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September 25, 2026

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

**Re: Proposed Enforcement Policy Statement Regarding Personalized Pricing**

To the Federal Trade Commission:

The Consumer Technology Association® ("CTA") submits this comment in response to the Federal Trade Commission's ("FTC" or "Commission") request for comment on its Proposed Enforcement Policy Statement Regarding Personalized Pricing ("Proposed Policy Statement").[1] CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 17 million American jobs. CTA owns and produces CES®, the world's most influential tech event.

CTA has a strong interest in this proceeding as many of our members offer variable pricing, including discounts and other benefits, which provide consumers lower average prices and businesses a wider pool of customers. CTA's members remain committed to providing consumer-friendly pricing options and understand the importance of enforcement against unfair or deceptive pricing practices.

Given CTA's members' interest in offering prices that benefit consumers and competition alike, CTA encourages the FTC to exercise caution in issuing a broadly applicable enforcement policy statement on personalized pricing. First, the Proposed Policy Statement is not narrowly tailored to address the FTC's primary concern of increased prices for consumers, as it is not clear whether it includes discounts, rebates, credits, and other pricing benefits as personalized pricing. In issuing a final policy statement, the FTC should provide businesses clearer guidance on its scope by clarifying key definitions and standards, including personalized pricing, covered entities, personal data, and consumer expectations. Given the Proposed Policy Statement's coverage of consumer-friendly pricing practices, such as discounts and other benefits, CTA urges the FTC to restrict the contemplated disclosure requirement to unfair or deceptive pricing

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

practices that increase prices for consumers. Mandatory disclosure requirements may be counterproductive to consumers, especially when applied to consumer-friendly pricing practices, and uniform disclosure obligations can impose unnecessary compliance burdens on a diverse range of businesses. To mitigate businesses' compliance burdens and encourage thoughtful compliance efforts, CTA encourages the FTC to adopt a cure period before enforcement becomes effective.

## I. The FTC Should Clarify the Scope of the Policy Statement.

### *The Proposed Policy Statement is Not Narrowly Tailored to the Consumer Harm It Identifies.*

CTA appreciates the Proposed Policy Statement's recognition of legitimate reasons for variable pricing and its long-standing practice in markets.[2] As the Proposed Policy Statement highlights, prices can vary based on changes in supply and demand, localized pricing, regional differences, and the nature of a product. For instance, using a consumer's location to set prices allows businesses to offer competitive prices in their local or regional market. Such variable pricing is necessary for businesses to provide goods and services to a diverse market of consumers, who vary by geography, as well as preferences for convenience and service levels, and risk profiles.

Although the Proposed Policy Statement recognizes these variables, it is not narrowly tailored to the consumer harm it identifies. The Proposed Policy Statement's concerns primarily center on the use of personalized pricing to increase prices for consumers. For instance, the Proposed Policy Statement points to the consumer harm of paying a higher price when businesses mislead consumers as to the basis for personalization.[3] However, the Proposed Policy Statement, in its broad scope, potentially captures variable pricing practices that benefit consumers. For example, variable pricing includes routine, pro-consumer practices, such as loyalty programs, member discounts, promotional offers, regional pricing, purchase-history-based coupons, and other benefits. Variable pricing also increases retailers' ability to offer competitive prices and manage inventory efficiently. As a result, variable pricing lowers average prices, improves inventory, and reduces waste, which benefit consumers and businesses alike.

It is important to note that using race, ethnicity, religion, national origin, sexual orientation, disability status, or other protected characteristics as a basis for discriminatory price increases is already prohibited under existing law. Moreover, state consumer protection statutes and federal antitrust law already prohibit discriminatory, deceptive, and anticompetitive pricing practices. New regulatory requirements would thus be redundant and create legal confusion for businesses. For concerns about increased prices for consumers not already covered by such laws, they would be more appropriately addressed by Congressional legislation. CTA supports a federal framework similar to Maryland's HB 895 (Protection from Predatory Pricing Act), which is more narrowly tailored to the industries that regulators are concerned about, explicitly carves

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[2] *Id.* at 1-2.
[3] *Id.* at 5.

out legitimate forms of variable pricing,[4] prohibits setting higher prices or using protected class data in certain scenarios,[5] and provides clearer definitions and guidance to businesses.[6]

***The FTC Should Clarify Key Definitions and Standards in the Final Policy Statement.***

As the Proposed Policy Statement acknowledges, "Congress has not given the Commission the authority to prohibit personalized pricing outright."[7] In recognition of this limitation, and to provide clearer guidance to businesses, CTA respectfully urges the FTC to clarify the scope of the Proposed Policy Statement, including the definitions of "personalized pricing" and "personal data," the entities setting personalized prices, as well as the standard informing consumers' expectation of uniform pricing.

First, CTA encourages the FTC to clarify the definition of "personalized pricing" under the Proposed Policy Statement. The Proposed Policy Statement does not clearly define personalized pricing. Although the press release announcing the Proposed Policy Statement indicates that personalized pricing is "the use of personal data to set prices according to the amount that a company believes an individual consumer is willing to spend,"[8] this definition remains vague and provides minimal guidance to businesses. As such, the breadth of this definition presents compliance uncertainty and legal risk for businesses. For instance, this definition could potentially capture using a consumer's loyalty membership (or lack thereof) to determine whether to offer a loyalty or non-loyalty price. In either scenario, the Proposed Policy Statement's disclosure requirement could apply. As a result, businesses may abandon discounts due to the added compliance costs and risks associated with such disclosures, ultimately harming consumers. Small businesses will be particularly impacted by the associated compliance burdens.

[4] *See, e.g.,* H.B. 895, 2026 Gen. Assemb., Reg. Sess. (Md. 2026) ("This subsection does not apply to: (i) Using promotional pricing offers, loyalty program benefits, or other temporary discounts or changes to pricing related to retention of existing customers; (ii) Setting a different price based on objective costs attributable to providing consumer goods or services to different consumers, such as a difference in price caused by shipping costs or taxes based on a consumer's physical location; (iii) Setting a different price based on costs or differences in supply or demand associated with providing or selling a good or service in different locations or geographies; (iv) Setting a different price based on costs associated with the availability or supply of the good or service; (v) Offering a price to a consumer through a loyalty, membership, or rewards program in which any consumer may voluntarily enroll or consent to participate").

[5] *See, e.g., id.* ("A food retailer or third-party delivery service provider may not: (i) Engage in dynamic pricing to set a higher price for food that is exempt from the sale and use tax in accordance with § 11-206(c) of the Tax - General Article for a specific consumer; or (ii) Use personal data to set a higher price for food that is exempt from the sale and use tax under § 11-206(c) of the Tax - General Article for a single consumer… A food retailer or third-party delivery service provider may not use protected class data to offer, advertise, or sell a consumer good or service to a consumer for whom the protected class data pertains if the use of the protected class data has the effect of withholding or denying from the consumer an accommodation, an advantage, or a privilege accorded to others").

[6] *See, e.g., id.* ("'Personal data' means any information that is linked or can be reasonably linked to an identified or identifiable consumer… 'Personal data' does not include: (i) De-identified data; or (ii) Publicly available information").

[7] Proposed Policy Statement at 1.

[8] Press Release, FTC, *FTC Seeks Comment on Enforcement Policy Statement Regarding Personalized Pricing* (Aug. 19, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-seeks-comment-enforcement-policy-statement-regarding-personalized-pricing.

In addition, the FTC should clarify that the final policy statement only applies to entities that determine, control, or materially influence the personalized price presented to a consumer. Online marketplaces that provide the infrastructure for independent third-party sellers to list and sell goods generally do not set the prices of those goods and should not be held responsible for a seller's independent pricing decisions. Extending responsibility to a marketplace solely because it facilitates a transaction or displays a seller-determined price would impose obligations on an entity that neither establishes the underlying price nor possesses the information to comply with the contemplated disclosure requirement.

Further, CTA encourages the FTC to specify what constitutes "personal data" used to set personalized prices. Combined with the potentially broad definition of personalized pricing, this could unexpectedly require consent to use data, such as student status, for a discount that typically does not require consent to use. This lack of clarity may create conflict with existing state privacy frameworks. To avoid such conflict, the final policy statement should define personal data in line with established U.S. privacy law, including the common exclusions for de-identified and publicly available information.

Finally, the FTC should provide further guidance on the standard that determines when "consumers reasonably expect that prices for a product or service will not vary based on their personal data."[9] In discussing this standard of consumer expectations of non-personalized pricing, the Proposed Policy Statement points to "prices for goods and services that traditionally did not vary from person to person and which American consumers therefore reasonably expect will not be any different for them than they will be for their friends or neighbors."[10] For example, the Proposed Policy Statement indicates that when shopping at a retail store, consumers "reasonably expect the price on the shelf to be the same price offered to any other consumer."[11] It is true that consumers expect shelf prices to be uniform, whether they are paper or electronic displays. However, consumers are well aware that stores may offer customers loyalty discounts and coupons that would mean they pay a different price at the register than do their friends or neighbors. To provide companies with greater clarity on the scope of the policy statement, the FTC should more clearly outline consumer expectations of uniform pricing.

## II. The Disclosure Requirement Should Apply to Pricing Practices that Increase Prices for Consumers.

Given the Proposed Policy Statement's broad conception of "personalized pricing," it would potentially encompass and burden consumer-friendly variable pricing practices. Instead, the Proposed Policy Statement's disclosure requirement should apply only where personal data is used to increase a price above a defined baseline, rather than where data is used to offer discounts, promotions, or membership benefits.

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[9] Proposed Policy Statement at 1.
[10] *Id.* at 2.
[11] *Id.*

First, discounts and similar offerings benefit consumers and businesses alike and should not be covered by the Proposed Policy Statement. Discounts permit price-constrained consumers, who are the most willing to adjust their purchasing practices, to obtain goods at a lower cost. Discounts, like other forms of variable pricing, often lower average prices and benefit most consumers. At the same time, businesses benefit from variable pricing practices by maximizing their customer base and expanding output. The Proposed Policy Statement does not exempt discounts and similar benefits, as described above, and sweeping in these practices is inconsistent with the Proposed Policy Statement's emphasis on pricing practices that harm consumers or raise the cost of living.

In addition, overbroad mandatory disclosures may be counterproductive and risk alarming consumers. For instance, a disclosure with language such as "This personalized price is based on your estimated willingness to pay derived from data about your previous purchases" may be unnecessarily concerning to consumers, who are familiar with customer loyalty programs but would be confused about whether this describes such programs or something else. Even when consumers are receiving a variable price in the form of a discount, rather than a price increase, they may erroneously conclude that they are being harmed by the price variation. As a result, consumers may avoid businesses that offer discounts or withhold data that would prompt a discount, therefore increasing the price to the consumer. This effect is both detrimental to consumers and in tension with the FTC's stated priority of "issues that affect the cost of living for American families."[12]

Finally, one-size-fits-all disclosure requirements, such as that contemplated in the Proposed Policy Statement, are operationally infeasible. The proposed disclosure requirement does not account for differences in business models, platforms, screen sizes, or user interfaces. As such, businesses that engage in consumer-friendly pricing practices and may be subject to the uniform disclosure requirement will face unnecessary compliance burdens.

## III. The FTC Should Adopt a Cure Period.

In recognition of compliance burdens for companies across a diverse range of commercial environments, CTA respectfully urges the FTC to adopt a cure period to allow sufficient time to implement required disclosures. This flexibility would support thoughtful redesigns of systems needed to surface mandatory warnings. A cure period would also be consistent with other substantial compliance regimes, such as comprehensive state privacy frameworks.

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CTA shares the FTC's interest in protecting consumers against unfair or deceptive personalized pricing practices that harm consumers. However, to target higher prices, the primary consumer harm identified, the FTC should clarify the scope of the policy statement and limit any disclosure requirement to unfair or deceptive personalized pricing practices that increase prices for

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[12] *Id.* at 2.

consumers. Such clarification will allow businesses to preserve variable pricing practices that benefit consumers and competition alike.

Sincerely,
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