



**Independent
Democratic
Conference**

Road to Credit Danger

Predatory Subprime Auto Lending in New York

April 2015

I. Introduction

In 2008, the national mortgage crisis shook the foundations of the US and global economies. Consumer protections and responsible lending practices took a backseat to sky-high, short-term profits as lenders stumbled over one another to cash in on a market with little oversight which abused borrowers for the sake of financial gain. When the market inevitably collapsed, billions of dollars evaporated overnight, and left average consumers reeling as they tried to meet impossible financial obligations in the wake of the economic disaster.

Following the collapse, Congress stepped in, creating legislation to curb the reckless lending practices which led to the crisis. This legislation is known today as Dodd-Frank, but its scope is limited, and it lacks jurisdiction over other financial sectors where consumers are being targeted by predatory lenders today. In 2009, Senator Jeffrey Klein helped to fill the gaps in Dodd-Frank by passing historic protections for homeowners who were threatened by foreclosure. That consumer protection legislation, since renewed by the legislature, will continue protecting homeowners until 2020. However, as regulations have limited lenders' actions in the mortgage industry, their focus has begun to aggressively shift to other sectors—particularly the auto lending industry.

As a result, Senator Klein and Chair of the Senate Committee on Banks, Senator Diane Savino, launched an investigation into this industry where alarming practices reminiscent of the 2008 mortgage crisis are once again threatening New York consumers and the economy. This industry is one with which too many consumers are all too familiar: the big business of subprime auto lending. Practices in this industry are similar to those in the subprime mortgage market prior to the federal crackdown, and in some cases are far more egregious. Lenders and automotive dealers are targeting consumers with viciously expensive, predatory loans whose costs are typically well beyond the means of the borrowers to whom they're assigned. Subprime lenders and car dealerships know that these loans are destructive to the financial well-being of many of their target borrowers, but massive profits in this highly risky business have thus far seemed to override any concerns about consumer welfare or our state's overall economic health.

This report highlights the grave financial dangers posed to both New York consumers and the state's economy by largely unregulated and unmonitored subprime auto lending. It shines a light on practices and high-pressure tactics utilized in the industry to rope in unsuspecting New York consumers and highlights New Yorkers who are currently suffering due to the alleged deceptive practices of various auto lenders and dealers across the state. In many instances, New York borrowers are set up for failure from the beginning, are bombarded by constant advertisements offering bad and risky loans, and then are issued loans that they never had any hope of being able to pay back only to later have their vehicles repossessed and credit ratings further tarnished.

Key Findings and Highlights

Our investigation found many deceptive and dangerous lending practices in the subprime auto market in New York State. Combined with flashy, dishonest, and “too good to be true” advertising, vulnerable New Yorkers are left with little defense against predatory lending. Beyond consumer protection concerns, subprime auto lending raises serious questions about its potential impact to the overall State economy in coming years.

Deceptive Subprime Lending Practices Uncovered

- Abusively High Interest Rates
- Dealer Financing Mark-Ups
- Fraudulent Loan Applications
- GPS Tracking Devices
- Abusive Loan to Value Ratio Financing
- Dealership Fraud
- Spot Delivery Scams
- Vehicle Kill Switches

Deceptive Advertising

- When New Yorkers conduct searches related to bad credit auto loans in the State or City, 89% of all website lender results are bad credit lenders attempting to lure consumers into predatory loans.
- Websites target NY consumers with deceptive promises of 100% guaranteed loan approval.
- Bad credit lenders and dealerships target the most financially vulnerable NY consumers, those who have bad credit, previous bankruptcies, previous foreclosures, and even previous repossessions.
- Some lenders even market specifically to those on a fixed income like Social Security Disability.

Economic Risk

- Subprime auto lending is a growing industry; lenders are aggressively shifting focus to this area.
- Delinquencies and repossession rates are rising in the market as lending standards are relaxed.
- Experts warn that due to the growing concentration of this credit risk among fewer institutions, the risk from high default rates could be spread to the credit market as a whole in dangerous ways. This is particularly dangerous for NYC, as the primary financial center in the US.

II. Financing of Auto Purchases in New York State

According to a 2014 report by the National Automobile Dealers Association (NADA)¹, in 2014 New Yorkers made \$45.5 billion in automobile purchases and registered 967,751 new vehicles. New Yorkers looking to obtain a vehicle have a number of options for how to pay for their vehicle. The most direct way for an individual to finance a vehicle is to save up and then pay the full value of their purchase in cash. Purchasing a car in this manner is straightforward, but most purchasers lack the income or the time to save up in this manner. A majority of auto purchases now include some form of financing. A recent report by Experiansm on the automotive finance

¹ National Association of Auto Dealers, NADA DATA 2014, Retrieved April 13, 2015, from: <https://www.nada.org/nadadata/>

market² shows that 85% of new car deals and 53.8% of used car deals included some form of financing in the second quarter of 2014. According to the New York Federal Reserve Bank, 23% of all borrowers over 18 in New York have taken out auto loans.³ Sometimes, financing a new car deal includes entering into a lease, which is a form of long term rental contract – a lease does not secure ownership of the vehicle. While 14.5% of financial deals were in the form of leases, less than 3.5% of leases were for used vehicles⁴. Loans for the purchasing of vehicles made up the bulk of these financing deals. Individuals looking to purchase a vehicle have various options when it comes to financing.

Getting an auto loan directly from a financial institution like a bank or credit union is one option for financing a vehicle purchase. The consumer may do this before or after they begin shopping for a vehicle, and the approval of such a loan is not tied to any particular vehicle. An individual uses the money they received directly from a financial institution to pay for a vehicle at the dealership. Individuals can also receive financing from a car dealership itself, without having to go directly to a financial institution. According to a 2012 report by the Center for Responsible Lending⁵, the vast majority of financing deals for vehicles are provided through auto dealerships. Dealerships themselves can provide the financing, but most of the time the actual funds come from a third party. In these transactions, the dealers are the initial creditors, but they quickly sell the contract to financial institutions with whom the dealer has a financial relationship. A car dealer will gather credit information from a prospective buyer and enter it into their system; the financing companies that have a relationship with the dealer will then accept or deny the consumer, and if they accept, will provide various financing options.

These indirect financing deals can be executed by a variety of financial institutions. Commercial banks and credit unions are sometimes the indirect financing companies. Large auto manufacturers often have their own non-bank financing arms, know as captives. These subsidiaries of the large auto manufacturers will provide credit to consumers trying to purchase their vehicles. Other non-bank institutions can also participate in these indirect loans. The Experiansm report shows⁶ that commercial banks hold \$299 billion of the \$839 billion in outstanding loan balances for auto loans nationwide. Captive financing companies hold \$223 billion, while credit unions hold \$191 billion. The Federal Reserve Bank of New York estimates that by the end of the second quarter of 2014, the total auto loan market stood at \$905 billion⁷. The rest is held by other non-bank financial entities. The kind of financing company a consumer

²Zabritsky, Melinda, Experian Information Solutions, Inc., State of the Automotive Finance Market Second Quarter 2014, pg. 21 Retrieved April 13, 2015, from: http://www.experian.com/assets/automotive/brochures/experian-auto-2014-q2-credit-webinar-presentation-9-4-2014.pdf?WT.srch=Auto_Q22014FinanceTrends_PDF

³ Federal Reserve Bank of New York: Regional Indicators of Consumer Debt, Retrieved April 13, 2015, from: <http://www.newyorkfed.org/regional/regional-indicators-of-consumer-debt/>

⁴Zabritsky, pg. 23.

⁵ Davis, Delvin, Center for Responsible Lending, The State of Lending in America and its Impact on US Households: Auto Loans (December 2012), pg. 66, Retrieved April 13, 2015, from: <http://www.responsiblelending.org/state-of-lending/reports/4-Auto-Loans.pdf>

⁶Zabritsky, pg. 8

⁷ Federal Bank of New York, “New York Fed Report Shows Rises in Auto Loan Originations and Balances” (August 14, 2014), Retrieved April 13, 2015, from: <http://www.newyorkfed.org/newsevents/news/research/2014/an140814.html>

will deal with varies depending on the nature of the car dealership where they make a purchase⁸. Franchise dealerships are those that are affiliated specifically with certain automakers. These dealers, which will typically bear the name of a car brand, have exclusive relationships with auto makers to sell brand new vehicles of that brand. These dealerships will enter into financing relationships with local commercial banks and credit unions, but also will commonly use the captive financing arm of their respective auto makers. Independent car dealerships lack a direct affiliation with an automaker and thus are limited to the used car market. They operate similarly to the franchise auto dealers in terms of financing. “Buy Here, Pay Here” (BHPH) Dealerships differ from the other two types of dealerships because they generally will finance auto purchases themselves, or will use a financing company affiliated directly with the dealership. These dealerships focus on selling older used cars to customers with poor credit.

Automobile dealerships profit from these financing deals. One way they profit is by being able to bundle additional services, such as warranties or service plans more easily into the final sales price that the financing agreement will pay for. In addition, dealerships also have some discretion in the setting of interest rates for many of these financing deals. The indirect lender provides a range of different financing deals with various interest rates depending on the terms of the contract and the risk involved, but most of these lenders allow the dealers the ability to increase the interest rates within a certain range; the dealer will keep the money made by this increased rate. This is commonly known as the “dealer reserve” or “dealer participation.”⁹ According to NADA’s latest report, around 20% of gross profits from new and used vehicle departments at car dealerships nationally come from the financing and insurance arm of the dealership¹⁰. This system gives dealerships the incentive to steer consumers towards purchases that include a lot of financial add-ons, like service plans, and it also gives dealers the incentive to increase the interest rates that a borrower will have to pay, since they get a cut.

Credit markets, including the auto loan market, can be categorized by the nature of risk presented by a loan, which is generally set by the credit worthiness of the borrower, as well as the ratio between the loan value and the value of the asset¹¹. Loans that are graded as a low risk are reclassified as “prime;” loans thought to be extra safe are classified as “super prime,” while loans below prime can be categorized as “near prime” or “non-prime.” “Subprime” loans are those loans that have significant risk attached to them. The risk for the lender comes generally from the poor credit history of the borrower, though the loan to value (LTV) ratio of a purchase¹² can also help determine whether a loan is to be considered subprime or not. There are also loans classified as “deep subprime.” According to the Experiansm report¹³, there is a significant difference in this area between the credit market for new cars and used cars. Nearly 64% of

⁸ Davis, pg. 64.

⁹ Davis, pg. 71.

¹⁰ NADA DATA 2014, pg. 9.

¹¹ Sengupta, Rajdeep & William R. Emmons, Federal Bank of St. Louis, What is Subprime Lending, 2007 Economic Synopses, number 13. Retrieved April 13, 2015, from: <https://research.stlouisfed.org/publications/es/07/ES0713.pdf>

¹² The asset to loan ratio is the amount of the price of an asset covered by a loan. A loan of \$60 used to buy a \$100 asset has a loan to value ratio of 60%. A loan of \$90 to buy a \$100 asset has a 90% loan to value ratio. The higher the loan to value ratio, the riskier the loan is since the borrower was not able to afford a significant portion of the assets value.

¹³ Zabritsky, pg. 30 and 31.

financing deals for new cars were considered super prime or prime while subprime and deep subprime loans made up 15.22% of the market. In the used car market on the other hand, only 36.56% of loans were super prime or prime while subprime and deep subprime loans made up 41.25% of the market. There is also a significant difference in the kinds of loans different financing institutions will accept¹⁴. Commercial banks, credit unions and captive finance arms prefer super prime and prime loans, with these kinds of loans making up more than 50% of the auto loans they originate. Less than 20% of their loans are classified as subprime or deep subprime. The situation is fundamentally different for Buy Here, Pay Here dealerships and non-bank financial companies. For both of these sectors, subprime and deep subprime loans make up the majority of their loans. For BHPH dealerships, these kinds of loans make up 76.2% of the loans, while for other non-bank financial institutions, subprime and deep subprime loans make up 74% of their loan market.

If subprime and deep subprime loans are so risky, why are financial companies willing to make them? Despite the inherent risks of loaning money to under qualified borrowers, the subprime auto loan market has thus far been a very profitable industry for lenders. This is due to the high rates assigned to loans and the banks' ability to repossess the loan collateral in the event of a default; banks are able to turn profits despite higher default rates. Another driver for this profitability is the strength of demand. These subprime loans are attractive to low credit and low income borrowers who need a vehicle but might not have any other option due to their credit or financial status. Many borrowers are able to drive off the lot without making a down payment or offering any proof of employment or income, without understanding the hidden costs they will bear for such deals. In the end, many of these subprime deals, even those that are completely above the board legally, end up saddling borrowers with high interest rates and loan to value ratios well above 100%, meaning that these borrowers end up paying far more than what they would have paid if they had access to direct financing, or if they had the ability to pay in cash.

Heavier regulation of other credit markets, including new regulations on mortgage lending following the subprime mortgage meltdown, and new payday loan rules, have put a damper on these highly lucrative financial products aimed at borrowers with poor credit. As a result, lenders are seeking business in the subprime auto loan market as a way to fill the void and drive profits up. The market is profitable enough that a significant player in the auto financing market, Ally Financial Inc., the successor to GMAC, announced recently that it wants to expand into the subprime auto loan market¹⁵.

¹⁴ Ibid, pg. 32.

¹⁵Rudegeair, Peter, *Reuters*, "New Ally CEO eyes expansion in subprime auto loans" (February 5, 2015). Retrieved April 13, 2015, from <http://www.reuters.com/article/2015/02/05/ally-financial-strategy-idUSL1NOVF1O520150205>

III. Subprime Auto Loan Deceptive Practices

By their nature, subprime loans are not deceptive or illegal. They provide a product which allows those with a poorer credit history to access funding for necessities like homes, cars and credit cards. However, it is more likely that those who are in poor credit situations may be more willing to accept unfavorable terms on loans or be influenced to make bad financial decisions thinking that is the only way they can access products that can make their lives and their families' lives easier. While the caveat of "buyer beware" is a responsibility all New Yorkers must accept, New York businesses and lenders across the state and nation must also adhere to a standard of business practices that encourages honesty and fair dealing, and avoids fraud and deception in the marketplace. Many do, but a lack of regulation in this industry has fostered a business environment where dishonest dealerships and lenders can thrive.

The Independent Democratic Conference conducted a survey of cases filed in New York against allegedly deceptive dealers and lenders, analyzed testimony provided at all levels of government across the United States on this issue, spoke to attorneys and advocacy groups who deal with this issue in New York State, and researched articles printed throughout major news publications across the nation (including a six part series by the *New York Times*), to create a list of the most deceptive practices occurring in this industry to date.

The Top 8 Deceptive Practices in the Subprime Auto Loan Industry

1. Abusively High Interest Rates: Subprime auto loans are loans made to individuals who have poor credit. Consequently, many of these individuals are not financially equipped to bear the burden of an expensive auto loan. Due to their risky nature, lenders have to cushion inevitable defaults with very high annual interest rates that sometimes hover around 24%.¹⁶ As a result, the most expensive loans are being issued to those individuals who are least able to pay them back.

High interest rates are correlated with high repossession rates. Buy Here, Pay Here dealerships typically offer very high interest rates around the same levels as subprime and deep subprime loans, and repossessions are a fundamental part of their business plan. While the most recent data indicates that the overall repossession rate in the auto market (for all credit levels) is .62%¹⁷, (a spike in repossession rates of 70% since last year), one of America's largest publicly-held BHPH dealerships had a repossession rate of around 18%¹⁸. BHPH dealerships on average have a default rate of around 25%; when these cars are repossessed, they are put back on the lot, sold to another buyer, and the cycle begins

¹⁶ Used Car Loan - Bad Credit Advice: Get a Low Rate Today. (n.d.). Retrieved April 8, 2015, from <http://www.carsdirect.com/auto-loans/used-car-loan---bad-credit-advice-get-a-low-rate-today>

¹⁷ State of the Automotive Finance Market Second Quarter 2014. (2014). Retrieved April 15, 2015, from http://www.experian.com/assets/automotive/brochures/experian-auto-2014-q2-credit-webinar-presentation-9-4-2014.pdf?WT.srch=Auto_Q22014FinanceTrends_PDF

¹⁸ Buy Here, Pay Here: Bottom-feeding for used car buyers. (2010, November 29). Retrieved April 15, 2015, from http://archive.fortune.com/2010/11/29/autos/americas_car_Mart.fortune/index.htm

again.¹⁹ These cars are recycled and resold by BHPH dealerships up to 8 times in some cases.²⁰ Average annualized repossession rates in the subprime auto market are around 9.5%²¹.

2. Abusive Loan to Value Ratio Financing: The loan to value (LTV) ratio [the cost of the loan vs. the actual value of the vehicle] in the subprime market is very high. With most prime or super prime loans, the LTV is low, hovering around (slightly under/above) 100%. That means, when a prime consumer takes out a loan for a vehicle, after the cost of financing, they are paying about what the vehicle is worth. However, with subprime loans, because interest rates are so high and buyers are encouraged to purchase vehicle customizations which are rolled into the cost of the loan, the LTV ratio can sometimes exceed 200%. This is the case with a full 23% of subprime auto loans.²² In many cases, consumers are effectively paying twice the actual vehicle's value for the sake of securing financing.

3. Dealer Financing Mark-Ups: Currently, dealers are allowed to mark-up interest rates on loans to drive higher profits. These mark-ups on new vehicles average around 1.01% for new vehicles and 2.91% for used vehicles. The average for both used and new is 2.47% and the average actual cost of the mark-up to the consumer is \$714, but can be as high as \$1,700 for a new car and \$1,200 for a used car.^{23,24} This can add hundreds of dollars to the cost of a loan by the end of its term. There are no disclosure requirements on these mark-ups, and many borrowers are not even aware that they exist. In 2010, the most recent year for which data is available, these mark-ups cost New York consumers a total of over \$1.5 billion.²⁵

Alarming, investigations by the Consumer Financial Protection Bureau (CFPB) have identified discriminatory patterns and practices in these mark-ups that run afoul of the Equal Credit Opportunity Act (ECOA):

During the last two years, multiple supervisory reviews have identified indirect auto lenders with discretionary pricing policies that resulted in discrimination against African-American, Hispanic, and/or Asian and Pacific Islander borrowers in violation of

¹⁹Bensinger, K. (2011, October 30). A vicious cycle in the used-car business. Retrieved April 16, 2015, from <http://www.latimes.com/business/buy-here-pay-here/la-fi-buy-here-pay-here-part1-storyb-story.html#page=1>

²⁰Bensinger, K. (2011, October 11). The Golden Kia. Retrieved April 16, 2015, from <http://www.latimes.com/business/la-fi-buy-here-pay-here-timeline-interactive-htmlstory.html>

²¹Below-Prime Auto Finance Industry Slipping but Not Falling. (2014, July). Retrieved April 15, 2015, from http://coladv.com/wp-content/uploads/Below-Prime-Auto-Finance-overview_July-2014.pdf

²²Gilani, S. (2015, January 16). The Next Subprime Crisis Has Already Started. Retrieved April 7, 2015, from <http://moneymorning.com/2015/01/16/the-next-subprime-crisis-has-already-started/>

²³ Davis, D., & Frank, J. (n.d.). UNDER THE HOOD: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses. Retrieved April 8, 2015, from <http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/Under-the-Hood-Auto-Dealer-Rate-Markups.pdf>

²⁴ What Does the Average Dealer Rate Markup Mean to Consumers? (n.d.). Retrieved April 8, 2015, from <http://www.responsiblelending.org/other-consumer-loans/auto-financing/tools-resources/average-markup.html>

²⁵ Rate Markup Volume by State (2009). (2010). Retrieved April 14, 2015, from <http://www.responsiblelending.org/other-consumer-loans/auto-financing/tools-resources/rate-markup-volume-by-state.html>

*the ECOA. These institutions maintained discretionary pricing policies while not adequately monitoring and controlling the fair lending risk associated with their policies. Examination and enforcement teams have already reached resolutions with several supervised institutions that will collectively pay about \$136 million to provide redress for up to 425,000 consumers, an average of more than \$300 per consumer.*²⁶

Data from 2010 indicates that race-based mark-ups are prevalent in New York. Information from GMAC showed that dealer mark-ups were 311% higher for African-American customers than those for Caucasian customers.²⁷

4. Dealership Fraud: Dealers sometimes engage in dishonest or fraudulent practices to coerce buyers into vastly increasing the cost of their loans in order to increase dealer profits on the back end of the financing. This costs consumers thousands of dollars over the term of the loan, especially in high interest scenarios where interest rates can be around 24%. These increases in the total loan amount can result from additions such as (sometimes nonexistent) service contracts, warranties, insurances, or anti-theft measures like window VIN-etching. Dealerships sometimes tell a buyer that in order to receive financing, the buyer must purchase these add-ons OR dealerships fail to inform buyers they are not required to purchase the add-ons. Alternatively, dealerships in some cases have simply orally represented to consumers that they will sell a vehicle for a certain price, then have inflated the sales price on the retail installment contract by thousands of dollars while simultaneously rushing buyers through the RIC paperwork and not informing them of the fraudulent discrepancy in the sales price.

The practice of obscuring financing and sales terms in the subprime auto industry is so notorious that it has a nickname, the “Five Finger Spread” (referencing a maneuver in which a salesman covers up terms in the contract with his fingers while a consumer victim signs the document).²⁸

5. Fraudulent Loan Applications: Dealerships may list on the loan application an inflated income level that does not reflect the true income of the applicant. In this scenario, a consumer may be granted credit based on false information, thus placing the consumer in a position of paying back a loan which the consumer cannot afford due to his or her true income level. Sometimes, borrowers do not see the actual loan application or are only made aware of the content of the loan application after the financing is finalized and the vehicle is delivered, only to discover after the fact that they cannot afford the vehicle they’ve purchased. Banks sometimes do not require income verification, and thus inaccurate loan applications can be pushed through without checks and balances to combat fraud.

²⁶ Supervisory Highlights. (2014, January 1). Retrieved April 13, 2015, from http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf

²⁷Racial Disparities in Auto Lending: A State-by-State Reminder Why Auto Dealers Must Be Subject to the Consumer Financial Protection Bureau. (2010, May 4). Retrieved April 16, 2015, from http://www.nclc.org/images/pdf/regulatory_reform/issue-brief-auto-dealer-racial-disparities.pdf

²⁸Cannon v. Metro Ford, Inc., 242 F. Supp. 2d 1322, 1329 (S.D. Fla. 2002) at 1328.

In some cases, lenders seem to be complicit with this kind of behavior, and continue to aggressively pursue borrowers despite being informed of the fraudulent nature of dealer activity or the loan application. The lenders' liability is generally limited to the remaining unpaid loan balance under New York's Holder in Due Course rule. That means in general, consumers utilizing the Holder in Due Course theory are not able to hold lenders liable except for the amount remaining on the loan (canceling the loan), and pursuing lenders legally beyond loan cancellation is difficult.

6. Spot Delivery Scams: Dealers sometimes engage in what are called "conditional delivery," "spot delivery," or "yo-yo financing" scams. These scams involve agreeing to certain financing terms, giving the buyer a vehicle to take home, and then calling the buyer back into the dealership with an indication that financing was denied. At this point, the buyer receives an ultimatum to either refinance the vehicle under far less desirable terms (higher interest rates, etc.) or surrender the vehicle back to the dealership.²⁹ This is a high-pressure, deceptive tactic that puts the buyer in a position of either agreeing to the new terms (which are more profitable for the dealer) or not having a vehicle to drive. While some conditional deliveries are legitimate, the line between these legitimate contingent deliveries and scams is blurry.

Beyond the financial concerns at the dealership are alarming issues about safety and privacy that are unique to the subprime auto loan industry. With subprime mortgages, the concerns were for the most part exclusively financial. However, due to the mobile nature of vehicles, subprime lenders have begun to utilize advanced technological tactics in order to secure and repossess their collateral. While this is good for lenders, it can be a nightmare for consumers.

7. GPS Tracking Devices: Due to the high default risk, it is common practice for lenders to install GPS tracking devices on autos purchased via subprime loans. Ostensibly, lenders utilize these devices to locate vehicles when necessary for repossession. However, because these devices are unregulated, and their use is "consented to" by the buyer, there are virtually no limitations on how and when the lender may track a user's vehicle.³⁰ This tracking raises potential privacy concerns that should be further investigated.

8. Vehicle Kill Switches: The aforementioned GPS devices also sometimes have an embedded kill switch to disable the vehicle in the event that a buyer does not pay his or her bill on time. The kill switch, sometimes referred to as a starter interrupt device, can have serious safety ramifications. There have been reports of vehicles being shut down while driving (even on the highway).³⁰ Though lenders claim these switches cannot be activated while the vehicle is on, drivers have reported incidents where this has occurred. In a related safety scenario, drivers may need to use their vehicles in the event of a medical emergency. If the vehicle is disabled during this period, they cannot, regardless

²⁹ Reed, P. (n.d.). Don't Fall Prey to Spot Delivery Scams and Yo-Yo Financing. Retrieved April 8, 2015, from <http://www.edmunds.com/car-loan/dont-fall-prey-to-spot-delivery-scams-and-yo-yo-financing.html>

³⁰Corkery, M. (2014, September 24). Miss a Payment? Good Luck Moving That Car. Retrieved April 7, 2015, from http://dealbook.nytimes.com/2014/09/24/miss-a-payment-good-luck-moving-that-car/?_r=0

of the emergency. Lenders claim there are overrides for these emergency purposes, but drivers have reported incidents where they were not able to use their vehicles even despite attempted overrides.³⁰

One can see from these innovative and abusive tactics that despite the inherent financial risks of the subprime auto loan market from a lender's perspective, lenders have developed new ways of driving profit in a market where defaults and risk are very high. Abusively high rates assigned to loans and banks' ability to repossess the loan collateral in the event of a default have allowed lenders to drive massive profits (at least in the short term), but these new tactics come at the cost of consumers' credit ratings, livelihood, safety, privacy, and financial stability. The ease by which under qualified borrowers are issued loans they cannot afford is alarming. This subprime financing is initially attractive to borrowers who need a vehicle but might not have any other option due to their credit or financial status; these borrowers are caught between a rock and a hard place as a result of their need for a vehicle, and many do not understand the predatory nature of these loans and the risks involved.

Many borrowers are able to drive off the lot without making a down payment or offering any proof of employment or income. This can lead to fraud or inaccuracies on loan applications, resulting in buyers being qualified for loans that are outside their income levels and personal budgets. Meanwhile, dealerships are predictably taking advantage of relaxed lending standards by aggressively marketing to the subprime consumer sector and reeling in unsuspecting borrowers via dishonest promises. The next section takes a look at these practices through the eyes of those affected most by these practices—New York consumers.

IV. Incidents of Consumer Abuse in New York State

We begin our exploration of the human side of deceptive practices of the subprime auto loan industry in New York with a look at Rodney Durham, a 62-year-old New York retiree whose sole source of income at the time of his vehicle purchase was Supplemental Security Income (SSI). Mr. Durham alleges that he visited Royal Ford Motor, Inc., an upstate car dealership, with the purpose of purchasing a vehicle, and secured financing through Wells Fargo for a vehicle which cost \$14,500 pursuant to a retail installment contract (RIC).³¹ Prior to his purchase, while at the dealership, Mr. Durham persistently rejected offers from the dealership based upon the fact that he could not afford the payments, until eventually he was surrounded by the salesman, finance manager, and another employee, who convinced Mr. Durham to make the purchase using high-pressure sales tactics that are notoriously utilized in the used car sales industry.³²

Mr. Durham's income was only \$800 per month, and yet his car payments were \$289.18, with a term of 72 months.³¹ These payments constituted over a third of Mr. Durham's income, a percentage that is not affordable for most consumers, especially those with a weekly income of around \$200. After three months, Mr. Durham was predictably unable to continue to afford his payments, and his vehicle was repossessed. At no point prior to the repossession had Mr.

³¹ Durham v Royal Ford motor, Inc., Wells Fargo Dealer Services, Index No. 2015-0442, 2015, NY Sup Ct, Durham complaint at 2.

³² Durham complaint at 4.

Durham been able to view his credit application. Ultimately, upon appealing to the Attorney General, he was able to view the application and noticed that the credit application falsely stated that he worked at Lourdes Hospital and earned \$35,000 annually. Mr. Durham has not worked at the hospital since 1987, and has never earned close to \$35,000.³³ The scenario left Mr. Durham without a vehicle, stuck with debt he could not afford, and a further diminished credit score.

Mr. Durham's case highlights all too common practices that are occurring in New York State when low income or fixed income individuals with sub-par credit go to purchase a car in New York State. Both Mr. Durham's income and his employment information were falsified for this purpose, unbeknownst to him. His case demonstrates a lack of transparency in the loan application process at dealerships, as well as the problems which can stem from it. Mr. Durham's case is only one of several our investigation uncovered. The following are additional cases highlighting many of the abusive industry practices outlined.

All facts alleged in plaintiff complaint filings.

Case #1: Anwar Alkhatib v New York Motor Group LLC et al

Anwar Alkhatib is a consumer who purchased a 2008 Honda Odyssey mini-van. The vehicle was advertised online for sale for approximately \$14,995.³⁴ Despite its listed price, upon arriving at the dealership, Mr. Alkhatib noticed that the van had a sticker price of \$16,995. After negotiations, the dealership agreed to offer the vehicle for sale at a price of \$14,995. Mr. Alkhatib explained that he wanted to make a down payment of \$10,000 and finance the remaining \$4,995 of the sale price. A representative of the dealership agreed to further reduce the price to \$13,995 as a result of the large down payment. Mr. Alkhatib was asked to place a \$200 deposit on the vehicle and return the next day to negotiate the financing. He was not provided a receipt for his deposit and returned the next day; he was told that he had to make his entire deposit before any loan application could be made on his behalf.³⁵ Following his deposit, Mr. Alkhatib was made to wait 2 hours before being introduced to the financing manager, Mr. Julio Estrada. Mr. Alkhatib was told that he had been denied financing from Chase and TD Bank due to his poor credit rating; Mr. Alkhatib was shocked to hear this as he had not filled out a loan application. He requested copies of the letters declining him credit, but the dealership refused to provide documentation and informed Mr. Alkhatib that they would be mailed to his home. The letters were never mailed.

At this point, Mr. Alkhatib was told that due to his poor credit, he would have to accept one of two financing options: either (1) a \$4,500 processing fee, 15% APR, and a prepayment penalty for pay offs within the first 18 months, or (2) a \$1,750 processing fee, \$2,700 for "insurance," \$3,000 for a service contract, and 10% APR.³⁶ Mr. Alkhatib then informed the dealership that he did not want to purchase the vehicle due to the high cost of the financing. At this point, Mr. Estrada told Mr. Alkhatib that since the financing process had already begun, the dealership

³³ Durham complaint at 3.

³⁴Alkhatib v New York Motor Group LLC et al, No. 1:13-cv-02337-ARR-SMG (PACER), (E.D.N.Y.), Alkhatib complaint at 5.

³⁵Alkhatib complaint at 6.

³⁶Alkhatib complaint at 7.

could not cancel it without Mr. Alkhatib incurring a penalty of 35% of the cash price. The dealership also informed Mr. Alkhatib that if he cancelled, the dealership would keep his \$10,000 deposit, and he would have to wait for a collection company to send him a refund after the 35% was taken. Mr. Alkhatib then offered to pay cash to avoid the outrageous financing cost. The dealership informed Mr. Alkhatib that at this point, it would be necessary to use the dealership's financing options. Feeling he had no good options, Mr. Alkhatib agreed under duress to the financing which included additional charges in excess of \$7,450.³⁷

The dealership then prepared a retail installment contract and purchase agreement that did not itemize additional charges and instead simply inflated the vehicle price to \$21,457.50. The RIC indicates that the amount financed is \$13,309.53 and the finance charge is \$4,034.67 with an APR of 10.76%. The RIC also indicates that Mr. Alkhatib will have to make payments of \$17,344.20 after putting down \$10,000, for an outrageous total vehicle cost of \$27,344.20.³⁸ Mr. Alkhatib later learned through his own research that the "insurance" purchased on his vehicle was fraudulent and did not exist.³⁹

This case highlights bait and switch tactics, high-pressure sales tactics, coercion, and fraud. It is also a prime example of how unnecessarily expensive financing can become when dealers incorporate add-ons like special insurance, warranties, and additional accessories to the financing. A vehicle that should have cost Mr. Alkhatib around \$14,000 cost a whopping \$27,000 after (fraudulent) add-ons and financing charges.

Case #2: Enrique Meza v Five Towns Nissan, LLC et al

On March 5, 2014, Enrique Meza went to purchase a 2012 Nissan Sentra SR at Five Towns Nissan after seeing an advertisement online that listed the car for sale at a price of \$12,088.⁴⁰ Mr. Meza was able to negotiate the sale price down to \$11,000. He put a \$7,300 down payment on the car, as well as \$1,050 for insurance. Mr. Meza signed a retail installment contract for the remainder of the vehicle's price, but the dealership prevented him from having physical possession of the RIC. Mr. Meza, unable to register the vehicle because the dealership did not provide him a title to it, contacted Condor Capital Corporation for a copy of the RIC. Upon reading the RIC, Mr. Meza realized that the document listed the sale price as \$17,627.99. The price listed on the RIC inflated the cost of the vehicle by over \$6,500.⁴¹

The RIC also listed another dealership (not the one Mr. Meza visited) as the seller of the vehicle.⁴² Mr. Meza explicitly told the dealership he did not want a service contract, but they included this contract in the RIC anyway, at a price of \$2,000. Mr. Meza also claims that the dealership placed his initials (unbeknownst to him) on the RIC next to the \$2,000 service

³⁷Alkhatib complaint at 8.

³⁸Alkhatib complaint at 9.

³⁹Alkhatib complaint at 10.

⁴⁰ Enrique Meza v Five Towns Nissan, LLC. et al, No. 2:14-cv-03781-JFB-GRB (PACER), (E.D.N.Y.), Meza complaint at 3.

⁴¹ Meza complaint at 4.

⁴² Meza complaint at 5.

contract. Condor (the financing company) was made fully aware of this fraud, but continued to insist that Mr. Meza pay on the fraudulent RIC.⁴³

This case highlights dealer fraud in the creation of retail installment contracts. Mr. Meza was charged a highly-inflated and fraudulent price for his vehicle despite making a large down payment. Had Mr. Meza been able to obtain a copy of the RIC at the dealership, he would have noticed this problem immediately, but the dealership prevented him from obtaining it during his visit there. This case also shines a light on lender complicity with, and lack of accountability regarding, dealership fraud, as the lender continued to demand payment from Mr. Meza despite being informed that the RIC was a fraudulent document.

Case #3: Rhonda Christo, Anthoney Christo v Fuccillo Hyundai of Syracuse, Inc.

On September 14, 2013, the Christos purchased a 2013 Hyundai Sonata from Fuccillo Hyundai of Syracuse. The purchase was financed through a retail installment contract.⁴⁴ Upon providing accurate income information to the dealership, a dealership employee informed the Christos that the only vehicle on the lot that their credit would qualify them for would be a 2013 Sonata and that purchasing a new Sonata would be cheaper than purchasing a used car. The Christos note later in their complaint that both claims were false. The Christos were hesitant to purchase the Sonata due to the high interest rate, but the dealership assured them that a bank would qualify them and that there would be no problem with the financing. The retail installment contract states that the Christos would incur a monthly payment of \$599.84 for 72 months at an interest rate of 18.99%.⁴⁵

Using high-pressure sales tactics, employees at the dealership rushed the Christos through documents which required their signature, and when they asked for further explanation, the employees would state something so fast that the Christos could not understand it. Included in the documents was a spot delivery agreement. This spot delivery agreement made the retail installment contract contingent upon the approval of outside financing. Fuccillo regularly utilizes spot delivery agreements. The Christos signed the retail installment contract and the spot delivery agreement.⁴⁶ Days later, Fuccillo called the Christos and informed them that their financing had been denied; the Christos were never provided with a denial letter. Fuccillo told the Christos that they could purchase the vehicle without engaging in or signing any further paperwork once Mr. Christo has a better job.⁴⁷

This case is a good example of (1) the egregious costs to unsuspecting consumers of financing in the subprime market, and (2) spot delivery scams. The financing inflates the actual cost of the vehicle by 68% due to the high APR and loan term (168% LTV ratio). Finance charges alone total \$17,670 when the original cost of the vehicle totals only \$25,550. The total cost to the consumer is \$43,188. The dealership appears to have used the spot delivery tactic to place the

⁴³ Meza complaint at 7.

⁴⁴ Rhonda Christo, Anthoney Christo v Fuccillo Hyundai of Syracuse, Inc., Index No. 20134EF3563, 2014, NY Sup Ct, Christo complaint at 2.

⁴⁵ Christo complaint at 3.

⁴⁶ Christo complaint at 4.

⁴⁷ Christo complaint at 5.

Christos in a high-pressure situation that would likely make any consumer feel obligated to purchase a vehicle regardless of the challenges involved at their credit level.

Case #4: Samuel C. Perez v Tri State Auto Mall, Inc. et al

In January, 2010, Samuel Perez visited Auto Palace, Inc. in Queens County to purchase a 2005 BMW X5, and to trade in a 2005 Audi A4. Auto Palace claimed that Mr. Perez's interest rate on the car loan would be 8.49% and that it would drop down to 6% after his first six payments. Mr. Perez was told that he would have to purchase a \$3,000 warranty to receive the quoted interest rate.⁴⁸ Auto Palace also claimed it would pay off the balance of the note on the Audi. Auto Palace did not obtain a warranty, but merely inflated the sales price of the BMW by \$3,000 and pocketed the money. The dealership did not provide Mr. Perez a title to the vehicle, thus preventing him from registering and legally driving it.⁴⁹ The vehicle also had undisclosed accident damage and a leaking sunroof. Mr. Perez brought the vehicle to the dealership for repair, but the dealership could not repair the leak.

Mr. Perez then received correspondence from Teachers Federal Credit Union demanding payment for the vehicle. Mr. Perez never applied for membership with the credit union, had no dealings with the credit union, and never entered into a loan agreement with the credit union. Nor is he eligible for membership at the credit union. The payments demanded by the credit union were higher than the dealership claimed they would be. At this point, Mr. Perez returned the BMW, and through his attorney, exercised his rights under the Uniform Commercial Code (UCC) to revoke acceptance, and demanded the return of his Audi.⁵⁰ Mr. Perez informed the credit union that the information on the loan application was falsified, that his income on the application was substantially inflated, and that he had not signed the contract. Despite having notice that the contract was fraudulent, Teachers Federal Credit Union continues to demand payment.⁵¹

Like Anwar Alkhatib's case, Samuel Perez's case illustrates issues with dealerships tacking on warranties (sometimes fraudulent or nonexistent) onto the financing charges, and claiming to buyers that the warranties are a condition of the purchase. The case also demonstrates fraudulent loan applications that are either incorrectly filled out by the dealer and/or are not authorized by the consumer. In this instance, as in some others, the lender (Teachers Federal Credit Union) continued to demand payment from the consumer despite being informed that the loan application was fraudulent and not authorized by the consumer.

Case #5: Mary Bridges v Crest Automotive Inc., Wells Fargo Dealer Services

Mary Bridges is a 75-year-old retiree whose sole source of income at the time of her vehicle purchase was \$1,155 per month in Social Security benefits. Responding to a mail-in promotion for a chance to win a vehicle, Ms. Bridges visited the dealership with no intent of purchasing a

⁴⁸ Perez v Tri State Auto Mall, Inc. et al, No. 1:10-cv-02389-CBA-JO (PACER), (E.D.N.Y.), Perez complaint at 2.

⁴⁹ Perez complaint at 3.

⁵⁰ Perez complaint at 4.

⁵¹ Perez complaint at 5.

vehicle.⁵² Dealership employees coaxed Ms. Bridges into test driving a Buick, at which point Ms. Bridges told the dealership employees that if she did buy a vehicle, she would like her monthly payment to stay the same, and that she could not afford a payment over \$200. Her vehicle payment at the time of the trade was \$152. The salesman verbally represented to Ms. Bridges that if she purchased the Buick, her monthly payment would remain the same. Ms. Bridges agreed to purchase the Buick based on the representations of the salesman that her payment would not increase.⁵³ The salesman spoke to Ms. Bridges outside the presence of her daughter and handed her a stack of documents to sign. The retail sales agreement that she signed increased her monthly payment to \$252.85 per month. The dealership did not notify her of this prior to having her sign the documents. While the salesman filled out the loan application, Ms. Bridges informed the salesman that her income was \$1,200 per month from Social Security benefits. Ms. Bridges later learned that the application listed her income as \$2,500 per month.⁵⁴

This case, like Rodney Durham's, involves a dealership fraudulently inflating income levels on a loan application. What's worse, the dealership used high-pressure and deceptive sales tactics on an elderly person who explicitly expressed that her limited income would require a monthly car payment under a certain threshold (\$200); the dealership orally misrepresented to Ms. Bridges that her payment would not increase if she purchased the vehicle from the dealership, and failed to adequately inform her of the massive 66% payment increase before she took possession of the vehicle. In the end, she was saddled with a car payment approaching 22% of her monthly income, which at the time was a mere \$1,155 in Social Security benefits.

Case #6: Michelange Lubin v Metro Chrysler Plymouth Inc. dba Star Chrysler Jeep Dodge

On March 18, 2008, Michelange Lubin went to Star Chrysler to purchase a vehicle and ultimately decided upon a 2008 Jeep Wrangler. The window sticker listed the base price as \$27,490 and stated that the total price with options was \$30,785. The sales staff at the dealership told Mr. Lubin they would sell the vehicle for \$27,000 "and change," if Mr. Lubin made a \$10,000 down payment. The dealership agreed to take Mr. Lubin's 2002 Volkswagen Jetta as a trade-in and agreed to pay the balance on the Jetta's note.⁵⁵

Mr. Lubin needed to go to his bank to get a certified check for his down payment. Before he did, the dealership insisted that Mr. Lubin leave \$500 as consideration for his interest in purchasing the vehicle. Mr. Lubin made the \$500 deposit and then went to the bank to obtain a certified check for \$9,500. Just before Mr. Lubin signed the contract, the dealership utilized a "bait-and-switch" tactic and tried to sell Mr. Lubin a 2007 vehicle instead of the 2008 vehicle he placed a deposit on. After he made a deposit and the dealership promised him the 2008 vehicle for \$10,000, the dealership demanded an additional \$5,000 down payment for the purchase of the 2008 model. Pressured by work responsibilities and time constraints, Mr. Lubin agreed and paid the additional \$5,000 down payment.⁵⁶

⁵² Mary Bridges v Crest Automotive Inc., Wells Fargo Dealer Services, NY Sup Ct, Bridges complaint at 2.

⁵³ Bridges complaint at 3.

⁵⁴ Bridges complaint at 4.

⁵⁵ MichelangeLubin v Metro Chrysler Plymouth Inc. dba Star Chrysler Jeep Dodge, No. 1:08-cv-04953-ARR-JO (PACER), (E.D.N.Y.), Lubin complaint at 2.

⁵⁶Lubin complaint at 3.

Despite arriving at the dealership in the morning, the sales team at the dealership dragged out the sales and financing process until 7:30 or 8PM, wearing Mr. Lubin down.⁵⁷ During this process, the only price Mr. Lubin was quoted was \$27,000.⁵⁸ It wasn't until Mr. Lubin arrived home that he realized the dealership had severely inflated the price of the vehicle on the retail installment contract. Despite telling Mr. Lubin the sales price was \$27,000, the dealership charged him \$41,216.32 on the RIC. This is a price increase of 53% over the quoted price. The next morning, less than 24 hours later, Mr. Lubin went to the dealership to revoke/reject acceptance based on fraudulent inducement by the dealer. Mr. Lubin returned the Wrangler and demanded return of his Jetta. The dealership refused to return the Jetta and threatened Mr. Lubin. Mr. Lubin called the police, and explained the discrepancy between the price on the RIC versus the price on the window sticker, and the police advised Mr. Lubin to seek legal counsel.⁵⁹

The dealership claimed it sold the Jetta in the narrow timeframe between when Mr. Lubin purchased the Wrangler and when he attempted to return it less than 24 hours later.⁶⁰ After Mr. Lubin retained legal counsel, the dealership later claimed that the price increase on the RIC reflected the “negative equity” of the Jetta, stating that the trade-in value was substantially less than they quoted Mr. Lubin and that the difference had been added to his financing on the RIC.⁶¹

This case, like Mr. Meza's, illustrates issues with dealerships creating inflated and fraudulent retail installment contracts. In this case, the dealership's fraud ballooned the purchase price of Mr. Lubin's vehicle by several thousands of dollars, a number that he was not quoted during any point of the sales process. This also demonstrates problems that arise when dealerships orally represent prices and terms to buyers and then rush them through complicated contracts and documentation that substantially inflate the vehicle prices. Of particular concern in cases like these are sales of the buyer's trade-in. The dealership claims it immediately sold the trade-in, so despite attempting to mitigate his losses, Mr. Lubin can't get back his trade-in vehicle regardless of his efforts to return to the same position he was in prior to the fraud. Finally, this case illustrates a “bait-and-switch” tactic which is not unlike the conditional delivery strategy seen in the *Christo* case. These tactics are meant to prime a buyer for the purchase of a vehicle, get them excited about it, and then at the last moment, place them in a situation where they feel they have no options, and must accept an older, less valuable vehicle, or agree to less favorable financing terms.

The previous cases highlight disturbing consumer issues in the subprime auto loan industry. Once a subprime car dealership or lender lures a victim in, high-pressure sales tactics, fraudulent loan applications, inflated income claims, false employment claims, preying on the elderly and those with limited incomes, spot delivery scams, expensive add-ons, sky-high interest rates, and fraudulent insurances/warranties all become tactics utilized to increase dealership and lender profits at the cost of unsuspecting consumers. When a consumer does fall prey to these tactics, often times their only avenue is to pursue costly and time-consuming litigation. In the meantime,

⁵⁷Lubin complaint at 3.

⁵⁸Lubin complaint at 4.

⁵⁹Lubin complaint at 4.

⁶⁰Lubin complaint at 5.

⁶¹Lubin complaint at 6.

lenders demand payment as the consumer's credit score declines and their vehicle is repossessed or worse, shut down via kill switch while they're driving on the highway.

V. Website Analysis

So how do New Yorkers, like the ones highlighted in this investigation, get themselves in a position where they are subject to the deceptive practices outlined in this report? Many times it is a simple case of the wrong business at the wrong time. But more often than not, they are lured into the false promise of being able to secure an important asset like a car, with little or no investment or security, through an advertisement on the internet. Promising New Yorkers a brand new car with no job, bad credit, and no money down can prove to be a recipe for disaster.

The Independent Democratic Conference decided to take a close look at Google (by far the most popular and predominant search engine) to investigate how New York consumers in the subprime auto market are targeted by lenders and dealers, and which terms are used to induce them to engage in subprime borrowing in order to secure a vehicle. Basic searches for subprime auto loan keywords yield alarming results, with websites from local car dealerships, national subprime lenders, and lender-finding services all targeting borrowers with enticing offers and catchy terms, many too good to be true.

Methodology

Staff conducted three Google search queries: a general search for “bad credit auto loans,” as well as two other searches that hone the results to be more specific geographically to “New York” and “New York City” by appending those terms to the beginning of the search queries. The first ten pages of search results for each search were analyzed to determine the content of the most popular, high-ranking results, as these are the websites consumers are most likely to view. If a website surfaces more than once in a single search query, any duplicates are eliminated because the information is redundant. Staff focused analysis only on websites that are “lenders” (dealerships offering financing, direct lenders, and lender-finding services). Analysis was then conducted based upon “terms of concern” (see *Figure 3*) to determine what percentage of all lenders are “bad credit lenders” (see *Figure 1*) and how they are targeting consumers.

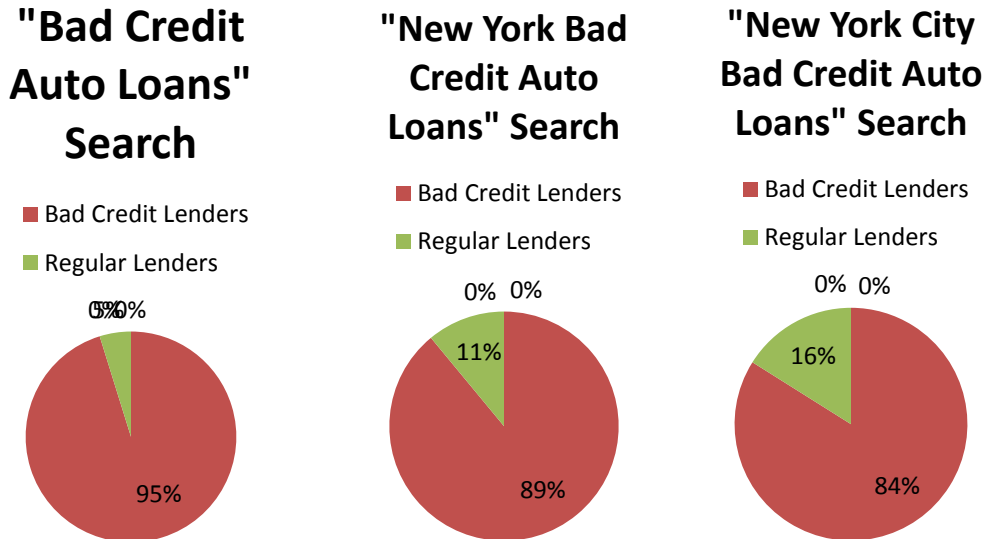
Figure 1: Google Search Results (Top Ten Pages)

Search Term	Total Non-Duplicative Website Results	Total Lender Sites	Sites That Specifically Advertise "Bad Credit" Auto Loans	Bad Credit Lenders	Bad Credit Lenders (As Percentage of All Lenders)
"Bad Credit Auto Loans"	129	104	98	99	95%
"New York Bad Credit Auto Loans"	125	100	83	89	89%
"New York City Bad Credit Auto Loans"	146	112	86	94	84%
TOTALS	400	316	267	282	Three Search Average: 89%

Bad Credit Lenders: Any website (a) whose purpose is to locate financing, offer financing, or sell an automobile to a consumer, AND (b) that utilizes terms which unconditionally guarantee financing and/or specifically target consumers who have bad credit, no credit, previous bankruptcies, repossessions, or foreclosures. Any lender which does not meet criterion (b) is considered a "regular lender."

Paid ads displayed above and on the side of the search results are included in the website count. Only one instance of each website is included in each search query (if a website appears more than once in a single search query, instances beyond the first are disregarded because they are duplicates).

Figure 2: Google Search Results, Regular Lenders vs. Bad Credit Lenders



The results above demonstrate that in the top ten pages of results for these search terms, the vast majority of search results (316/400 or 79%) are lender or lender-affiliated websites. Lender-affiliated websites are either (1) websites which help a consumer find auto lenders, or (2) car dealerships that advertise offers for financing. Of all lenders and lender-affiliated sites displayed

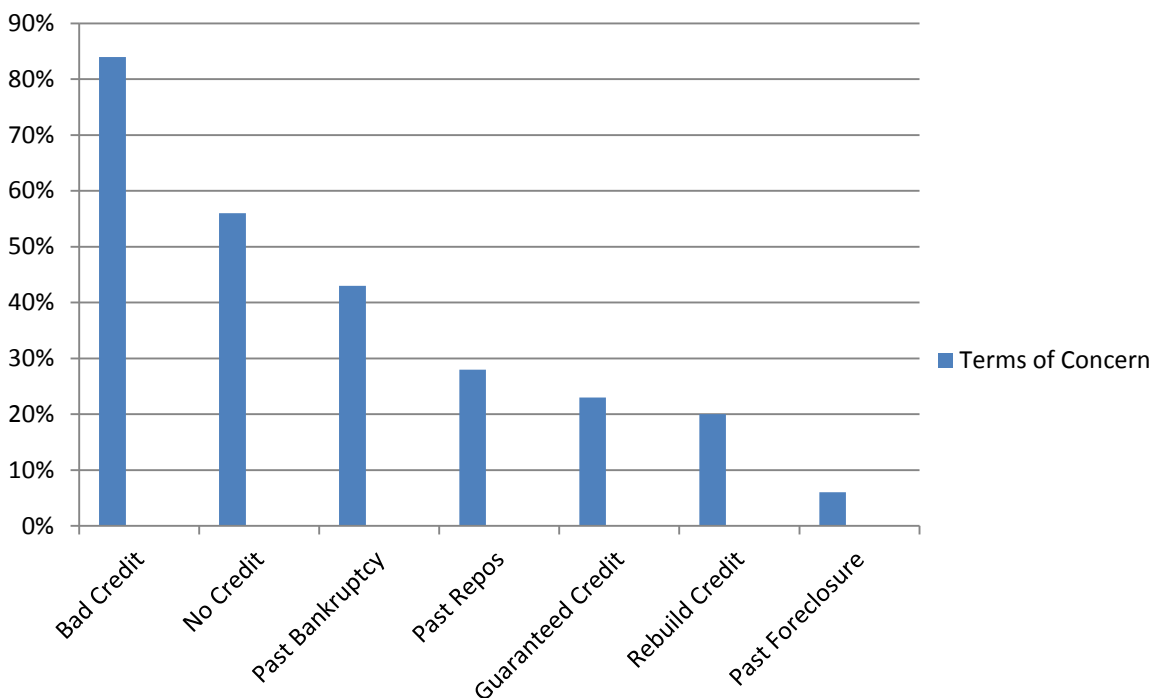
in search results, most are bad credit lenders. When searching generally for “bad credit auto loans,” 95% of all lender websites presented to borrowers either target borrowers with tarnished credit histories, or offer guaranteed financing. Similar searches targeted geographically to New York and New York City yield results of 89% and 84% bad lenders respectively. The three search average demonstrates that when consumers search for these terms, of all lenders displayed in the search results, 89% of these lenders are bad credit lenders.

Found among the websites are a slew of inducements directed toward consumers. The websites use marketing terms that are common to the subprime auto loan industry, and make a number of promises with the hope of luring consumers toward purchasing a vehicle via subprime lending channels. Any website that uses any combination of these terms is considered a bad credit lender website.

Figure 3: Terms of Concern

Term (or similar)	Term Frequency Across All Three Search Queries	Term Frequency (As Percentage of Total Lender Websites)
Bad Credit	267	84%
No Credit	178	56%
Past Bankruptcy	135	43%
Past Repossession	87	28%
Guaranteed (or 100%) Credit Approval	73	23%
Rebuild Credit	62	20%
Past Foreclosure	19	6%

Figure 4: Terms of Concern Frequency Among Lender Websites Graph



As the above terms demonstrate, businesses in this industry are actively targeting individuals who have past bankruptcies, bad credit, no credit, past foreclosures, and those who have trouble getting financing elsewhere. Twenty eight percent of these websites specifically target consumers who have already had a vehicle repossessed due to nonpayment. Some businesses even market specifically to one of the most financially vulnerable sectors of society, consumers like Mr. Durham who rely on Supplemental Security Income (SSI) or Social Security Disability (SSD) as sole sources of income.^{62,63,64} The individuals targeted, due to their troubled credit history, are likely to be those who are least able to pay the high rates common to the subprime auto loan industry. This is a recipe for default, repossession, and further damage to the financial situation and credit scores of subprime borrowers.

Further, some businesses go so far as to make promises of a brighter future for borrowers. Promises of a fresh start and rebuilding credit are scattered throughout the websites; borrowers aren't just being promised a loan for a vehicle, they're being promised a better life. One website brags "The Guaranteed Credit Approval Program from our New York car dealers will get you back on your feet and into a new car - whatever your financial situation!"⁶⁵ while another

⁶² Auto Loans with Disability or Social Security Income. (n.d.). Retrieved April 8, 2015, from http://www.autocreditexpress.com/resources/videos/applying_with_disability_or_social_security_income/

⁶³ Applying for Auto Loans with Bad Credit and SSI. (n.d.). Retrieved April 8, 2015, from <http://www.dougscreditcenter.com/auto-loans-bad-credit-ssi/>

⁶⁴ Cypress Motors Of Ridgewood. (n.d.). Retrieved April 8, 2015, from <http://www.cypressmotorsny.com/>

⁶⁵ NY Auto Giant. (n.d.). Retrieved April 8, 2015, from <http://www.nyautogiant.com/financing/used-car-loans.htm>

promises "[we] can help you rebuild your score AND get a great car! Credit bureaus look favorably upon auto loans as a signal of trust and reliability..."⁶⁶

Some websites guarantee a 100% approval rate. Many websites, while not completely guaranteeing approval without qualification, brag of extremely high approval rates. Throughout the websites, claimed approval rates (excluding those which guarantee approval or cite a 100% approval rate) are as follows: 94%, 91%, 99%, 98.9%, 87.4%, and 90%.

Figure 5: Bad Credit Lender Website Screenshots

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- Credit FAQ
- Credit Profiles
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Bad Credit Auto Loans

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Auto Loan Terms and Definitions
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⁶⁶ Apply For A Fresh Start Auto Loan In Just 90 Seconds! (n.d.). Retrieved April 8, 2015, from <http://www.1800freshstart.com/?src=42051&lnk=74248>

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1,152 Active Dealerships Nationwide	3,721 Applications Processed Yesterday	509,669 Applications Processed in 2015
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We are the neighborhood dealership that works with several financial companies and banks to offer great rates to our clients. At Massapequa Nissan we work with you and the lender directly to provide more assistance. Information and follow-through, doing everything we possibly can to help arrange your loan.

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We offer reasonable rates and fair terms on our subprime or bad credit card loans. If you want affordable monthly payments, competitive interest rates, and low down payments, Massapequa Nissan will make sure to provide an easy approval process.

How do I apply for Bad Credit Car Loan?

1. Complete our secure online application
2. Your subprime auto loan request would be reviewed by our bad credit auto finance team.
3. A financial expert will contact you to review your application and explain financing options available for customers with bad or bruised credit.
4. Once your loan is approved, you can finalize the process at the dealer's office, shop and drive off in style.

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We take pride in helping our customers get the best loan rates. We guarantee approval whether you have good credit, bad credit or no credit. If you have any questions about our bad credit car loan services please contact our auto finance team.

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Hyundai (3)	Isuzu (1)	Jaguar (1)	Jeep (1)	Mercedes-Benz (1)
Mitsubishi (1)	Nissan (2)	Oldsmobile (1)	Pontiac (1)	Saturn (1)
Subaru (1)	Toyota (1)	Volkswagen (1)	Volvo (1)	

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Here at Cypress Motors, Home of the BAD CREDIT FORGIVENESS PROGRAM we specialize in auto loan financing and getting you approved for used car auto loans whether you have Good Credit, Bad Credit and even No Credit. As a matter of fact, we specialize in sub prime financing and bad

It is easy to see how a consumer like Rodney Durham could be reeled in by the flashy advertising terms and methods utilized by these businesses. If one were to take the information on these websites at face value, a subprime auto loan would appear to be a wise investment for one's financial future and credit score, a means of getting back on one's feet when there are few other options. However, the reality is far bleaker, as demonstrated by several egregious cases like Mr. Durham's from around New York State. But there is trouble in the subprime auto loan industry that reaches beyond the concerns regarding consumer abuse. Like the subprime mortgage crisis of yesteryear, this market features lenders who are engaged in extremely risky business that could prove catastrophic to New York's and the United States' economies.

VI. Potential Economic Impact

Recent data has shown that defaults in the subprime auto loan market are rising. *The Wall Street Journal* says of the default situation: "More than 2.6% of car-loan borrowers who took out loans in the first quarter of last year had missed at least one monthly payment by November, the highest level of early loan trouble since 2008, when such delinquencies rose above 3%..."⁶⁷

The health of the market has been questioned by many economists in recent months. Mark T. Williams, professor at Boston University, former Federal Reserve examiner, and expert in financial risk management, has serious concerns about the direction of the subprime auto loan market. He analogizes behaviors by lenders in the market to those that were common prior to the mortgage collapse of 2008. "There's many similarities between the subprime crisis we went through and subprime auto lending today. I see it very much a parallel with 2007, that is the Fed reduced interest rates and increased in particular, greater market demand to find products that offered higher yields, and today that's what we see. So risk levels are increasing here."⁶⁸ **While some analysts have played down the overall economic risks of the subprime auto market due to its smaller size relative to the subprime mortgage market that caused the 2008 collapse, Professor Williams notes in exclusive comments provided for this report that this argument fails to take into consideration the growth in this market and the risks inherent to it:**

The volume of deep subprime loans, those made to borrowers with shaky FICO scores of 540 or below increased by 5.6 percent from the previous year. A separate study conducted by the National Bureau of Economic Research examining loans of similar quality made between 2001 and 2004 showed that over 50 percent of these borrowers ultimately defaulted... Since 2010, securitization of subprime auto loans has also grown by over 300 percent. Today subprime auto lending at \$130 billion might be relatively small but based on a conservative growth trajectory of 10 percent, this market exposure doubles in only seven years. At that level its impact to the real economy would have an even greater detrimental knock-on effect if left unchecked... Subprime auto loans are risky instruments that are exposed to borrowers highly prone to default. In the last decade, the growth of subprime lending has increased the population of risky borrowers

⁶⁷Car Loans See Rise In Missed Payments. (n.d.). Retrieved April 7, 2015, from <http://www.wsj.com/articles/car-loans-see-rise-in-missed-payments-1420768083>

⁶⁸Subprime car buyers fueling default surge. (n.d.). Retrieved April 7, 2015, from <http://finance.yahoo.com/news/subprime-car-buyers-fueling-default-surge-180026748.html>

that are exposed to greater financial shock in time of economic downturn. Currently, subprime loans exceed 25 percent of total car loans. To simply say that a rapidly growing market segment of over \$130 billion will not have a broader impact on the U.S. economy, if default rates increase, is a dangerously flawed argument... Wells Fargo has recently decided to cap its subprime lending to no more than 10 percent of auto underwriting. However, as the Nation's largest bank by stock value, this credit exposure remains in the billions. Should defaults climb, Wells Fargo would be forced to take substantial financial losses... As more and more debt is added to this higher risk segment, the unknown variable is how much excess credit capacity exists, especially in a sluggish economy where real wage and employment growth is nonexistent. At what point will this risky lending segment be oversaturated with debt and hit a tipping point? Even at \$130 billion, a level not seen since pre-financial crisis 2006, subprime auto is a large enough lending segment that it could transmit greater risk to the broader market and the financial intermediaries that have extended the debt... There is also growing lender concentration risk. In the used auto segment, the top 20 lenders represent almost 40 percent of the overall market. The credit standards set by even a few large lenders and their willingness to assume greater subprime auto risk can substantially influence the financial health of the overall auto lending market.

As an important indicator of consumer insolvency and rising default levels, repossessions are skyrocketing along with defaults in the market. The Center for Responsible Lending noted in a recent report that:

In every quarter since 3Q 2013, repossession rates have been significantly higher than the same quarter in the previous year. Most alarming, the 2Q 2014 repossession rate was 70% higher than 2Q 2013. This increase is also evidenced in the auto loan asset backed securities (ABS) market. Both delinquency and net loss rates have increased from their post-recession lows in 2011, and are projected to continue that trajectory in the near future.⁶⁹

Lenders are relaxing standards and thus allowing broader access to subprime and deep subprime loans to individuals who would not have previously qualified for these loans. *Fortune* notes that:

In the third quarter, in the worst days of the global financial crisis, the average credit score for a new-car loan was 736; five years later the average had dropped to 713, as lenders relaxed their loan standards to include more buyers with credit problems. Over the five years the average loan score for used-car buyers fell to 650 from 661. The average duration of a new-car loan rose to a record 66 months and a record 62 months for used cars, as lenders wrote more five-year, six-year and seven-year loans so that buyers could afford the monthly payments on vehicles that have grown more costly.⁷⁰

Although the market is smaller in size from the subprime mortgage market, many of the same concerns and risks are reflected in this industry due to similar practices. Relaxed lending standards, rising default levels, and massive growth in this market could spell out a perfect storm

⁶⁹"Reckless Driving": Implications of Recent Subprime Auto Finance Growth. (2015, January 1). Retrieved April 7, 2015, from http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/recklessdriving_implications_subprime_autofinance_growth.pdf

⁷⁰Levin, D. (2015, February 9). The next bubble: Automotive credit? Retrieved April 7, 2015, from <http://fortune.com/2015/02/09/automotive-credit/>

for a catastrophic meltdown not unlike that seen in 2008 unless this market is properly monitored, regulated, and contained before it has the potential to implode.

Given the rampant consumer abuse that is occurring in this market, combined with the economic risks that are beginning to surface as the market grows due to lenders shifting their focus in order to increase profits, it is necessary to consider statutory intervention to quell these issues. Both consumers and the economy can be better protected if the legislature carefully considers meaningful forms of intervention.

VII. Legislative Solutions

On April 23, 2015, Senator Savino, a member of the Independent Democratic Conference and Chair of the New York State Banking committee, held a hearing to (1) gather more information about the issues raised during the course of this investigation, and (2) determine responsible legislative solutions to this problem. As a result of the findings in this report and the expert testimony presented during the Banks committee hearing, the Independent Democratic Conference is introducing a comprehensive legislative package to address the myriad problems which exist in the subprime auto lending industry. These solutions range from more comprehensive regulations on auto lenders, to holding dealerships accountable for their marketing practices and representations during sales negotiations, to much-needed consumer protection reforms that will protect all New Yorkers in the marketplace for automobiles and other products. The bills fall into three categories. Below are some background on the pending bills as well as their specific provisions.

Lender Bills

- **Bill 1: Usury Rate Reform**
 - Background
 - Currently, New York's usury rate is capped at 16%. The usury rate is the maximum rate at which a lender in New York can issue a loan. The usury rate could better protect consumers and provide a more reasonable auto loan APR if it were brought in line with California's and Texas's, which stand at 10%. This would also bring New York into the bracket of states with lower usury rate caps and would represent a significant victory for consumers. Additionally, dealerships often circumvent the usury rate because national banks or out of state banks provide financing for the vehicles. However, dealerships are usually technically the original lenders, and so as a matter of law, should be subject to the usury rate; financial institutions quickly buy the loan from the car dealerships. New York cannot regulate all interest rates, but it can regulate its car dealerships.
 - Provisions
 - Section 1
 - Limit civil usury rate to 10%
 - Limit criminal usury rate to 15%

- The civil and criminal usury rate shall apply to all Retail Installment Contracts (RICs).
 - \$7K EXEMPTION: Exempt cars priced under \$7,000 (inclusive of all add-ons and fees) from the 10% usury rate. The effective usury rate for these vehicle sales will be 16%.
 - Mandate that loan underwriting standards in New York include an ability to repay provision, and authorize the Department of Financial services to promulgate regulations on these standards.
 - Section 2
 - Explicitly declare auto dealerships lenders for the purposes of any loan they originate.
 - Declare the 10% usury rate effective against all loans issued by dealerships (except \$7K EXEMPTION).
 - Ban dealerships from facilitating any loan which has terms above New York’s usury rate (except \$7K EXEMPTION).
 - Provide civil and criminal penalties for any dealership that violates these provisions.
- **Bill 2: Increase Lender Liability**
 - Background
 - Lender liability is usually limited under the holder in due course rule and rules concerning loan assignees. Thus, consumers are left to recover from dealerships (who often shut their doors or default), even when, in some cases, lenders are complicit with fraud. In order to deter fraud and inaccurate applications, lender liability must be increased (in scenarios when the dealership is not the lender).
 - Provisions
 - Declare lenders jointly liable for all claims asserted against the dealership when the lender did know, or should have known, of any illegal activity involving the transaction, including but not limited to fraudulent activities or activities which violate New York’s UDAP-style statutes.
 - Authorize the Department of Financial Services to promulgate regulations to ensure state-chartered auto finance lenders (dealerships and all other state-based lenders) institute regulations for flagging suspicious applications, verify income, communicate directly with borrowers pre-approval, and meaningfully respond to consumer complaints.
- **Bill 3: Limit Dealer Discretion in Mark-Ups**
 - Background
 - Dealerships earn additional revenue from the back-end of the financing when they include a mark-up between 0-3%. There is no transparency involving the mark-up and the consumer is almost never aware this mark-up even exists. It incentivizes dealers to seek more expensive financing and roll add-ons into the financing to inflate back-end financing profits.
 - Federal and advocacy-organization investigations have demonstrated that these mark-ups are being applied in a race-discriminatory fashion. One report found that in New York, African-Americans were being subjected to dealer mark-ups at a rate 311% higher than those given to Caucasians.

- Provisions
 - Require that dealerships disclose any financing mark-up to consumers.
 - Authorize the Department of Financial Services to study patterns and practices in dealership mark-ups to identify problematic practices including race discrimination, and to make recommendations for eliminating problematic practices in dealership mark-ups.
 - The aforementioned report shall be sent to the Governor, the Speaker, the Senate Temporary President, and the chairs of the Senate and Assembly Banks committees.

Dealership Bills

- **Bill 1: Increase Surety Bond Levels for Used Car Dealerships**
 - Background
 - Surety bond levels in New York are inadequate to protect consumers. Currently, most used car dealerships are only required to obtain a \$10,000 surety bond. While new, franchised car dealerships are more heavily regulated within their industry by their associated manufacturers, used car dealerships have more leeway to operate independently on their own terms. This creates a higher risk of deceptive, fraudulent, or otherwise illegal behavior in the industry, and much of this activity is surfacing in the used car industry. Ensuring adequate bond levels guarantees that consumers can recover in the event that they are wronged by a dishonest dealership or lender.
 - Provisions
 - Increase the required surety bond level to \$100,000 for all used car dealerships.
 - Maintain the \$50,000 required bond level for all new, franchised car dealerships.
- **Bill 2: Regulate Dealer Advertising**
 - Background
 - Dealership advertisements are sometimes dishonest and often times target the most vulnerable sectors of the population, such as those who have few resources, poor credit, are elderly, or rely on public benefits as a sole source of income. Dealership advertising must be better regulated to ensure that fraudulent claims, bait-and-switch tactics, and predatory advertising are eliminated.
 - Provisions
 - Authorize the Department of State, Division of Consumer Protection to promulgate regulations regarding dealership advertising in consultation with the Attorney General's office and the Department of Financial Services.
 - Ban dealership advertisements which make representations that SSI and SSD are adequate income sources to qualify for an auto loan.
- **Bill 3: Transparency Reforms--Require Loan Application, Loan-to-Value Consumer Protection, and Sales Transparency Forms**

- Background
 - Consumers are often not aware that with subprime loans, the cost of financing can be more than double the actual value of the purchased vehicle, due to high APRs and expensive add-ons like warranties and service contracts. Additionally, dealerships sometimes provide fraudulent loan applications to lenders without informing consumers. Lenders sometimes turn a blind eye to this activity, even when consumers inform them of it. False applications result in the approval of loans which consumers cannot afford. Spot delivery scams are also a problem that could be addressed through conditional delivery bans and transparency measures that inform consumers of the ban. Conditional delivery scams are also known as “spot delivery” scams or “yo-yo financing” scams. These scams involve putting a buyer into a vehicle and having the buyer take it home; the dealership then calls the buyer later to tell them the favorable terms on which they purchased the vehicle are invalid. The buyer, enjoying their new vehicle and fearing they have no other options, often agrees to the less favorable terms simply for the sake of keeping the vehicle. The less favorable terms are more profitable for the dealer. It’s often difficult to distinguish between a legitimate conditional delivery and a spot delivery scam.
- Provisions
 - Section 1
 - LTV Consumer Protection Form must be separate from all other dealership forms.
 - Form must itemize all add-ons.
 - Add-on itemization must include the sale price of the add-ons as well as the add-ons’ cost after financing.
 - The form must disclose the sale price of the vehicle bundled with all add-ons as well as the cost after financing.
 - Form must provide a consumer warning that informs the consumer in plain language about the LTV and cautions against expensive add-ons.
 - Form must inform the consumer that add-ons are not a prerequisite for securing financing.
 - Authorize the Department of Financial Services to design this form and provide it to car dealerships in consultation with the Department of Motor Vehicles.
 - The form must be standardized and provide areas for dealerships to plug in information and values.
 - This form must be signed by the dealership and the borrower. The borrower must be presented a copy and the dealership must maintain a copy for no less than one year.
 - Failure to produce the form shall empower the consumer to void the sale at any time within 30 days for a full refund and recover the fair market private sale value of any trade-in should they exercise the option.

- Any consumer who litigates and successfully establishes claims under this section shall be entitled to reasonable attorney’s fees.03
 - Section 2
 - Require dealerships to provide a copy of all loan applications (even those filed through software) to the consumer.
 - Require that all loan applications be signed by both the dealership and the consumer.
 - Require the dealership and the consumer to certify that the information is accurate to the best of their knowledge.
 - Require the dealership to maintain a signed copy of the loan application for a period of one year.
 - Failure to comply with this section shall empower the consumer to void the sale at any time within 30 days for a full refund and recover the fair market private sale value of any trade-in should they exercise the option.
 - Any consumer who litigates and successfully establishes claims under this section shall be entitled to reasonable attorney’s fees.
 - Section 3:
 - Ban conditional deliveries in New York.
 - All financing and sales terms must be agreed to and finalized before a consumer takes possession of the vehicle.
 - Disclosure form must be provided informing consumer that conditional deliveries are banned in New York.
 - Form must be signed by both buyer and dealership. Dealership must maintain a copy for one year, and consumer must be provided with a copy.
 - Authorize the Department of Financial Services to design and promulgate this form.
- **Bill 4: Require Dealerships to License their Finance Managers and Give the Department of Financial Services Jurisdiction Over Dealership Financing**
 - Background
 - Currently, there are few universal regulations in the financial divisions of car dealerships, despite that these dealerships behave like lenders and many times are in fact lenders even though they sell loans to larger banks and lenders almost immediately. Regulating dealerships’ finance departments could help bring them in line with consumer protection regulations in the banking industry and standardize practices to protect consumers. The Department of Financial Services currently does not have jurisdiction over lenders who are also sellers of goods (the dealerships, in this case).
 - Provisions
 - Eliminate ban on Department of Financial Services having jurisdiction over lenders who are also sellers of goods (only to the limited context of car dealerships).
 - The Department of Financial Services shall have authority to oversee dealership finance departments.

- Require that all car dealerships designate and license at least one finance manager if the dealership conducts or facilitates financing in any fashion.
- The financing manager must be an owner OR active employee at the dealership, and must have regular involvement in, or oversight of, the financing process at the dealership.
- Finance managers at dealerships shall be required to register and license with the Department of Financial Services.
- Require dealership finance managers to take an informational licensing course on the regulations and requirements (established by the Department of Financial Services) that oversee financing (this course is not to exceed 16 hours).
- Authorize the Department of Financial Services to promulgate regulations for dealership finance managers and finance departments.
- Authorize the Department of Financial Services to establish educational materials or a mandated educational course for finance managers who wish to become licensed.
- Authorize the Department of Financial Services to establish a nominal licensing/course fee for applicants which shall not exceed \$200.
- Authorize the Department of Financial Services to promulgate regulations for license revocation and penalties to dealerships and licensees for violations of its regulations.

Consumer Protection Bills

- **Bill 1: Strengthen New York’s Unfair and Deceptive Acts and Practices (UDAP)-Style Statute**
 - Background
 - New York has one of the weakest UDAP-style statutes in the nation. It lacks many essential components that protect consumers from unfair and deceptive practices. Without the ability to utilize these statutes in cases against dealerships and lenders who abuse them, consumers are left with few legal avenues to pursue remedies. In order to deter fraud and other illegal activities and empower consumers to recover when they have been wronged, New York must introduce a real, comprehensive UDAP-style statute.
 - Provisions
 - Eliminate the public impact requirement.
 - Specifically include practices that are unfair or unconscionable.
 - Increase statutory punitive damage cap to \$10,000 for regular cases and \$15,000 for seniors whose primary resources are targeted.
 - Allow the Department of Financial Services rulemaking authority to promulgate regulations and enforce the UDAP-style statute.
 - Explicitly permit class action suits under §349.
 - Increase penalty to \$10,000 in N.Y. Gen. Bus. Law §350-d.
 - Explicitly allow injunctive relief.

- Reasonable attorney’s fees shall be paid to the plaintiff in the event of successful establishment of claims under the UDAP-style statutes.
 - **Bill 2: Require Cooling Off Period**
 - Background
 - A cooling off period exists for many transactions, but not for motor vehicles. Providing a cooling off period for new cars poses legitimate concerns, including the fact that the car loses thousands of dollars of value the moment it drives off the lot. These same concerns do not exist for used cars and providing this cooling off period would deter fraud and allow consumers a reasonable timeframe to analyze their retail installment contract/loan and all the terms of the sale.
 - Provisions
 - Provide a three day cooling off period for all used car sales made at dealerships.
 - New car sales are exempt under certain circumstances (see below).
 - With new car purchases, the three day cooling off period shall apply only if the vehicle has not been taken off the lot by the consumer.
 - Require new car salesmen to offer to hold the car for three days while the consumer considers the sale.
 - Consumers may opt out of the new car cooling off period by taking the car off the lot immediately.
 - Require dealerships to provide the consumer with a disclosure form that informs them that if they take the vehicle immediately, the cooling off period is void.
 - This form must be signed by both the dealership and the consumer, a copy must be provided to the consumer, and the dealership must maintain a copy of the form for 1 month.
 - In the event that this form is not provided to the consumer, a 30 day cooling off period shall take effect, and the consumer shall be entitled to a full refund of the vehicle price and the fair market private sale value of their trade-in should they exercise the option.
 - Any consumer who litigates and successfully establishes claims under this section shall be entitled to reasonable attorney’s fees.
 - Authorize the Department of Financial Services to design and promulgate this form.
 - **Bill 3: Ban Kill Switches**
 - Background
 - Kill switches pose potentially grave safety risks to consumers and are not necessary for repossession of a vehicle; GPS tracking hardware makes repossession very easy for lenders, rendering kill switches unnecessary. Senator Kennedy has introduced a bill to ban kill switches, and the IDC commends his leadership on this important safety issue. The IDC hopes to work with Senator Kennedy to ensure a comprehensive bill, and to facilitate its passage as a component of the IDC’s comprehensive set of subprime lending reforms.
 - Provisions

- Ban all vehicle kill switches.
 - Explicitly exempt GPS tracking devices from the ban and clarify that these are separate from vehicle kill switches.
- **Bill 4: Creation of SONYMA-Style Auto Loan Program**
 - Background
 - Would create a public authority which offers loans to certain qualifying consumers so that they can obtain vehicles under relatively affordable terms with a chance to rebuild their credit histories and reenter the credit market. This publicly-sponsored loan program would ensure that any regulation on the lenders and the dealerships would not result in vulnerable consumers (those with subprime and deep subprime credit scores) being completely cut out of the market.
 - Provisions
 - Require dealerships to notify consumers of this program whenever a dealership facilitates financing.
 - Allocate the authority with an adequate level of funding to provide affordable auto loans to qualifying consumers.
 - Make available to consumers with qualifying credit scores (subprime and deep subprime) or no credit histories.
 - Offer affordable interest rates.
 - Require consumers to go through credit counseling to qualify for the loan.
 - Authorize the newly-established agency to promulgate regulations regarding credit counseling.
 - Loans would serve as an alternative to the predatory rates of current private subprime and deep subprime loan products.
 - Create standards for dealerships that offer this loan product, as well as the vehicles they sell.
 - Limit LTV ratios and cap eligible vehicle sales prices.
 - Create measures to assist consumers in the event of a default on this loan product.
 - Establish a program for responsible and efficient repossession in the event of default that cannot be remedied.

VIII. Conclusion

Access to an automobile is crucial for many New Yorkers, even those with poor credit. This especially applies to working families in rural and suburban areas, and those who work inside cities but live outside areas where public transportation is readily available and reliable. Most individuals need to borrow in order to purchase a vehicle, even a used one. The subprime auto loan market exists to provide individuals with bad credit access to the financing necessary to acquire the vehicles they need. It is critical that every resident of the State of New York have access to honest and reliable financing tools regardless of their credit background or history. A bad credit history should never be seen as a license to abuse or defraud a customer.

Unfortunately, as this report has shown, there are many unscrupulous dealers that prey on individuals with bad credit, knowing that they have fewer choices when trying to purchase a car. Outrageously high interest rates, abusive loan to value ratios, non-transparent mark-ups, and all sorts of outright criminal fraud are some of the deplorable practices that the IDC has found present in the subprime auto loan world.

These bad lending practices are not confined to the physical world; even in virtual space we found signs of danger for borrowers. The investigation found that when consumers go online looking for information regarding financing for auto purchases for individuals with bad credit, they are directed primarily to websites promising potentially dangerous deals. Too often, these websites promise no money down deals with very long terms, practices that are often associated with irresponsible lending. These glossy websites are designed to entice borrowers with bad credit histories into deals that are potentially financially ruinous.

Many of the lending institutions associated with the subprime market appear to look the other way in the face of these fraudulent practices as they profit from this growing section of the auto loan market. Financial experts have sounded the alarm about how fast this sector of the auto loan market is growing, recalling the damage done to the economy by the collapse of the subprime mortgage market. They point to how concentrated the subprime auto loan market has become amongst a few institutions, as well as the high growth in repossession rates, as key points of concern. It is critical that our State take action now, before the subprime auto loan market becomes a serious danger to our economic prosperity and growth.