



August 2nd, 2024

Chair Lina M. Khan
Federal Trade Commission
600 Pennsylvania Avenue
Washington, DC 20580

Re: Consumer Federation of America's Past Work on Price Optimization

Dear Chair Khan,

The Consumer Federation of America (CFA) writes in response to the recent announcement that the Federal Trade Commission (FTC) is investigating surveillance pricing products and services to determine their impact on and potential harm to consumers. CFA has previously worked on this issue, specifically regarding the use of price optimization in insurance markets. We hope that this letter, and its links to some of our work in this area, might be useful in your investigation.

While unfair to consumers in any setting, price optimization in insurance markets is particularly egregious, because unfair discrimination laws in virtually every state are built to ensure that consumers with similar risks pay the same premium. By including a measure of elasticity of demand, which is not related to risk of loss, insurance price optimization upends that central principle of fair insurance pricing. The insidiousness of price optimization is yet more profound when considering that auto insurance is a government mandated purchase for most Americans and home insurance is mandatory for anyone with a mortgage.

Led by our then-Director of Insurance, former Texas Insurance Commissioner J. Robert Hunter, in 2013 CFA [wrote to state Insurance Commissioners](#) expressing concern that price optimization is “widespread, actuarially unsound, and unfairly discriminatory,” requesting information on the practice, and urging that Commissioners take steps to end it.¹ In 2014 CFA [sent an additional letter](#) to the National

¹ “Many Auto Insurers Filing Unfairly Discriminatory Auto Insurance Rates. Price Optimization Used to Raise Rates Above the Cost-Based Level.” Consumer Federation of America. August 29th, 2013. Available at <https://consumerfed.org/pdfs/price-optimization-letter-state-auto-insurance-commissioners.pdf>.

Association of Insurance Commissioners (NAIC) with evidence that price optimization was resulting in unfair pricing; the letter included documentation from Allstate regulatory filings in Pennsylvania, Oklahoma, and Wisconsin.²

In the wake of CFA highlighting concerns about price optimization, the National Association of Insurance Commissioners' Casualty Actuarial and Statistical Task Force issued [a white paper on price optimization in the insurance market](#), which was published in November 2015. Prior to its publication, CFA provided comments on the draft white paper [highlighting our view](#) that “[s]ystematically moving prices around to reflect non-risk information such as price elasticity of demand *per se* causes rates to be unfairly discriminatory and illegal in virtually every state.”³

Since CFA initially raised these concerns, at least twenty states have issued bulletins banning insurance companies from using price optimization—including Alaska, California, Colorado, Connecticut, Delaware, [the District of Columbia \(a copy of which is linked here as an example of Department bulletin\)](#),⁴ Florida, Indiana, Maine, Maryland, Minnesota, Missouri, Montana, Nevada, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington State.⁵ Additionally, there have been several civil lawsuits against insurers for their use of price optimization.

² “Proof That Price Optimization Is Being Used and Producing Unfairly Discriminatory Rates.” Consumer Federation of America. December 16th, 2014. Available at <https://consumerfed.org/pdfs/CFA-letter-NAIC-commissioners-12-16-2014.pdf>.

³ “Consumer Group Calls on NAIC to Recommend Prohibition on the Use of Price Optimization in Insurance.” Consumer Federation of America. September 14th, 2015. Available at https://consumerfed.org/press_release/consumer-group-calls-on-naic-to-recommend-prohibition-on-the-use-of-price-optimization-in-insurance/.

⁴ “Price Optimization Ban.” Department of Insurance, Securities, and Banking. August 25th, 2015. Available at https://disb.dc.gov/sites/default/files/dc/sites/disb/publication/attachments/Bulletin15-1B-06-8_15.pdf.

⁵ Here is an example of CFA’s response to the several bulletins issued during this period: “Consumer Groups Applaud NV Insurance Commissioner for Banning Price Optimization and Closing the “Underwriting” Loophole. Consumer Federation of America. February 1st, 2017. Available at https://consumerfed.org/press_release/consumer-groups-applaud-nevada-insurance-commissioner-banning-price-optimization-closing-underwriting-loophole/.



Despite the success of the effort to raise awareness and engage regulators in the effort to prevent price optimization in insurance, we remain concerned about the continued use of price optimization in insurance markets. Insurers (aided by third party vendors that produce price optimization products) may continue to use price optimization techniques in many of the states that have not issued bulletins and, potentially, have crafted strategies for deploying price optimization tools even in those states that have warned against its use.

If there is any way in which our investigation into price optimization in the insurance market or our ongoing concerns about its use can be helpful to your work on this issue, please contact us at mdelong@consumerfed.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Heller', with a long horizontal stroke extending to the right.

Douglas Heller
Director of Insurance
Consumer Federation of America

A handwritten signature in black ink, appearing to read 'Michael DeLong', written in a cursive style.

Michael DeLong
Research and Advocacy Associate
Consumer Federation of America