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September 25, 2026

The Honorable Andrew N. Ferguson, Chairman
The Honorable Mark R. Meador, Commissioner
Federal Trade Commission.
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing

Dear Chairman Ferguson and Commissioner Meador,

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, fraud, abuse, mismanagement, and inefficiency in government. On behalf of the more than one million members and supporters of CAGW, I am writing to share our comments on the Proposed Enforcement Policy Statement Regarding Personalized Pricing.¹

On July 23, 2024, the Federal Trade Commission (FTC) issued orders under its Section 6(b) authority to engage in studies that do not have a law enforcement purpose by requesting information from companies about their business practices. The orders went to eight companies that offer personalized pricing to their customers to "better understand how surveillance pricing is affecting consumers, especially when the pricing is based on surveillance of an individual's personal characteristics and behavior."² The orders requested information about the types of products and services being offered; data collection and inputs; customer and sales information; and, impacts on consumers and prices.

On January 17, 2025, the FTC adopted the staff's preliminary findings of the 6(b) study, which found that, "Companies that collect or obtain individualized information about their actual or potential customers can potentially use a variety of features to target prices to specific consumers and charge particular groups higher prices or use those features to generate greater profits." The report further noted that, "The surveillance pricing tools studied appear to be intended for a spectrum of targeting, from more generalized store-level pricing and promotions to more individually targeted outputs and prices. For example, on the more generalized end, a tool could use aggregated transaction data about goods like eggs or halal meat to set prices for a group of stores.

"On the more individualized end, a tool could be used to collect real-time information about a person's browsing and transaction history and enable a company to officer – or not offer – promotions based on that consumer's perceived affinity for particular products."³

¹ Federal Trade Commission (FTC), "Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing," August 19, 2026, https://www.ftc.gov/system/files/ftc_gov/pdf/p034101-ftc-enforcement-policy-statement-re-personalized-pricing-proposed-for-public-comment.pdf.

² FTC, "FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing," July 23, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing>.

³ FTC, "FTC Surveillance Pricing 6(b) Study: Research Summaries A Staff Perspective," January 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf.

As now Chairman Ferguson noted in response to the staff report, “Congress has entrusted us with ‘secur[ing], evaluat[ing] and report[ing] facts which reveal[] the structure of our economy.’ This work accords with our ‘fundamental character,’ which is that of ‘a fact-finding body.’ Thus Section 6 of the FTC Act enables the Commission to conduct wide-ranging studies, and also allows it to ‘make public from time to time ... portions of the information obtained by it ... as are in the public interest.”

He added, “Unfortunately, today’s research summaries are far from a comprehensive report. Interim reports for 6(b) studies are unusual enough; research summaries ‘designed to showcase ideas’ and ‘initial observations’ for a Section 6(b) study are unprecedented. The Democratic majority justifies its unorthodox maneuver by likening the research summaries to ‘pre-publication[s]’ such as beta versions in the technology sector or ‘draft chapters, manuscripts, extended abstracts, and tiny papers’ in other fields. But what is done in other fields is not necessarily the correct approach for the Commission, which has the power of compulsory process over private firms and individuals, and which exercises a public trust in the Section 6(b) process.”⁴

But instead of rejecting further activity based on the staff report, the FTC issued the Proposed Enforcement Policy. The decision seems to be following the principles pursued by the FTC under former Chair Lina Khan, who expanded the scope and purpose of Section 6(b) studies to pursue enforcement activities that were not part of the character of the agency as a “fact-finding body.” The FTC has the authority to force disclosure of commercial activities, but CAGW believes it does not have the authority to ban or restrict personalized pricing models, which appears to be the purpose of this proposed policy.

The draft enforcement statement’s disclosure requirements would create undue burdens for both sellers and buyers of goods and services and is not in the public interest. The requirements are overly broad and not limited to when a consumer is charged a higher price. It also encompasses a wide variety of pricing changes including providing a consumer with a discounted price.

As noted in Mark Jamison’s September 22, 2026, American Enterprise Institute blog post, “Digitization gives businesses far more information about customers than they previously possessed. And machine learning makes it increasingly possible to use that information to estimate what an individual might be willing to pay. But knowing that prices can be personalized tells us little about whether consumers are harmed.” Jamison cites research demonstrating that, “personalized pricing can benefit consumers when market coverage is high. It also finds something especially relevant for policymakers: Consumers can sometimes be worse off when only some firms are able to personalize prices than when either all or no firms can do so. ...consumer information can intensify competition as businesses make targeted offers to defend existing customers and attract customers from rivals.”⁵

The draft enforcement statement creates undue expectations for changing behavior patterns of both the seller and the buyer of a particular good or service. For the buyer, the draft statement sets the stage for a consumer to build methodology for privacy from personalized pricing by taking countermeasures that include using a private virtual network or private browsing functions in their searches to avoid personalize pricing from occurring.⁶ On the part of the seller, the disclosure requirements could include sensitive information regarding business practices and trade secrets, particularly regarding sales and consumer information.

⁴ FTC, “Dissenting Statement of Commissioner Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak Regarding the Surveillance Pricing 6(b) Staff Research Summaries, Matter Number P246202,” January 17, 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/surveillance-pricing-6b-research-summaries-ferguson-dissent-final.pdf.

⁵ Mark Jamison, “The FTC Should Not Dissuade Personalized Pricing,” American Enterprise Institute, September 22, 2026, <https://www.aei.org/domestic-policy/technology-and-innovation/the-ftc-should-not-dissuade-personalized-pricing/>.

⁶ Dr. George S. Ford, “Personalized Pricing and the Limits of Section 5,” Perspectives, Phoenix Center for Advanced Legal & Economic Public Policy Studies, September 16, 2026, <https://phoenix-center.org/perspectives/Perspective26-05Final.pdf>.

Instead of increasing competition in the marketplace and allowing consumers to benefit from personalized pricing opportunities, the draft enforcement policy would penalize pricing decisions for all businesses, including small businesses that offer a variety of special personalized discounts, including for friends and family; law enforcement officers; emergency workers; teachers; and senior citizens. This would harm both businesses and consumers.

The FTC attempts to validate the enforcement policy by stating, “The rise of data-driven ‘personalized pricing’ has the potential to transform our history of relatively limited variation in pricing from one consumer to the next.” It then cites a series of hypothetical (and fantastical) situations, like an individual traveling to a funeral and paying more than another traveler for a hotel room; a consumer who is unable to leave their home to purchase goods and services being charged more for at home delivery than another customer; or a grocery chain that charges more for milk to a delivery customer based on the number of children residing in the home. The FTC has the authority to investigate any of those scenarios as unfair trade without creating a new and intrusive enforcement mechanism.

The enforcement policy would undermine cost reductions to consumers based on frequency of use discounts and other savings generated by personalized pricing algorithms. The enforcement could occur by government fiat against any variation by increasing or decreasing prices for any reason, even if there is no harm to consumers.

Instead of increasing competition and allowing consumers to benefit from personalized pricing opportunities, the draft statement of enforcement would harm all businesses regardless of size based on odd hypotheticals that do not rely on real world scenarios and any violations of consumer protection could be enforced under current law. CAGW strongly urges the FTC to abandon this draft statement, which would harm consumers and marketplace competition by disincentivizing all forms of personalized pricing.

Sincerely,

Tom Schatz