September 12, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave., NW
Washington, DC 20580
Submitted via www.regulations.gov

Re: Motor Vehicle Dealers Trade Regulation Notice of Proposed Rulemaking- FTC-2022-0046-0001, Federal Register No. 2022-14214

Dear Commissioners:

The undersigned 110 national, state, and local consumer, civil rights, legal services, community, public interest organizations, consumer attorneys, and others appreciate the opportunity to comment on the FTC's Notice of Proposed Rulemaking (NPRM) on the sale, financing, and leasing of motor vehicles by dealers.[1] We welcome this proposal and applaud the FTC for engaging in this important area impacting the majority of households in the United States. As the FTC has recognized and detailed in the NPRM, the process of selling, financing, and leasing new and used vehicles in the United States is fundamentally broken. Because of misrepresentations, and unfair or deceptive practices, many consumers are paying far more for vehicles than they bargained for.

Cars are essential for most households in the United States, but access to a safe, affordable vehicle is increasingly limited for many consumers by sharply rising prices, burdensome accompanying debt obligations and problematic dealer practices. The cost of a vehicle represents such a significant proportion of many American households' total annual income that over 88% of new car purchases and 45% of used car purchases are financed.

Enforcement actions by federal and state consumer protection agencies, as well as private litigation, have highlighted auto dealer practices that exploit the inherent power imbalance in vehicle sales, effectively further driving up the cost of many vehicles. The unfair and deceptive practices focused on in these actions include:

- Misleading advertising which conceals the vehicle price and the limited applicability of offers or rebates.
- The deceptive inclusion of Add-on products or services at inflated prices, many of which have little to no benefit for consumers.
- Discrimination against people of color in the pricing of Add-ons and finance interest rates.
- Selling unsafe and damaged vehicles.
- Engaging in yo-yo sales transactions in which dealers trick consumers into financing agreements with more expensive terms than previously.
- Verbally negotiating terms of the sale in a language other than English but presenting the consumer with contracts in English that contradict the negotiated terms.

[1] https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-14214.pdf

- Installing devices to abusively facilitate electronic repossessions and harass consumers.
- Using electronic signatures and electronic records to facilitate fraud.

Auto related complaint numbers to federal and state protection agencies are generally higher than most other consumer transactions. Indeed, complaints to the Better Business Bureau about new and used auto dealers, when combined, have been either the first or second highest against any industry in the U.S. for the past twenty years.

Research shows that deceptive dealer conduct disproportionately affects minority communities: people of color are charged higher prices for vehicles, and they are charged higher interest rates than equally or less creditworthy white consumers. Hispanic and Black consumers are also targeted for more Add-on products and services, and dealers have charged them more for these products than they charge white consumers.

Financing a purchase through a dealer allows the dealership to select the creditor and control the entire car-financing process. Dealer financing provides the mechanism that allows dealers to commit many of the unfair and deceptive practices addressed by the FTC's NPRM.

The FTC's proposed rule targets particular advertising, pricing, and financing practices to bring transparency and consistency to the marketplace. We applaud the FTC's proposal and its comprehensive rule, and we make the following recommendations regarding its provisions:

A. The FTC's rule should be adopted and strengthened to incentivize fairness, encourage competition with honest dealers, and give consumers meaningful relief when they have been defrauded.

The FTC's proposals are necessary to define with more specificity unfair and deceptive practices that impact consumers when purchasing and financing vehicle purchases. While adopting the proposed rule will enable the FTC to provide much needed consumer redress, **additional protections** are necessary to incentivize fairness in these transactions, and to enable consumers to obtain their own relief.

1. Add-ons

Add-ons are extremely lucrative for car dealers but often provide little benefit to consumers. Many abuses in the sale of Add-ons occur because the sales and financing process is shrouded in secrecy and occurs in a high-pressure environment at the end of a complex and fatiguing transaction. Unlike other goods there are no listed prices for Add-ons. Different consumers are charged different amounts for the same Add-on—often resulting in discrimination against consumers of color.[2] Some Add-ons have no or little value. This NPRM prohibits Add-ons without value and requires multiple disclosures. But to provide meaningful protection that will disincentivize unfair practices, we recommend the following additional protections:

- Consumers should have a 30-day cooling off period within which they can obtain a full refund for Add-ons.

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[2] National Consumer Law Center, Auto Add-ons Add Up: How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing 21 (Oct. 2017), available at www.nclc.org.

- The FTC should adopt its proposal prohibiting the sale of Add-ons with no value and expand that to include Add-ons with almost no value compared to the Add-on price.
- The FTC should adopt its proposed rules providing a price list for consumers to see the true cost of Add-ons. For Add-ons that differ in price based upon the vehicle being sold, the list should indicate the low, median, and high prices charged to consumers over the previous two years and a specific list should be published for each vehicle for the prices of Add-ons for that car.

2. Offering Price

The most important factor for consumers purchasing a vehicle is its price, yet the price is almost impossible to ascertain without spending hours at the dealership. The price of cars is higher now than ever, and dealer conduct has further obfuscated consumers' ability to learn how much the dealer will accept as full payment through advertisements that deceptively exclude fees or crowd the advertisement with special offers that have limited or no applicability to most consumers. Dealers also pack vehicle sales with mandatory and price-inflated Add-ons, increasing the cost and creating further confusion and uncertainty about the ultimate price of a vehicle.

- The FTC should require the use of a simplified, uniform, comprehensive and legally enforceable "Offering Price" by dealers.
- The Offering Price should include all pre-installed and mandatory Add-on products, and all dealer fees.
- The definition of "government charges" should be limited to those charges that are imposed by and paid to a government entity.
- The FTC should also require dealers to provide (and attach in writing to each vehicle offered for sale) an Offering Price along with a list of optional Add-ons and their non-negotiable prices, require consistent use of the Offering Price, and explicitly provide that any buyer can purchase the car by paying the Offering Price and the applicable government charges in cash or with other financing**.**

3. Financing Disclosures

The process of financing a vehicle purchase is complex and presents a unique opportunity for dealers to take advantage of consumer confusion and lack of bargaining power. To fully appreciate the financing dynamics, consumers would need to understand the interplay of numerous components, including loan terms, monthly payment amounts, payment consideration, and the addition of products and services. A critical variable in this process is the loan's interest rate, but consumers often have no way of knowing if the rate they are offered is fair or capable of being negotiated. Although many consumers focus on the monthly payment to determine whether they can afford a vehicle, dealers exploit this confusion by focusing on the monthly payment instead of the total cost, often hiding inflated rates and Add-ons to increase their profit.

- The FTC should adopt its proposal to provide key information about monthly payments to consumers, including a disclosure that a longer loan term will increase the total cost of the vehicle, a calculation of the total vehicle cost when discussing monthly payment amounts, and an itemization of any trade-in or down payment amounts.

4. Recordkeeping

Strong recordkeeping requirements are a critical tool for enforcement agencies and victims to ensure compliance. However, the FTC's proposal to require recordkeeping for only two years is inadequate.

- The FTC should adopt the proposed content of records that dealers are required to retain, and it should extend the retention period to 7 years or the length of the retail installment sales contract, whichever is longer.
- The FTC should also require dealers to make consumer-specific records available to that consumer upon request.

B. The FTC should expand its rule to address additional unfair and deceptive dealer practices.

The Commission has asked for comment on several specific dealer practices, and it has asked generally about other unfair and deceptive practices that should be addressed.

1. Safety and condition of vehicles

Some of the most harmful practices perpetrated by auto dealers involve the sale of hazardous vehicles with unrepaired recalls, mechanical defects, undisclosed collision and material damage history, and altered odometers. The FTC's Used Car Rule is decades out of date. We strongly recommend that:

> The FTC should specify that is an unfair practice to misrepresent the safety, mechanical or structural condition of a vehicle, odometer reading, or history of a vehicle offered for sale by dealers.

2. Yo-yo sales

One of the most egregious auto financing practices is yo-yo sales. In these unfair and deceptive transactions, after a consumer has signed a financing contract and left the dealership with a vehicle, the dealer contacts the consumer at a later point in time, claiming that the deal "fell through" and that the consumer is required to sign a new financing contract with terms that are worse than previously agreed to. This conduct is deceptive by its very nature, and it is inconsistent with federal consumer protection law. In connection with the "yo-yo" tactics of hauling a consumer back to the dealership, the dealer holds the consumer's down payment or trade-in hostage until the new deal is finalized. Even when the deal falls through and no subsequent contract is signed, some dealers keep the down payment or have already sold the trade-in, leaving consumers much worse off than they started. This conduct is so embedded in car sales that dealers routinely insert a "spot delivery agreement" into the loan paperwork, effectively giving them a license to change the terms.

The FTC should:

- Prohibit yo-yo sales.
- Require dealers to insert a clause into every retail installment sales contract providing that the deal is final.
- Prohibit dealers from asserting ownership over the down payment or trade-in until the binding credit contract is signed.

3. Language access

Nearly 22 percent of the U.S. population over the age of 5 speaks a language other than English at home, and, of these, 38.3 percent are Limited English Proficient ("LEP"). These consumers face significant barriers when navigating the purchase of financial products, and the purchase of a car is complex even for native English speakers. This leaves LEP consumers particularly vulnerable to unfair and deceptive dealer conduct, such as failing to translate documents after negotiating a sale in a language other than English, falsifying finance applications, and sneaking in worthless Add-ons to their contracts.

The FTC should:

- Require the translation of each required disclosure, as well as the most critical sales documents: the buyers order and the retail installment sales contract.

4. Devices used to aid in electronic repossessions.

Buy-here, pay-here and some other dealerships solicit consumers who believe they have poor credit and few options. Instead of legitimately underwriting the vehicle financing, these dealers impose excessively high interest rates, and often utilize abusive methods to scare consumers into making their monthly payments when they fall behind and are at risk of repossession. Such methods include the installation of devices that remotely disable vehicles (sometimes dangerously and without regard to the location or operation of the vehicle), or that prevent vehicles from being started (starter interrupt devices), making them undriveable until the consumer has caught up on their payments. These practices endanger consumers, and, especially when used to scare consumers into making their payments, should be declared unlawful.

The FTC should:

- Prohibit the use of electronic disabling and starter interrupt devices and consider additional regulation of other devices used in electronic repossession.

5. Electronic records and signatures.

Federal and state laws promulgated to permit electronic transactions over the internet were intended only to provide legal equivalency to electronic records, not enhanced status for electronic media. However, too often, and especially among dealers using certain finance companies, the practice of meeting statutory requirements for writings with electronic records and signatures has been the means of facilitating fraud, unfair and deceptive practices.

<u>The FTC should declare that it is an unfair practice for an auto dealer to fail to ensure that:</u>

- <u>The E-Sign demonstration of consent meets all of the material demonstration requirements found in E-Sign § 7001(c)(1)(C)(ii);</u>
- <u>Records required to be provided to the consumer in writing are fully visual to the consumer before the consumer is asked to sign the record; and</u>
- <u>Records provided to the consumer electronically are provided in a manner that the consumer can review and retain the record.</u>

We appreciate the attention of the FTC to these important issues.

Sincerely,

National Organizations

20/20 Vision DC
Accountable US
Americans for Financial Reform Education Fund
Center for Auto Safety
Consumer Federation of America
Center for Digital Democracy
Center for Economic Justice
Center for Responsible Lending
Consumer Action
Consumer Reports
Consumers for Auto Reliability and Safety
Disability Rights Advocates
National Association of Consumer Advocates
National Consumer Law Center
National Coalition for Asian Pacific American Community Development
National Consumers League
U.S. PIRG
UnidosUS

State and Local Organizations, Attorneys, and Individuals

<u>Alaska</u>
Alaska PIRG

<u>Arizona</u>

Arizona PIRG
Wildfire: Igniting Community Action to End Poverty in Arizona
Regina White Falcon

California
CA Alliance for Consumer Education
CalPIRG
Consumer Federation of California
The Katharine & George Alexander Community Law Center
Public Good Law Center

Colorado
CoPIRG
THE ONE LESS FOUNDATION

Connecticut
ConnPIRG

Delaware
Delaware Community Reinvestment Action Council, Inc.

District of Columbia
DC Consumer Rights Coalition
Tzedek DC
20/20 Vision DC
William Pierre-Louis, Jr.

Florida
Florida Consumer Action Network
Florida PIRG
Robert Murphy

Georgia
Georgia PIRG
Georgia Watch

Illinois
Illinois PIRG

Indiana
Citizens Action Coalition of IN

Iowa
Iowa PIRG

Maryland
CASH Campaign of Maryland
Maryland Consumer Rights Coalition
Maryland PIRG
Montgomery County, Maryland Office of Consumer Protection
Christine Hines

Massachusetts
MassPIRG
John Van Alst

Michigan
PIRGIM

Missouri
MoPIRG

New Hampshire
NHPIRG

New Jersey
County and Municipal Consumer Affairs Agencies of New Jersey
Law Office of David Ricci, LLC
New Jersey Citizen Action
NJPIRG
Union County Consumer Affairs

New Mexico
New Mexico PIRG

New York
Consumer Justice for the Elderly: Litigation Clinic of St. John's University School of Law
Dombrow Law Firm
Empire Justice Center
New Yorkers for Responsible Lending
Gina M. Calabrese

North Carolina
NCPIRG

Ohio
Community Legal Aid
Ohio PIRG

The Pride Through Empowerment Foundation, Inc.

Oregon
OSPIRG
The Pride Through Empowerment Foundation, Inc.

Pennsylvania
Bucks County Consumer Protection
Roseman Law Firm, PLLC
PennPIRG
Michael Bannon

Rhode Island
RIPIRG

South Carolina
South Carolina Appleseed Legal Justice Center

Texas
Texas Appleseed
TexPIRG

Virginia
Blue Ridge Legal Services
Legal Aid Justice Center
Virginia Organizing
Virginia Citizens Consumer Council
Virginia Poverty Law Center
The Consumer Law Group, P.C.
Laura R. Pyle, LLC
Kelly Guzzo, PLC
Amanda Gago Silcox
Carol Ann Gordon
Connie Stevens
Edgar Gonzalez
Erin Witte
Ezra Halstead
Flannery O'Rourke
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James W. Speer
Jennifer Locke
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Teresa Maxey

Washington
WashPIRG

West Virginia
Mountain State Justice
The Grubb Law Group, PLLC
Margot Saunders

Wisconsin
WISPIRG