

Congress of the United States
Washington, DC 20515

June 21, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

We write to support your efforts to address unfair and deceptive practices in the sale, financing, and leasing of motor vehicles by dealers.¹ We agree that the practices of some motor vehicle dealers impose substantial financial costs on consumers, and the problems you have identified in the automobile financing market are serious, harmful, and widespread. These practices also hurt honest dealers, making it more difficult and costly for them to compete. The Federal Trade Commission (FTC) should move forward with its rulemaking proceeding — the Motor Vehicle Dealers Trade Regulation Rule — and adopt a final rule to address these pressing issues.

Unfair and deceptive practices involving motor vehicle dealers have widespread consequences in the United States. An auto purchase is the second largest financial transaction for millions of American consumers, second only to buying a home. It is the most significant financial transaction for the 35 percent of American households that don't own homes, and nearly all car buyers who finance the purchase of their vehicle do so through the dealership (87 percent), subjecting them to many of the practices highlighted in your notice of proposed rulemaking.² Experts recognize that purchasing a car is a highly confusing process for consumers, so it is unsurprising that the FTC has received more than 100,000 complaints on this topic over the last three years.³

In light of these concerns, the FTC should adopt strong regulatory protections for car buyers. Specifically, the final rule should include the following components:

1. **The use of a uniform, enforceable Offering Price:** The most important factor for consumers purchasing a vehicle is its price, yet that price is often difficult to ascertain without spending hours at the dealership. Car prices are sky-high right now,⁴ and dealer

¹ Federal Trade Comm'n Motor Vehicle Dealers Trade Regulation Rule, Notice of Proposed Rulemaking, 87 Fed. Reg. 42,012 (July 13, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-14214.pdf> (hereinafter NPRM).

² Adam J. Levitin, *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses*, 108 Geo. L.J. 1257, 1262 (2020), available at https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/05/Levitin_The-Fast-and-the-Usurious-Putting-the-Brakes-on-Auto-Lending-Abuses.pdf.

³ NPRM at 42015.

⁴Sean Tucker, *Is Now the Time To Buy, Sell, or Trade-in a Car?*, Kelley Blue Book (Apr. 19, 2023), <https://www.kbb.com/car-advice/is-now-the-time-to-buy-sell-or-trade-in-a-used-car/> (noting that “[n]ew car prices

conduct — for example, through advertisements that deceptively exclude fees or crowd the advertisement with special offers that have limited or no applicability to most consumers — often obfuscates consumers’ ability to learn how much a dealer will accept as full payment.⁵ Dealers also pack vehicle sales with mandatory and price-inflated add-ons, increasing the cost and creating further confusion and uncertainty about a vehicle’s ultimate price.⁶

To remedy this, the FTC should require dealers to provide a simplified, uniform, comprehensive and legally enforceable “Offering Price” that includes all pre-installed and mandatory add-on products. The Offering Price should exclude only charges that a government entity imposes and are paid to it. We also encourage you to require dealers to use the Offering Price consistently, attach it in writing to each vehicle that is offered for sale, include it with all online descriptions of offered vehicles, and permit any consumer to purchase a vehicle by paying the Offering Price (plus applicable government charges) in cash or with other financing.

2. **Longer required record retention periods:** Strong recordkeeping requirements are a critical tool for enforcement agencies and consumers to ensure dealer compliance with any final rule. We encourage you to require auto dealers to retain records of consumer transactions for seven years or the length of the retail installment sales contract.
3. **Language requirements for disclosures and the financing agreement:** More than 20 percent of the U.S. population speak a language other than English at home.⁷ These consumers face significant barriers when navigating the purchase of expensive financial products, including vehicles. Dealers advertise in foreign language publications and employ salespeople who speak other languages, yet dealers generally provide neither required disclosures nor the contract itself in the language used to negotiate with the consumer. The FTC should require dealers to provide all required disclosures and contractual agreements to consumers in the language in which the transaction was conducted.
4. **Clearly defined prohibited misrepresentations.** The Supreme Court’s ruling in *AMG Capital v. FTC*⁸ significantly limited the FTC’s ability to obtain consumer restitution and

remain historically high” although they are in decline, but that “[u]sed car prices are creeping up, with limited supply likely to push them temporarily higher heading into summer.”).

⁵ See Consumer Federation of America, 2021 Consumer Complaint Survey Report 4 (Aug. 8, 2022), available at <https://consumerfed.org/reports/2021-consumer-complaint-survey-report/> [hereinafter CFA 2021 Survey Report]. For the past six years, participating agencies have told CFA that auto-related complaints were the top complaint received from consumers. These annual reports include stories that exemplify the nature of the problems the FTC seeks to address in this rulemaking, such as undisclosed add-ons, hidden dealer fees, deceptive leasing practices, fraudulently altered financing applications, and yo-yo financing.

⁶ See John W. Van Alst et al., National Consumer Law Center, *Auto Add-Ons Add Up: How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing* (Oct. 2017), available at <https://www.nclc.org/issues/auto-add-ons-add-up.html>.

⁷ U.S. Census Bureau, 2019 American Community Survey 5-Year Estimates, Table S1601: Language Spoken at Home (2020), available at <https://data.census.gov/cedsci/table?q=S1601&tid=ACSSST5Y2020.S1601>.

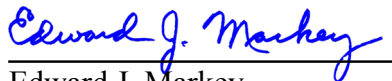
⁸ In *AMG Capital Management LLC v. FTC*, 141 S.Ct. 1341 (2021), the Supreme Court ruled that the FTC does not have the authority to seek restitution for persons harmed by the unfair practices of a defendant, without clear

injunctive relief. A trade regulation that specifically identifies prohibited conduct is necessary to enable the FTC to return money to consumers and stop auto dealers' unfair and deceptive conduct. Promulgating a regulation that prohibits specific misrepresentations will ensure that the FTC can obtain restitution to consumers harmed by these practices.

We encourage you to adopt a final rule with these and other provisions to facilitate a more competitive marketplace, address deceptive sales practices that disproportionately burden car buyers of color, and reduce headaches for consumers.

Thank you for your consideration.

Sincerely,



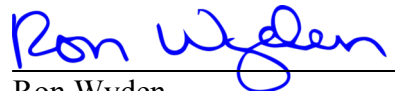
Edward J. Markey
United States Senator



Pramila Jayapal
Member of Congress



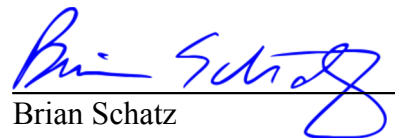
Elizabeth Warren
United States Senator



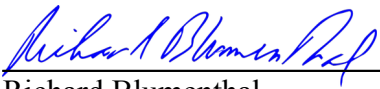
Ron Wyden
United States Senator



Cory A. Booker
United States Senator



Brian Schatz
United States Senator



Richard Blumenthal
United States Senator



Katie Porter
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Greg Casar
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Barbara Lee
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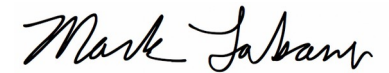
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