loyalty Program Practices States Can Challenge

Stopping unlawful hooks

1. Deceptive Benefits Claims: Enticing consumers to join loyalty programs by promising discounts or perks but failing to deliver those benefits.
2. Hidden Restrictions: Making big promises while concealing fine print restrictions.
3. Fake Discount Claims: Marketing loyalty programs by touting discounts that are illusory — either because few consumers pay the "full" price or because the company does not advertise a full price.
4. Deceptive Cancellation and Data Security Claims: Making false claims about easy cancellation, free trials, or strong data security.

Stopping unlawful hacks

5. Excessive Collection: Collecting more personal data than reasonably necessary or disclosed.
6. Excessive Selling or Sharing: Selling or sharing consumer data beyond what is reasonably necessary for the stated purposes of a loyalty program, especially to unrelated third parties.
7. Lack of Meaningful Consent: Collecting consumer data without clear, informed, freely given, and unambiguous consent.
8. Excluding Consumers Who Exercise Privacy Rights: Broadly denying loyalty program benefits to consumers who opt out of data sales or targeted ads.

Stopping unlawful hikes

9. Confusing Redemption Terms: Designing rewards programs with unclear or misleading redemption rules that obscure true costs.
10. Unilateral Changes. Making unilateral changes to loyalty programs that expand surveillance or reduce benefits without fair consumer exit options.
11. Raising Prices: Promising discounts through a rewards program only to deliver higher prices.
12. Preventing Exit: Trapping consumers in loyalty programs by making cancellation difficult.

Competition-Related Harms

13. Price Discrimination: Tying rebates, discounts, or special pricing to purchase size or offering unequal promotional allowances or services.
14. Monopolization via Customer Lock-in: Creating high switching costs that make it harder for rivals to win business and easier for dominant firms to entrench their power.
15. Collusion: Sharing detailed purchase and pricing data through loyalty programs that facilitate tacit collusion or allow algorithms to coordinate prices.
16. Barriers to Entry: Leveraging loyalty programs to amass consumer data and locked-in customers, making it harder for new entrants to compete and sustain market concentration.
17. Exclusionary Pricing: Designing bundled discounts or conditional rebates that make it prohibitively costly for customers to buy from competitors.

Appendix B: State General Privacy Law & Bona Fide Language

State	General Privacy Law *in effect as of October 2025*	Bona Fide Loyalty Program Language[190]
CA	California Consumer Privacy Act – CCPA	**1798.125. Consumers' Right of No Retaliation Following Opt Out or Exercise of Other Rights** "(a)(3) This subdivision does not prohibit a business from offering loyalty, rewards, premium features, discounts, or club card programs consistent with this title. (b) (1) A business may offer financial incentives, including payments to consumers as compensation, for the collection of personal information, the sale or sharing of personal information, or the retention of personal information. A business may also offer a different price, rate, level, or quality of goods or services to the consumer if that price or difference is reasonably related to the value provided to the business by the consumer's data. (2) A business that offers any financial incentives pursuant to this subdivision, shall notify consumers of the financial incentives pursuant to Section 1798.130. (3) A business may enter a consumer into a financial incentive program only if the consumer gives the business prior opt-in consent pursuant to Section 1798.130 that clearly describes the material terms of the financial incentive program, and which may be revoked by the consumer at any time. If a consumer refuses to provide opt-in consent, then the business shall wait for at least 12 months before next requesting that the consumer provide opt-in consent, or as prescribed by regulations adopted pursuant to Section 1798.185. (4) A business shall not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature."
CO	Colorado Privacy Act – SB 190	**6-1-1308. Duties of controllers. (1) Duty of transparency.** "(d) Nothing in this Part 13 shall be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discount, or club card program." **Colorado Privacy Act Rules** **Rule 6.05 LOYALTY PROGRAMS** "(D) If a Consumer refuses to Consent to the Processing of Sensitive Data necessary for a personalized Bona Fide

[190] Some laws may have additional provisions (e.g. provisions applicable to the use of universal opt-outs) related to bona fide programs.

		Loyalty Program Benefit, the Controller is no longer obligated to provide that personalized Bona Fide Loyalty Program Benefit. However, the Controller shall provide any available, non-personalized Bona Fide Loyalty Program Benefit for which the Sensitive Data is not necessary. A Controller may not condition a Consumer's participation in a Bona Fide Loyalty Program on the Consumer's Consent to Process Sensitive Data unless the Sensitive Data is required for all Bona Fide Loyalty Program Benefits."
CT	Connecticut Data Privacy Act – SB 6	**Sec. 42-520. Controllers' duties. Sale of personal data to third parties. Notice and disclosure to consumers. Consumer opt-out.** "(b) Nothing in subsection (a) of this section shall be construed to require a controller to provide a product or service that requires the personal data of a consumer which the controller does not collect or maintain, or prohibit a controller from offering a different price, rate, level, quality or selection of goods or services to a consumer, including offering goods or services for no fee, if the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts or club card program." **Sec. 42-520. Controllers' duties. Sale of personal data to third parties. Notice and disclosure to consumers. Consumer opt-out.** "(B) If a consumer's decision to opt out of any processing of the consumer's personal data for the purposes of targeted advertising, or any sale of such personal data, through an opt-out preference signal sent in accordance with the provisions of subparagraph (A) of this subdivision conflicts with the consumer's existing controller-specific privacy setting or voluntary participation in a controller's bona fide loyalty, rewards, premium features, discounts or club card program, the controller shall comply with such consumer's opt-out preference signal but may notify such consumer of such conflict and provide to such consumer the choice to confirm such controller-specific privacy setting or participation in such program."
DE	Delaware Personal Data Privacy Act – HB 154	**§ 12D-106. Duties of controllers.** "(b) Nothing in subsection (a) of this section shall be construed to require a controller to provide a product or service that requires the personal data of a consumer which the controller does not collect or maintain, or prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program."
IN	Indiana Consumer Data Protection Act – SB 5 Effective 1 Jan. 2026	**IC 24-15-4-1 Responsibilities of controller; discrimination against consumer for exercising consumer rights prohibited; processing of sensitive data** "Sec.1 (4) A controller shall not process personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers. A controller shall not discriminate against a consumer for exercising any of the consumer rights set forth in this article, including by denying goods or services to the consumer, charging different prices or rates for goods and services, or

		providing a different level or quality of goods or services to the consumer. However, nothing in this subdivision shall be construed to: [...] (B) prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised the consumer's right to opt out under IC 24-15-3-1(b)(5) or if the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discount, or club card program."
IA	Iowa Consumer Data Protection Act – SF 262	**Sec. 4. NEW SECTION. 715D.4 Data controller duties.** "3. A controller shall not process personal data in violation of state and federal laws that prohibit unlawful discrimination against a consumer. A controller shall not discriminate against a consumer for exercising any of the consumer rights contained in this chapter, including denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods and services to the consumer. However, nothing in this chapter shall be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised the consumer's right to opt out pursuant to section 715D.3 or the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program."
KY	Kentucky Consumer Data Protection Act – HB 15 Effective 1 Jan. 2026	**367.3617 Limitations on the collection and use of personal data by a controller – Waiver of consumer rights contrary to public policy -- Privacy notice -- Notice for sale of personal data to third party -- Process for consumers to exercise consumer rights requirement.** "(d) Not process personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers. A controller shall not discriminate against a consumer for exercising any of the consumer rights contained in KRS 367.3615, including denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods and services to the consumer. However, nothing in this paragraph shall be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain, or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program;"
MD	Maryland Online Data Privacy Act – SB 541	**14–4606. (B) (1) A Controller shall:** "(2) Prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or

		club card program, provided that the selling of personal data is not a condition of participation in the program."
MN	Minnesota Consumer Data Privacy Act – HF 4757	**Subd. 3. Nondiscrimination** "(b) A controller may not discriminate against a consumer for exercising any of the rights contained in this chapter, including denying goods or services to the consumer, charging different prices or rates for goods or services, and providing a different level of quality of goods and services to the consumer. This subdivision does not: (1) require a controller to provide a good or service that requires the consumer's personal data that the controller does not collect or maintain; or (2) prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program."
MO	Montana Consumer Data Privacy Act – SB 384	**30-14-2812. Data processing by controller -- limitations. (1) A controller shall:** "(3) Nothing in subsection (1) or (2) may be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised their right to opt out pursuant to this part or the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program."
NE	Nebraska Data Privacy Act – LB 1074	**Sec. 12. (1) A controller:** "(3) Subdivision (2)(c) of this section shall not be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of a good or service to a consumer, including offering a good or service for no fee, if the consumer has exercised the consumer's right to opt out under section 7 of this act or the offer is related to a consumer's voluntary participation in a bona fide loyalty, reward, premium feature, discount, or club card program."
NH	SB 255	**507-H:6 Controller Responsibilities. –** "II. Nothing in this section shall be construed to require a controller to provide a product or service that requires the personal data of a consumer which the controller does not collect or maintain, or prohibit a controller from offering a different price, rate, level, quality or selection of goods or services to a consumer, including offering goods or services for no fee, if the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts or club card program."
NJ	SB 332	**C.56:8-166.8 Discrimination against consumer, opt out, prohibited.**

		"5. A controller shall be prohibited from discriminating against a consumer if the consumer chooses to opt out of the processing for sale, targeted advertising, or profiling in furtherance of decisions that produce legal or similarly significant effects of the consumer's personal data pursuant to P.L.2023, c.266 (C.56:8-166.4 et seq.). The provisions of this section shall not prohibit the controller's ability to offer consumers discounts, loyalty programs, or other incentives for the sale of the consumer's personal data, or to provide different services to consumers that are reasonably related to the value of the relevant data, provided that the controller has clearly and conspicuously disclosed to the consumer that the offered discounts, programs, incentives, or services include the sale or processing of personal data that the consumer otherwise has a right to opt out of."
OR	Oregon Consumer Privacy Act – SB 619	**646A.578 Duties of controller; prohibitions; privacy notice to consumer.** "(3) Subsections (1) and (2) of this section do not: [...] (b) Prohibit a controller from offering a different price, rate, level of quality or selection of goods or services to a consumer, including an offer for no fee or charge, in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discount or club card program."
RI	Rhode Island Data Transparency and Privacy Protection Act – H 7787	**6-48.1-5. Customer rights.** "(d) Controllers may provide different prices and levels for goods and services if it is for a bona fide loyalty, rewards, premium features, discount or club card programs that customers voluntarily participate."
TN	Tennessee Information Protection Act – HB 1181	**47-18-3204. Data controller responsibilities -Transparency. (a) A controller shall:** "(5) Not process personal information in violation of state and federal laws that prohibit unlawful discrimination against consumers. A controller shall not discriminate against a consumer for exercising the consumer rights contained in this part, including denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods and services to the consumer. However, this subdivision (a)(5) does not require a controller to provide a product or service that requires the personal information of a consumer that the controller does not collect or maintain, or prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised the right to opt out pursuant to§ 47-18-3203(a)(2)(F) or the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program;"
TX	Texas Data Privacy and Security Act	**Sec. 541.101. CONTROLLER DUTIES; TRANSPARENCY. (a) A controller:**

	– HB 4	"(c) Subsection (b)(3) may not be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised the consumer's right to opt out under Section 541.051 or the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program."
UT	SB 227 – Utah Consumer Privacy Act	**13-61-302. Responsibilities of controllers -- Transparency -- Purpose specification and data minimization -- Consent for secondary use -- Security -- Nondiscrimination -- Nonretaliation -- Nonwaiver of consumer rights.** "(4)(b) This Subsection (4) does not prohibit a controller from offering a different price, rate, level, quality, or selection of a good or service to a consumer, including offering a good or service for no fee or at a discount, if: (i) the consumer has opted out of targeted advertising; or (ii) the offer is related to the consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program."
VA	SB 1392 – Virginia Consumer Data Protection Act	**§ 59.1-578. Data controller responsibilities; transparency.** "A. A controller shall: [...] (4) 4. Not process personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers. A controller shall not discriminate against a consumer for exercising any of the consumer rights contained in this chapter, including denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods and services to the consumer. However, nothing in this subdivision shall be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised his right to opt out pursuant to § 59.1-577 or the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program;"