



September 25, 2026

The Honorable Andrew Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Response to Proposed Enforcement Policy Statement Regarding Personalized Pricing

Dear Chairman Ferguson,

On behalf of the American Fintech Council (AFC),¹ I submit this comment letter in response to the Federal Trade Commission's (FTC) Proposed Enforcement Policy Statement Regarding Personalized Pricing (Policy Statement).² AFC appreciates the FTC's efforts to address potentially unfair or deceptive uses of consumer data in pricing while recognizing that certain products, including credit, may regularly rely on individualized consumer characteristics to appropriately reflect risk.³ As the FTC considers a final policy statement, AFC encourages it to build on that recognition by further distinguishing financial products and services, so that the pricing of financial products continues to be evaluated under the statutes and regulations purpose-built to govern it rather than under a framework directed principally at retail pricing practices. Preserving that distinction is essential not only to regulatory certainty but also to protecting consumer access to credit, particularly for underserved borrowers who benefit most from data-driven, risk-based lending.

AFC is a standards-based organization and the largest and most diverse trade association representing financial technology companies and innovative banks. On behalf of more than 150 member companies and partners, AFC promotes a transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial services and encouraging sound public policy. AFC's membership includes innovative banks, non-bank lenders, payments providers, financial technology companies, compliance providers, and other financial services firms that routinely use consumer information in accordance with applicable law to evaluate creditworthiness, assess risk, prevent fraud, and price financial products. These institutions possess direct experience with the legal, operational, and consumer protection considerations associated with individualized underwriting and risk-based pricing, as well as with the design and pricing of financial products more generally.

¹American Fintech Council's (AFC) membership spans banks, non-bank lenders, payments providers, EWA providers, loan servicers, credit bureaus, and personal financial management companies.

² Federal Trade Commission, *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.

³ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing*, 3.

The Policy Statement appropriately recognizes that credit pricing reflects individualized consumer characteristics that inform a lender's assessment and pricing of credit risk. That distinction should be carried expressly into the final policy statement. Without additional clarification, broader references to the use of personal data in pricing could create uncertainty as to whether lawful usage of data within financial services to determine pricing is among the practices the FTC intends to characterize as personalized pricing. AFC therefore recommends that the FTC preserve a clear boundary between the retail practices targeted by the Policy Statement and the individualized risk assessment inherent to responsible lending.

I. AFC Supports a Clear Distinction Between Personalized Pricing and Risk-Based Credit Pricing to Preserve Responsible Underwriting and Regulatory Certainty

Credit pricing serves a fundamentally different purpose from pricing practices designed to determine the highest amount an individual consumer may be willing to pay for an otherwise standardized good or service. Lenders, most commonly, evaluate the likelihood and expected cost of repayment to determine whether credit can be extended and, if so, on what terms. Information bearing on creditworthiness, repayment capacity, fraud risk, collateral, and other legitimate risk characteristics therefore serves a different function from data used to infer shopping urgency, price sensitivity, or willingness to pay.

Credit pricing and offer construction may also reflect legitimate considerations beyond expected credit loss, including the cost of capital, acquisition and servicing costs, product economics, and marketplace conditions. These considerations are integral to how credit products are designed, priced, and made available, and they are likewise distinct from using personal information to infer a particular consumer's willingness to pay for an otherwise standardized retail product or service.

The final policy statement should make that distinction explicit. As such, AFC recommends that the FTC clarify that personalized pricing does not encompass the lawful use of consumer information to, among other things, evaluate creditworthiness, conduct underwriting, assess or price credit risk, prevent fraud, determine eligibility for credit, or establish the terms of a loan or other credit product. AFC cautions, however, against defining that exclusion solely by reference to enumerated risk-related inputs. Because credit pricing and offer construction may reflect a range of legitimate considerations, an overly narrow exclusion could invite the inference that other lawful considerations relevant to the pricing or provision of credit fall within the Policy Statement. Such clarification should extend to the use of consumer reports, credit scores, income and debt information, transaction data, and other information that is reasonably related to the pricing, cost, or provision of credit, subject in all instances to applicable consumer financial protection laws.

A clear exclusion would not immunize unlawful conduct. Creditors remain subject to federal and state prohibitions on discrimination, deception, unfair practices, and impermissible uses of consumer information. Rather, the clarification would ensure that the term personalized pricing is directed at the conduct the Policy Statement identifies as its central concern: the use of personal information to charge different consumers different prices for otherwise standardized

retail goods and services based on inferred willingness to pay or similar considerations unrelated to the underlying cost or risk of providing the product. Preserving that distinction would give credit providers greater certainty while allowing the FTC to focus its enforcement resources on the practices the policy statement is designed to address.

Moreover, risk-based pricing directly benefits consumers by expanding access to credit. When lenders can differentiate pricing based on individual creditworthiness, they are able to extend credit to borrowers who might otherwise be denied under a uniform pricing model. This is particularly true for underserved consumers, including those with thin or non-traditional credit histories, who depend on innovative, data-driven underwriting to obtain affordable credit. Regulatory uncertainty regarding the boundary between personalized pricing and risk-based credit pricing could lead lenders to narrow their credit criteria, reducing the availability of credit for the populations the FTC's consumer protection mission is designed to serve.

II. AFC Supports Alignment with Existing Consumer Credit Laws to Promote Clear and Consistent Disclosure Obligations

Federal consumer financial law already establishes a detailed framework governing how individualized information may be used in credit decisions and when particular disclosures are required. Regulation B generally permits a creditor to consider information obtained in evaluating an application, subject to the Equal Credit Opportunity Act's restrictions on discrimination and the use of prohibited bases.⁴ The Fair Credit Reporting Act and Regulation V likewise expressly contemplate risk-based pricing and prescribe notices when a consumer report results in materially less favorable credit terms than those offered to a substantial proportion of consumers.⁵ These provisions reflect a longstanding regulatory recognition that differential credit terms may result from legitimate differences in credit risk.

Risk-based pricing is therefore not a novel practice, and Congress has expressly established requirements addressing the use of consumer information and associated disclosures in this context. The Policy Statement should avoid layering a generalized personalized-pricing framework onto conduct already subject to purpose-built federal consumer credit laws, particularly where doing so could create overlapping or inconsistent obligations without providing corresponding consumer benefit.

The final policy framework should therefore avoid language that could be read to impose a separate, generalized personalized-pricing disclosure obligation whenever a creditor uses consumer information to establish credit terms. Such an interpretation could create duplicative or inconsistent requirements without improving consumer understanding. By way of example, a lender that uses a consumer report and offers terms less favorable than those extended to a substantial portion of consumers is already required to provide a risk-based pricing notice. If the Policy Statement were to impose a parallel personalized pricing disclosure for the same transaction, the consumer would receive two notices covering overlapping information with

⁴ Consumer Financial Protection Bureau, Regulation B, 12 C.F.R. § 1002.6(a), <https://www.consumerfinance.gov/rules-policy/regulations/1002/6/>.

⁵ Consumer Financial Protection Bureau, Regulation V, 12 C.F.R. § 1022.72, <https://www.consumerfinance.gov/rules-policy/regulations/1022/72/>; 15 U.S.C. § 1681m(h), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section1681m&num=0&edition=prelim>.

different terminology, which could result in consumer confusion. Instead, the FTC should clarify that the policy statement does not alter disclosure obligations arising under the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Truth in Lending Act, or their implementing regulations, and that lawful underwriting and risk-based pricing remain governed by those established frameworks.

Consistent with that approach, AFC recommends that the Commission expressly exclude credit transactions governed by the Equal Credit Opportunity Act and Regulation B, and, where applicable, the Fair Credit Reporting Act and its implementing regulations, from the personalized-pricing framework contemplated by the Policy Statement. Where the use of consumer information in determining eligibility for credit or establishing credit terms is already subject to these established federal consumer financial protection requirements, layering a separate personalized-pricing framework onto the same conduct could create overlapping obligations and uncertainty regarding the standards that govern a creditor's use of consumer information. Such an exclusion would preserve the application of existing consumer protection requirements while providing creditors with greater certainty that lawful underwriting and risk-based pricing will continue to be governed by the regulatory frameworks specifically designed for credit transactions.

For additional precision, AFC recommends that the Commission incorporate language substantially similar to the following: "For avoidance of doubt, this Policy Statement's personalized pricing framework does not apply to credit transactions subject to the Equal Credit Opportunity Act and Regulation B or, where applicable, the Fair Credit Reporting Act and its implementing regulations. The term personalized pricing also does not include the lawful pricing, structuring, or offering of credit products, including, but not limited to, the use of consumer information to evaluate creditworthiness, assess or price credit risk, prevent fraud, determine eligibility or terms of credit, or otherwise engage in lawful underwriting or risk-based pricing, where such practices are conducted in accordance with applicable law." This clarification would preserve the distinction already recognized in the Proposed Statement, reduce unnecessary interpretive uncertainty, and reinforce a coherent federal approach to consumer credit pricing.

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AFC appreciates the FTC's recognition that individualized risk considerations are integral to credit pricing and encourages the FTC to carry that distinction expressly into the final policy statement. A clear boundary between personalized pricing based on inferred willingness to pay and lawful credit underwriting will protect consumers while preserving the risk-sensitive pricing practices that support responsible lending and broader access to credit. These practices should continue to be evaluated under the purpose-built federal and state legal frameworks governing consumer credit rather than under a framework principally directed at personalized retail pricing.

AFC welcomes continued dialogue with the Commission and remains ready to provide additional information or industry perspective as the FTC finalizes the policy statement.

Sincerely,

A handwritten signature in black ink, reading "Ian P. Moloney" with a stylized flourish at the end.

Ian P. Moloney
Chief Policy Officer
American Fintech Council