Chairman Andrew N. Ferguson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Proposed Enforcement Policy Statement Regarding Personalized Pricing

Via electronic submission

Dear Chair Ferguson:

On behalf of our member organizations across the United States, Consumer Federation of America appreciates this opportunity to comment on the Commission's proposed policy on personalized pricing. We appreciate the Commission's attention and action on this critical and urgent issue. We agree with the Commission that consumers reasonably expect the price they see to be the price anyone else would see, but we urge you to go beyond mere transparency and prohibit harmful surveillance pricing[1] practices.

Contrary to the assertions in the proposed policy, the Commission does have the authority to prohibit the practice of surveillance pricing, and should use it. Section 5 of the FTC Act is a powerful tool that reaches practices that cause substantial injury that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits. A higher price set by an opaque algorithm from a consumer's private data fits that test.[2] The Commission's own examples, such as charging more to homebound people, families with children, or people traveling to a funeral, describe injuries that disclosure would not cure.

Decades of experience with the failed "notice and consent" framework for data privacy has taught us that disclosures alone do not cure unfairness or provide real control for consumers. Many pricing systems are "black boxes," and a notice that a price is based on surveillance data gives consumers little ability to contest it, change their behavior, or negotiate.

Discrimination is the most pernicious consequence of surveillance pricing. Data used to set prices can easily stand in for race, age, income, and other protected characteristics. This means that surveillance pricing hurts low-income and working families who cannot easily comparison shop the most. We urge the Commission to keep using its tools against discriminatory pricing,

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[1] Though the term "personalized pricing" is used in the policy, the term "surveillance pricing" is used similarly to mean pricing based on data collected from a consumer. CFA prefers the latter term, because "personalized" implies a benefit that this pricing mechanism does not deliver and also because it implies individualized pricing, which is less common than pricing based on groups of consumers tailored by their characteristics at the time of this writing.
[2] For a detailed analysis of why surveillance pricing satisfies Section 5's unfairness test, please refer to the comment of the Electronic Privacy Information Center (to which CFA has signed on), to this same rulemaking.

including the Equal Credit Opportunity Act, rather than retreating from them. In insurance and housing, prices should reflect actual risk, not willingness to pay.

For these reasons, we urge the Commission to strengthen the final statement and to prohibit surveillance pricing.

Respectfully submitted,

Emily Peterson-Cassin
Director, Competition and Market Fairness
Consumer Federation of America