



March 7, 2016

Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave. NW
Suite CC-5610 (Annex J)
Washington, DC 20580

Via: <https://ftcpublic.commentworks.com/ftc/autobuyersurveypra>

Re: *Auto Buyer Consumer Survey, Project No. P154800*

Comments in Response to the Federal Trade Commission's Request for Public Comment on Its Proposed Research of Consumer Auto Purchases and Financing

The National Association of Consumer Advocates (NACA), a nonprofit association of attorneys and consumer advocates who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices, is pleased to submit comments in response to the Federal Trade Commission's (FTC) proposed survey of consumers who recently purchased and financed an automobile through a dealer. NACA advocates, many of whom represent consumers harmed following their transactions with auto dealers, encounter numerous patterns and varieties of misconduct in auto sales and financing. NACA supports a well-executed survey aimed at uncovering important data to assist the FTC in vigilantly monitoring the marketplace and curbing unfair and deceptive acts and practices in auto sales and lending.

The agency enforces the FTC Act, which prohibits unfair and deceptive practices by a wide variety of entities, including auto dealers. In its notice, the FTC states that the survey is meant to help it identify current consumer protection issues that it could address through enforcement, rulemaking, education, or other action. The notice suggests certain categories of questions for its consumer interviews. NACA's comments focus on providing substantive topics and lines of inquiry to address specific issues in consumers' experience with auto purchasing and financing through car dealers.

Recommendations

Survey Methodology

The FTC should ensure that its methodology is appropriate for this survey, including the sampling of its target population, that is, consumers who purchase and finance a car through auto dealers. The FTC should ensure that the sample size for the survey is large enough to

provide an accurate representation of the population. It should inquire into whether the suggested sample size is sufficient for providing an adequate representation of the data the FTC intends to collect.

The FTC has indicated that it would engage a population of auto buyers that would be racially diverse and would involve participants of both sexes, and would include buyers with “prime” and “subprime” credit scores. We agree with the FTC’s approach to obtain experiences from different populations. We encourage the FTC to also include Native Americans, non-English speakers, and military members in its sample.

Suggested Discussion Topics and Questions for the Consumer Interviews

There are well-established principles for designing survey questions. We encourage the FTC to craft fair and easily understandable questions for its diverse population sample of consumers. The questions should also be sufficiently precise to facilitate substantive responses and adequate data collection on consumer auto purchases. Below are suggested topics and inquiries for the consumer interviews.

Documentation. The survey should examine the extent of consumers’ awareness and knowledge of the documents presented to them in their purchase and finance of automobiles. It should make the following inquiries:

- How many documents did the consumer sign at time of purchase?
- Did the consumer received copies of all the documents, in the language in which the transaction was negotiated?
- What documents did the consumer sign (contract, warranty)?
- Was the consumer given time and opportunity to read the paperwork?
- Did the consumer read and understand key terms in the documentation?
- What questions did the consumer ask the salesperson about the contract terms and what were the salesperson’s responses?
- Was the consumer aware of any provisions in the contract that eliminated their right to sue the auto dealer and/or financing company? Did the consumer ask about the provision that required that disputes be settled in arbitration rather than in court? Or did the dealer share any information about an arbitration provision or a provision that eliminated the right to sue in court? What was the dealer’s representation about these provisions?
- When in the process did the consumer receive the documents?
- Did the documents accurately reflect what the consumer was led to believe about the terms of the transaction, based on verbal representations by the salesperson, F & I manager, and other dealership personnel?
- If the consumer is Spanish-speaking, did he or she receive the contract in Spanish or English?

Dealer Promotions and Advertising. Dealer representations sometimes play a role in forming a consumer’s expectations before he or she arrives at a dealership. The FTC should examine the consumer’s expectations stemming from dealer representations, and determine whether those expectations were met. Questions should include:

- What factors went into choosing the dealer? Why did they go to a particular dealer?
- Was the consumer motivated by a dealer advertisement (radio, TV, Internet, newspaper, etc.)?
- Did the consumer rely on the promotion?

- Did the consumer take a printed promotion to the dealership?
- Did the dealer agree to apply the promotion, or did it allege that conditions to receive the promotion were not met? Did the transaction occur consistent with the advertisement, as the consumer expected?
- Did a fellow member of the Armed Forces take them to a dealership or recommend the dealership?

Agreeing to a Price. We agree that the FTC should inquire about price negotiations and dealer representations about the price of the car. An inquiry should include the following questions:

- Was the price a “no-haggle” price, or did the consumer have to negotiate?
- When in the process did the consumer agree on a price for the car?
- Was the price the same as advertised?
- What, if any, other fees and charges were added to the price of the car? [including dealer doc fees and other charges].
- Were all fees explained to the consumer? What was the explanation for the fees?
- When in the process did the consumer learn about added fees?
- What factors did the consumer consider in negotiating pricing with dealer? [Price of car? Monthly payment? Other factors?]
- as the price paid significantly higher than the fair market value, based on nationally recognized guides such as Kelly Blue Book or TrueCar?
- Was the price on the contract the same as what the dealership agreed upon verbally?

Obtaining Financing. Financing may be one of the most complicated, least transparent aspects of a consumer’s purchase of a car. The FTC should inquire into every stage of a consumer’s experience to obtain financing through a dealership. For example, it should inquire about the following:

- Does the consumer think that he or she received the best possible interest rate and other loan terms from the dealership?
- Was the consumer aware how long the loan will last and how much they will pay in total, with all payments?
- Was the consumer aware that he or she could obtain financing elsewhere?
- Did the consumer consider other financing options, with banks and credit unions?

Creditworthiness. Creditworthiness is a key aspect of negotiating a price and interest rates. The survey should inquire into the consumer’s awareness of his or her credit scores and creditworthiness, including the following questions:

- What were the consumer’s beliefs about his or her creditworthiness before going to the dealership?
- Did the consumer obtain a copy of his or her credit score or credit report before going to the auto dealership?
- Did the consumer think that he or she was in a good negotiating position at the dealer?
- What were the dealer’s representations to the consumer about his or her credit worthiness? What did the dealership relay to the consumer about his or her credit scores?
- For a consumer whose credit was below par, what were the dealer’s representations to him or her regarding creditworthiness and their ability to purchase a car?
- For a consumer whose credit was below par, was the dealer’s price different from the advertised or book-value price? How so?

- Did the consumer think the dealer got them the best deal? Did they know that they could obtain financing elsewhere? Did they shop around for financing?
- At what stage in the transaction (when they first arrived at the dealer or near the end of the transaction), did the consumer and dealer begin discussions about the consumer's credit score and creditworthiness?

Trade-Ins. Consumers may have unmet expectations regarding their intention to trade-in their old car (trade-in) for a newly purchased car.

- What were the dealer's representations to the consumer about the trade-in's condition?
- Was the car paid off or was there an outstanding owed balance on the car?
- Was the consumer aware of whether the amount owed on the trade-in was more or less than its value?
- Did the documentation, including the sales contract, reflect the trade in?
- Was any value of the trade-in subtracted from the price of the new car?
- Was the consumer able to trade in his or her old car?
- Did you at any time in the process give the dealer the keys to the consumer's old car?
- What reasons, if any, did the dealer give the consumer for requesting the keys to the old car?
- Did the dealer at any time refuse to return the keys to the old car?
- Did the dealer do anything to prevent you from leaving the dealership?
- If the old car was successfully traded in and there was an outstanding lien on the old car, has the dealer paid off the lien?

Add-On Products. Add-on products are expensive and often unnecessary. The representations made to the consumer about the products are often in conflict with their actual utility. We urge the FTC to question consumers about their experiences with auto dealer add-on products.

- What products, in addition to the car, did the dealer offer to the consumer?
- Did the consumer purchase an extended warranty? What was the cost of the extended warranty? Is the consumer aware of the specifics in the warranty coverage?
- Did the consumer purchase any product in addition to the car, such as any of the following products: vehicle theft protection, wheel/tire protection, Phantom Foot Prints, Window Etch, GAP ("guaranteed asset protection")
- If so, what products were purchased, and what is the purpose of each product?
- Was the consumer aware of whether a service contract or any other add-on product was or was not included in the purchase of the car?
- What was the cost of the add-on products they purchased?
- Has the consumer utilized or interacted with any of the add-on products that they purchased? What was their experience?
- What claims did the dealer make about the specifics of the warranty coverage, the service contracts, or any other add-on products?

Contact with Dealers, Post-Purchase. We agree with the FTC's intention to inquire about dealers' contact with consumer after a purchase has been made, including:

- Did the consumer have any contact with the dealer after driving the car off the lot?
- Did the dealer contact the consumer, or vice versa?
- What was the reason(s) for the contact?
- Was the contact related to the consumer's financing or change in pricing?
- Was the contact related to a car recall or other safety issue?

- How was this contact resolved?
- Did the contact result in consumer surrendering the car?
- Did it result in a change in financing terms or a change in the price owed on the car?
- Was the consumer threatened with arrest if they did not agree to sign another contract on worse terms?
- Did the dealer threaten to report the car as “stolen” if they would not agree to sign another contract on worse terms?
- Was the consumer who is in the Armed Forces threatened with losing their security clearance or getting in trouble with their Command if they did not agree to sign another contract on worse terms?

Car Quality/Safety. Consumers should be questioned about their expectations related to the car quality and safety. The FTC should review thorough history of each consumer’s car, to determine accuracy of representations. For example:

- What vehicle history report(s) did the dealership use to promote the safety/value of its used cars?
- What were the dealer’s representations to the consumer about the car’s safety?
- Did the dealer tell the consumer that the car was safe?
- Was the consumer aware of the full history of the car before they bought it?
- Did the consumer expect that the car would be safe?
- Did the consumer check for unrepaired safety recalls?
- Was the car advertised as being “certified?” If so, did the consumer expect that it would be safe?
- Did the consumer get their own automotive expert to inspect the car prior to buying it? If not, why not?
- Was the vehicle safe?
- Did the vehicle have unrepaired safety recalls at the time of sale?
- Did the vehicle break down soon after purchase and need an expensive repair?
- Did the vehicle's “check engine” light come on soon after purchase?
- Did the vehicle pass an emissions inspection in the state of purchase?
- Did the consumer find out after purchase about prior damage to the car, that was undisclosed at the time of purchase?

Co-signers. The FTC should inquire about consumers’ awareness and understanding of co-signers to the auto purchase. Questions should include the following:

- Did another consumer sign documents on behalf of the consumer to purchase the car? [Who was it – a relative, friend?]
- What were the dealer’s representations relating to a co-signer?
- Did the dealer acknowledge that the co-signer would also be responsible for the amount owed on the car?
- Did the co-signer also receive a copy of the documentation?
- If the dealer said that they would only need another person’s income to get approval, what did the consumer understand that to mean?

Vehicle Registration. The FTC should inquire about consumers’ experience with vehicle and title registration, including:

- Was the consumer able to get the car registered without difficulty?
- Were there delays in getting proper registration for the car?

- Was there clear information about the exact amount of the tag and registration fees?

Conclusion

NACA supports the FTC's intention to examine consumers' experiences with auto dealers. Comprehensive, data-driven research, including an accurate, well-executed consumer survey, can assist the FTC in its work to uncover and curb misconduct in auto sales and financing.

If you have any questions or would like to discuss the issues above, please contact Christine Hines at Christine@consumeradvocates.org or (202) 452-1989.