September 12, 2022

Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580
Via: regulations.gov

Re: Docket ID-FTC-2022-0046-0001; Motor Vehicle Dealers Trade Regulation Rule—Rulemaking, No. P204800

Comment Responding to the Federal Trade Commission's Notice of Proposed Rulemaking

As consumer attorneys and advocates, including private practitioners, legal services attorneys and law professors, who represent car buyers across the country harmed by unscrupulous auto sales and financing practices, we are pleased to submit this comment in response to the Federal Trade Commission's (FTC) notice of proposed rulemaking on the sale, financing, and leasing of motor vehicles by dealers.[1] In our roles, we hear firsthand the numerous ways auto dealers routinely deceive, bully and defraud our clients.[2] Collectively, we have helped thousands of consumers who have been deceived and defrauded into purchasing unsafe cars; tricked and swindled by tactics concerning when a car deal is final (yo-yo financing); ripped off by overpriced and unnecessary add-on products; misled, inconvenienced and then trapped by deceptive advertising and pricing; and other widespread misconduct in the auto marketplace.

We appreciate FTC's recognition of the serious pitfalls consumers face in the auto marketplace, the issuance of its current proposed rule, as well as its robust research and enforcement work in this area.[3] As consumer advocates, we strive to represent and obtain remedies for harmed consumers despite ongoing and persistent barriers to obtaining justice, such as the proliferation of predispute arbitration clauses in auto dealer contracts that prevent car buyers from going before a judge and jury to get their cases heard. FTC's role to enforce federal laws and issue safeguards against the most damaging dealer misconduct is even more crucial when forced arbitration and other obstacles are present, such as the fact that millions of consumers whose rights have been violated are often forced to "go it alone" without legal representation.[4] Further, we acknowledge that FTC is taking this step that will guarantee for all consumers a federal baseline of safeguards in certain auto sales practices given that state laws have various levels of protection.

That said, we strongly believe that FTC can and should strengthen its proposed rule in several respects. We urge improvements to the proposal related to the finality of car deals, transparency in advertising and pricing, and fairness in the sale of add-on products.[5] Additionally, we urge FTC to consider measures that would empower harmed consumers to understand and rely on the rule's protections as

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[1] Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, July 13, 2022.

[2] *See* Nat'l Ass'n Consumer Advocates, *Online Survey: Consumer Harms in Auto Transactions Today*, January 2021 (presenting and discussing the results of a survey of 115 consumer attorneys who represent clients in auto-related cases in which respondents reported seeing fraud and deception during every stage of auto transactions).

[3] *See e.g.* Carole L. Reynolds and Stephanie E. Cox, *Buckle Up: Navigating Auto Sales and Financing, Staff Report of the Bureau of Consumer Protection Federal Trade Commission*, July 2020 (reporting on the results of in-depth interviews with 38 consumers who had recently purchased and financed cars from dealers); Complaint, *Fed. Trade Comm'n v. North American Automotive Services*, et al., N.D. Ill., Case 1:22-cv-01690, Mar. 31, 2022 (taking action a multi-state dealer group for deceptive add-on practices among other illegal conduct).

[4] See, e.g. Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, 2022, available at https://justicegap.lsc.gov.

[5] According to the survey report referenced *supra* note 2, harms related to these categories were among the most commonly seen in respondents' practices. 63% reported representing clients harmed by yo-yo financing, 56% with deceptive add-ons, and 78% with misrepresentations in pricing and advertising.

they seek redress. These recommendations are reflected in and expanded upon in the comment letter submitted by consumer advocacy organizations.[6]

To avoid yo-yo abuses, FTC must ensure finality of signed credit contracts.

Currently, FTC is proposing to make it a prohibited misrepresentation for a dealer to mislead a consumer about when a sale becomes final and for a dealer to mislead a consumer about what will happen to a cash down payment or trade-in vehicle if a sale is not finalized.[7] This approach will not sufficiently prevent dealers from engaging in abusive spot delivery and subsequent pressures on consumers to return to the dealership and enter into additional contracts with less favorable terms. To be more effective in this area, the FTC instead should enact a bright line rule for dealers ensuring that a deal is considered final as soon as the consumer credit contract is signed and require dealers to include a finality clause in all of their consumer contracts. Such an approach would significantly reduce confusion for consumers and dealers alike and dramatically curb predatory yo-yo financing practices. We fully support the evidence and proposal provided in the petition earlier submitted to FTC by the National Association of Consumer Advocates, Consumer Federation of America and other consumer organizations.[8]

Ensure consumers have more power to refuse add-on products.

While FTC's proposal on add-on products may help it to seek accountability for fraud and deception after the misconduct, the proposal should be strengthened to empower consumers to stop the bad practice *before* the harm. In our experience, unscrupulous auto dealers exert significant pressure on consumers during a negotiation and dealers pressure consumers into purchasing add-on products they do not want or need. Consumers should be able to choose add-ons for their cars without undue pressure. In the event unwanted or useless add-on products are included in a sale, FTC should grant consumers a right to cancel or remove any add-on product within a reasonable timeframe, a 30-day period.

We support FTC's proposal prohibiting the sale of add-ons with no value. It should consider including a prohibition of add-ons with almost no value when compared to its price. We also support the proposal to provide a price list to enable consumers to see the true cost of add-ons, specifically for each vehicle for the prices of add-ons for that car.

Ensure consumers can rely on an accurate offering price and financing obligations.

We have observed many consumers after they have paid far more for a car than they expected to, due to dealers using deceptive advertisements and padding transactions with add-ons and junk fees. We recommend that FTC bolster its required disclosures related to the price of a vehicle. The proposed rule would require dealers to disclose a vehicle's actual Offering Price to consumers.[9] FTC should also require that the Offering Price is presented in a simple format and is legally enforceable. To that end, FTC should require that the Offering Price presented to consumers also include the pre-installed mandatory add-on products, and an estimate of government fees and charges such as sales tax and

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[6] Organizations include National Consumer Law Center, Consumer Federation of America, National Association of Consumer Advocates, U.S. PIRG, Consumer Reports, Americans for Financial Reform, Center for Responsible Lending, and Consumers for Auto Reliability and Safety.
[7] Motor Vehicles Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42020, July, 13 2022.
[8] Request for Rulemaking Concerning the Finality of a Car Purchase (Spot Delivery and Yo-Yo Financing), April 29, 2022, available at https://www.consumeradvocates.org/wp-content/uploads/2022/04/NACA_spotdelivery_FTC_04292022_exh.pdf.
[9] *Id.* at 42022.

registration based on the dealer's location. FTC should explicitly provide that any buyer can purchase the car by paying the offering price and the applicable government charges.

FTC has also proposed requiring dealers to make certain disclosures whenever discussing a vehicle's monthly payment.[10] We support the FTC's 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, and a disclosure with an itemization of any trade-in or down payment amounts. We urge FTC to require these disclosures to be made in writing. These measures would serve to make transactions more predictable and more transparent for consumers.

Ensure defrauded and deceived consumers can pursue private remedies.

We recommend that FTC grant consumers a privately enforceable remedy for any violations of the rule to help incentivize car dealers' compliance. While FTC has had a handful of enforcement actions against auto dealers over the last decade, it is not nearly enough to address the vast reach of unscrupulous conduct in the auto sales industry and the thousands of people it injures each year. Private enforcement is necessary. Therefore, FTC should require all disclosures to become terms of the written contracts between dealers and consumers. In this way, car buyers should be able to legally enforce the terms. Moreover, as these claims against dealers are actionable against assignees to the contracts under the FTC Holder Rule, these claims would also be enforceable against the assignees.

Provide these additional protections for car buyers:

1) We support the FTC's proposal to require retention of records, but we strongly recommend that the length of time to retain records be extended from two to seven years or the length of the retail installment sales contract, whichever is longer. We also urge the FTC to require dealers to make a car buyer's records available to that buyer upon request.

2) In its enforcement actions, FTC has noted how non-English speaking car buyers are targeted and scammed by certain dishonest car dealers. We suggest a rule that requires translation of required disclosures and critical sales documents, including the buyers order and the retail installment sales contract.

3) We recommend that FTC eliminate unsafe and unfair tactics for carrying out repossession of cars, and in particular prohibiting the use of electronic disabling and starter interrupt devices.

4) Electronic records and signatures are a fast-growing aspect of car deals. We recommend that the FTC ensure existing protections under the E-Sign Act are enforced by declaring certain misconduct an unfair practice. For example, dealers' failure to ensure consent under the E-Sign Act provisions; failure to ensure written records provided to consumers are fully visible; or failure to ensure records provided electronically can be reviewed and retained by the consumer, should each be considered an unfair practice under the FTC Act.

On behalf of our consumer clients, we appreciate this FTC action to combat abuses in auto sales. Thank you for taking our views into consideration as you move forward with this proposal.

Sincerely,

[10] *Id.* at 42022-25.

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Additional Comments of Signers

"I receive approximately 20 phone calls every week from consumers who have been duped by used car dealers. For the majority of these consumers, I can't help them. This is because the existing laws lack even the basic protections against unscrupulous sales tactics, financing and warranties. I support creating new legislation and/or adding detail and muscle to current law, in an effort to stop dealer abuse and provide fair solutions for consumers." – *Adam Alexander*

"Dealership Finance, Insurance and Warranty extras have been a ripoff for well over 40 years. See Loyola Consumer Law Review, Volume 6, #1, page 5, Fall 1993. Also, the FTC should clarify that warranty disclaimers are not a valid defense to common law fraud and statutory consumer fraud, and if fraud is proven that warranty disclaimers are not an allowable defense to Uniform Commercial Code actions." – *Daniel G. Deneen*

"New Yorkers must rely upon the federal government for consumer protection until the New York State legislature reforms New York's consumer protection laws to protect consumers from unfair and abusive, as well as deceptive, acts and practices, especially in the retail automotive sales sector." – *Russell W. Dombrow*

"There are many dealers who utilize deep subprime lenders who charge fees to take assignments of the vehicles. These fees should be disclosed to the consumer, with a notation "That because you do not have excellent credit, the lender is charging a fee in the amount of ____ to accept assignment of this loan, if you can pay in cash, the cash price if the car would reflect the selling price less this discount imposed by the assignee and passed on by the dealer. This discount could be a hidden finance charge and could cause this transaction to violate The Truth in Lending Act and/or your state's usury laws." – *Ronald Frederick*

"A general manager at a new car dealership recently informed me that the auto dealers association in New York mandates that auto dealers offer each add-on product to customers regardless of whether customers have already informed dealership staff, such as a salesperson or finance manager, that they do not wish to buy any add-on. The sale of add-ons rivals financing as the most profitable business of car dealerships because of the exorbitant profit margin on such sales. Customers should not have to endure the very high-pressure sales tactics that in my practice often lead to several add-ons being included in the sale without the knowledge or consent of customers." – *Novlette R. Kidd*

"With regard to electronic signing of sales contract at the dealer's place of business, in addition to the suggestions provided herein, I strongly urge that it be mandatory that the sales contract and any other document executed by the consumer be displayed on an electronic device, e.g., an iPad, that the consumer be allowed to hold and freely navigate before signing, since it has been my experience that consumers are not allowed to view the terms and provisions, including prices, during the electronic signing, but instead are compelled to trust what the Dealer represents the customer is signing and agreeing to. Simply providing the buyer a copy after a binding contract has been entered does not go far enough, since buyers who E-Sign are often shocked when they eventually read their copy of what was signed when they get home, especially if the copy is provided in electronic form." – *Michael R. Quirk*