Comments Received by the Department of Consumer Affairs

on

Proposed Rule related to Amendment of Rules Relating to Second-Hand Auto Dealers

as made available for public inspection

Greater New York
Automobile Dealers
Association

May 7, 2018

Via email (rulecomments@dca.nyc.gov, cadams@dca.nyc.gov)
Casey Adams
Deputy Director of City Legislative Affairs
Department of Consumer Affairs

Dear Mr. Adams:

On behalf of the members of the Greater New York Automobile Dealers Association, we appreciate that DCA has integrated many of our suggested changes. While improvements have been made, there are significant changes that remain necessary.

GNYADA has always supported transparency in vehicle sales but the fact is that vehicle sales already require more robust disclosures than any other consumer purchase, even those that include financing. The burdensome disclosures that the City is requiring are not borne by any other business and will, we believe, add to the complexity of the car buying process and lead to confusing consumers, which could ultimately harm small businesses operating in NYC.

We understand that the intent of 197 and 198 of 2017, and their implementing rules, is to provide consumers with a greater understanding of what goes into a used vehicle purchase. However, all information required to be disclosed under these laws are already disclosed pursuant to state and federal regulation.

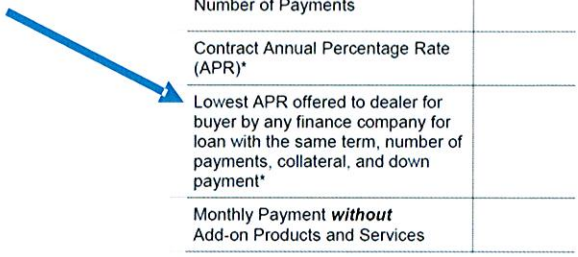
Furthermore, dealers provide a valuable service to consumers by facilitating and securing financing. Plainly speaking, consumers receive more favorable financing through dealers than they would receive on their own. Dealers have expertise, relationships, and technology that allow them to research and provide the best financing available. Dealerships, like any other businesses, charge a fee for the time and effort it takes to provide service to their consumers (i.e. to identify the most favorable financing institution).

Consumers also save a significant amount of time by using dealer-facilitated financing. If a customer were to apply to multiple banks for a vehicle loan, they would spend a tremendous amount of time filling out and submitting multiple financing applications and forms.

Specific sections still requiring changes and further DCA review include:

I. Financing Disclosure

a. Under "Financing Terms", the fifth box down reads "Lowest APR offered to dealer for buyer by any finance company for loan with the same term, number of payments, collateral, and down payment". In indirect lending transactions, such as vehicles sales involving financing institutions, *the financing institution does not offer an APR*. Therefore, this language requires a legal impossibility.



FINANCING TERMS

Total Sale Price ***without*** Add-on Products and Services *after* Financing Charges	
Down Payment *(if applicable)*	
Number of Payments	
Contract Annual Percentage Rate (APR)*	
Lowest APR offered to dealer for buyer by any finance company for loan with the same term, number of payments, collateral, and down payment*	
Monthly Payment ***without*** Add-on Products and Services	

This issue could be resolved by changing the language in this section to read "Lowest APR offered to buyer for loan with the same term, number of payments, collateral, and down payment."

New York City is requiring car dealers to disclose their fees in a way that is not required of any other commercial businesses. Dealers provide a vital service for customers by aiding in securing financing for vehicle purchases; the fees dealers charge reflect the value of this service. When a customer seeks financing through a dealership, the dealer does not set the interest rate but rather contacts the lending institutions with which the dealership has a relationship(s). The lending institution then reviews the customer's creditworthiness, determines the risk of extending credit, and sets a corresponding interest rate. In most instances, because of the relationships dealers have with lending institutions, they are able to obtain favorable interest rates for customers or to obtain financing for customers who may be unable to do so on their own. The dealer charges a fee for providing this service. These transactions are already governed by state and federal law and the Consumer Financial Protection Bureau.

Providing this service is a real operational cost for dealers and, to pay the overhead costs, dealers must charge customers for the service. Any limitation on a dealer's ability to recover this expense will impact that price of the car and, by association, the consumer's financing. For those consumers with weak credit, this could mean the difference between finding affordable financing and not.

b. The Rules still do not address 20-268.1(d), which would penalize dealers for submitting "false, misleading, or deceptive credit application[s] or contract[s] to a lender or finance company" even if they do so unknowingly or in reliance on information provided by the consumer. We respectfully request changing the language so that such penalty would apply only if a dealer provides such information knowingly or negligently.

II. Contract Cancellation Option

a. In the initial Proposed Rules, 2-107(a) provided that dealers must provide the Contract Cancellation Option form in the language in which the contract was negotiated, "provided the commissioner has made the form available in such language". This provision has been removed from the revised version; we respectfully request that it be restored.

b. On page 6, "Cancellation Deadline" reads that the contract cancellation deadline "can be no earlier than the close of business on the second weekday (excluding legal holidays) after you sign the sales contract or the retail installment contract, whichever is later".

CANCELLATION DEADLINE: The deadline to personally deliver to the dealer (address above) the signed "Notice to Cancel the Sales Contract" is shown in the yellow box above. The date and time set by the dealer can be no earlier than the close of business on the second weekday (excluding legal holidays) after you sign the sales contract or the retail installment contract, whichever is later.

However, 20-268.2(b)(3) says the deadline to cancel is "no later than the dealer's close of business on the second business day following the day on which the customer signed the bill of sale or retail installment contract" and with "Cancellation Option", on page 6, which reads:

CANCELLATION OPTION: This form outlines the terms and conditions of the contract cancellation option. *If you ACCEPT*, you have the right to cancel the purchase within two (2) business days and get a full refund. *If you DECLINE*, you give up this right. Read both sides before signing.

Additionally, the deadline should not be after signing the sales or retail installment contract but rather after the "Deadline to Cancel" as written on the Contract Cancellation Option. This will provide consistency and no chance for misunderstanding or misinterpretation.

To correct these internal inconsistencies, the "Cancellation Deadline" should read: "The date and time set by the dealer can be no earlier than the close of business on the second business day after you sign this Contract Cancellation Option Agreement (i.e. the Deadline to Cancel, written above)."

III. Used Car Consumer Bill of Rights

a. Number four contains the same language explained in I(a) to require a legal impossibility – "the lowest APR offered to the dealer for you by any financing company" –

in indirect lending transactions, such as vehicles sales involving financing institutions, the financing institution that takes assignment of the finance contract does not offer an APR.

Under NYC law, the dealership must disclose the lowest APR offered to the dealer for you by any financing company for a loan with the same term, number of payments, collateral, and down payment. The dealership must also disclose any fees the dealer is charging you for financing. These disclosures must be in the language in which you negotiated the contract, provided DCA has made these disclosures available in such language.

This issue could be resolved by changing the language in this section to read "lowest APR offered to buyer for loan with the same term, number of payments, collateral, and down payment."

b. For number five, we suggest the language "You have the right to the Federal Trade Commission (FTC) Buyer's Guide for any used car and a written New York State Lemon Law warranty where applicable." This will ensure that buyers realize there are limitations to this warranty.

You have the right to the Federal Trade Commission (FTC) Buyer's Guide for any used car and a written New York State Lemon Law warranty.

c. For number eight, we suggest changing "you will be able to use the trade-in during the cancellation period" to "you may [. . .]", as this is permitted only if the consumer chooses to do so and pays the necessary fee.

dealership. You will not be able to take the car home, but if you are trading in a car, you will be able to use the trade-in during the cancellation period. The contract cancellation option must be given to you in the language in

As explained above, we also request that this provision read "the contract cancellation option must be given to you in the language in which you negotiated the contract provided DCA has made this form available in such language."

d. 2-108(a) requires dealers to post a copy of the Used Car Consumer Bill of Rights on a paper at least 17" x 28" in English and any language in which the dealer conducts business, as long as DCA has made such language available. These large signs must be posted in any office or area where consumers negotiate and execute sales contracts.

The posting requirement is duplicative when all customers will be provided a printed copy of the DCA-created Used Car Consumer Bill of Rights in the language in which the sale was negotiated. Additionally, the uncommon poster size is not one that can be printed in-house but rather will burden dealers with the expense of printing.

DCA already requires dealerships to post a panoply of signs, in a variety of sizes, throughout the store, in addition to the required item pricing. New York State and federal law require a myriad of other signs. Wallpapering the dealership in signs is likely to further confuse customers. We suggest that dealers be permitted to make disclosures electronically on their website.

We respectfully request that this posting requirement be removed from the law or, in the alternative, that dealers be permitted to post in English only since customers will be given a copy of the Used Car Consumer Bill of Rights in another language, if applicable.

In addition to the specific changes detailed above, we respectfully request:

1. That the following language be added to the bottom of each form "Dealers that use these DCA forms, or one that provides the same information, will be deemed to be in compliance with DCA regulations. I.e., using this form shall provide a "safe harbor" from enforcement."

2. A one-year trial period before the law is enforced for:
    a. DCA to create and distribute a compliance guide;
    b. DCA to provide dealers with training on best compliance practices;
    c. The companies that create dealership business forms to create and make a compliant form available;
    d. Dealers to train employees and implement compliant policies and practices.

3. A provision that one year after the conclusion of the trial period, NYC Council and DCA will form a Committee, to include automotive dealership industry representatives, to examine the efficacy of these laws and, if they have not been effective, to amend, modify, or repeal them.

We are available for clarification and further discussion, if needed.

Very truly yours,

Mark Schienberg
President

GT GreenbergTraurig

William B. Mack III
Tel 212.801.2230
Fax 212.805.9210
mackw@gtlaw.com

May 7, 2018

VIA EMAIL TO RULECOMMENTS@DCA.NYC.GOV

Casey Adams
Deputy Director of City Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Comments on behalf of Enterprise Car Sales

Dear Mr. Adams:

Greenberg Traurig represents Enterprise Car Sales ("ECS"), a division of ELRAC, LLC d/b/a Enterprise Holdings ("Enterprise"). Greenberg Traurig hereby submits the following comments on behalf of ECS to the New York City Department of Consumer Affairs ("DCA") in response to the DCA's publication of the proposal to add new rules to implement Local Laws 197 and 198 of 2017 relating to second-hand automobile dealers (the "Proposed Rules").

ECS engages in direct retail car sales through more than 130 ECS locations nationwide. ECS's inventory is comprised of used vehicles in over 250 available makes and models, most of them from Enterprise's own fleet of rental cars. At any given time, ECS's network has more than 6,000 vehicles for sale across the United States. Within the State of New York, ECS has four dealerships, one of which is located in Queens, NY.

Enterprise's founder, Jack Taylor, developed a simple but enduring business philosophy that still guides Enterprise's efforts: take care of your customers and your employees first, and the profits will follow. Embracing that philosophy, Enterprise offers a transparent process, providing no-haggle pricing and excellent customer service, which has been the cornerstone of its business for more than 50 years. Enterprise clearly marks its no-haggle price on every vehicle. The price you see is the price you pay. That is why Enterprise is in support of the written testimony of Greater New York Automobile Dealers Association ("GNYADA") as it believes that the issues presented by the Proposed Rules create confusion for second-hand automobile dealers and consumers, and this confusion will have a negative impact on second-hand automobile purchasers.

We look forward to the opportunity to continue working with the DCA on this matter. We welcome the opportunity to discuss these matters further, and we are willing to meet with you.

In the meantime, please feel free to contact me Julia Rogawski at 212 801 6909 if you have any questions.

Best regards,

William B. Mack III
Shareholder

TESTIMONY OF THE
NEW YORK STATE AUTOMOBILE DEALERS ASSOCIATION
BEFORE THE NEW YORK DEPARTMENT OF CONSUMER AFFAIRS ON NEW RULES REQUIRING SECOND HAND AUTOMOBILE DEALERS TO PROVIDE CONSUMERS WITH (A) FINANCING DISCLOSURES (B) A TWO-DAY CANCELLATION OPTION AND (C) A WRITTEN USED CAR CONSUMER BILL OF RIGHTS

As Presented by Brian Dennis:

MAY 7th, 2018

Members of the Department of Consumer Affairs, my name is Brian Dennis and I am the Legislative Committee Chairman of the New York State Automobile Dealers Association ("NYSADA") and the dealer operator of two new car franchises in the City of New York. I am joined by our President, Bob Vancavage, and counsel, Leonard A. Bellavia, Esq., a partner in the law firm of Bellavia Blatt, P.C. As you may recall, I testified on behalf of NYSADA before the Department of Consumer Affairs at the public hearing that took place on February 28 with respect to proposed Local Laws 197 and 198 of 2017 related to second hand automobile dealers. NYSDA thanks the Department for considering and, in fact, integrating, many of NYSADA's requested modifications to the proposed legislation, however, NYSADA strongly feels that there are still changes that need to be made to the proposed legislation to reduce the unnecessary burdens that the proposed legislation places on NYSADA's member dealers.

<u>Financing Disclosure</u>

As modified since the February 28 public hearing, the first of the proposed laws would require each dealer to provide each consumer with a financial disclosure statement which includes a requirement that, among other things, a dealer disclose the "Lowest APR offered to dealer for buyer by any finance company for loan with the same term, number of payments, collateral, and down payment." While the modification to the proposed legislation seeks to remedy some of the

deficiencies in the prior version of the proposed law, we respectfully submit that the proposed law is still likely to lead to confusion by both the consumer and the dealer as to exactly what is required by the dealer.

As I had previously testified, there are numerous factors that influence each consumer loan approval, even on the same vehicle with the same term, number of payments, collateral and down payment, that may make one with a lower rate less beneficial to the customer or not constitute an approved bona fide offer to finance at all. As just one example that was previously provided to the Department, there are numerous stipulations which may make the approval untenable such as verification of the customers ability to repay the loan following delivery of the vehicle including income verification, employment verification, trade in payoff requirements, requirements for cosigners, and an entire list of lender requirements that the customer may not qualify for expressly written in the conditional approval as well as the lenders guidelines. In this manner, two seemingly similar approvals that require the same term, number of payments, collateral and down payment may not be that similar at all.

It certainly appears that the Department is under the impression that it is somehow in the dealer's business interests to have identical approvals in every way and offer the customer the one with the higher rate. Dealers, however, do not benefit in any way by providing a loan form a lender with a higher rate. It cannot be stressed enough is that the dealer and the customer are aligned with a common interest to have the dealer extend the best viable offer obtained through a third-party lending source in order to help customers achieve a manageable or affordable monthly payment that will fund when the contract is received by the lender.

In addition, one important suggested modification to the proposed legislation that I had previously testified to has not been addressed. Typically, when a car buyer finances a purchase

through a dealer, they sign what is called a retail installment contract, a transaction in which the consumer agrees to make a fixed number of payments over time, plus interest, for the car. In the industry, this is based on the "time-price doctrine," a principle that says consumers will pay an increased credit charge in exchange for having the ability to make monthly installments over time, rather than pay the entire cash price for the car up front. There is a difference between the interest rates offered by third party lenders to the dealer for the particular customer (the "Buy-Rate or Discounted Rate") and the ultimate rate that the dealer offers the consumer. Stated otherwise, there is a technical difference between the buy rate that the lender provides the dealer with (a "buy rate") and the "sell rate" (what is offered for the assignment for the retail installment contract). The proposed legislation needs to be modified to focus on the disclosure of the single best rate offered to the customer. The discount or "reserve" provided to the dealership is intended to offset the costs incurred by the dealership to train, compensate, and assume accountability for the business manager to process applications. This discount provided to the dealer or "Reserve" is capped federally and by the lenders at 2% of the finance charge and averages less than $650 on the average second hand vehicle. By further regulating and curtailing this payment, the dealers' ability to employ and support professionals who advocate for the customers with the lenders to help them find approval and competitive terms including discounted rates will be greatly diminished. By drafting laws that will have the effect of eliminating or reducing a dealer's right to earn a discount for their service in facilitating an auto loan for buyers of used cars, the Department of Consumer Affairs is actually causing a disservice to consumers.

It cannot be disputed that second-hand automobile dealers provide a valuable service in helping customers acquire the opportunity to finance their vehicle purchase through a third-party lender so that the customers are not limited to seeking private finance or paying cash.

Approximately eighty percent (80%) of all consumers obtain financing for a car through auto dealers, as opposed to their own banks or credit unions. Many times, the lenders that work with dealers are far more competitive than private lenders and do not offer direct loans. Dealers have often established relationships and offer loans with finance companies that provide far more competitive rates and have a much higher approval penetration than local banks that are available to customers. The proposed legislation, however, would actually restrict the dealer's ability to provide these services to customers in New York City. Stated otherwise, the proposed law will harm the very customers this law was initiated to protect and would further have a disparate impact on customers that live in the most depressed and underserved areas of the city who need these services in order to buy a car with a payment that fits their budget. Again, by drafting laws that will have the effect of eliminating or reducing a dealer's right to earn a discount for their service in facilitating an auto loan for buyers of used cars, the Department of Consumer Affairs is actually causing a disservice to consumers.

Unfortunately, the proposed legislation will only add to the already excessive burdens that NYSADA dealer members are required to comply with in this area. There are already so many forms and disclosures that are already required that and the Department's actions will only add to the numerous documents already required in the delivery process for a finance customer. This results in additional time needed to sit with the qualified business manager and sign all of the paperwork and thereby leading to heightened consumer confusion and a deterioration of the customer experience without any real benefit or increase in the protecting of the consumer's interests.

More importantly, the proposed law, in practice, will discourage consumers from seeking to obtain a vehicle loan through a dealer as consumers look skeptically upon the dealer's assistance

in facilitating a vehicle loan as many do not realize that a dealer is entitled to make a profit for its services in facilitating such loan. As previously stated, this will harm the majority of consumers because, by using a private lender, poor credit consumers do not have the ability to (a) get approved for certain vehicle loans and (b) obtain an interest rate as low as the one that a dealer may be able to secure for such consumer. Indeed, a dealer has more leverage with the auto lender, which the consumer does not, because of the volume of vehicle loans that the dealer assigns to the lender. The dealer has the ability to get the consumer, especially consumers with poor credit, approved for vehicle loans, and at a lower interest rate than the consumer could do on his/her own. In sum, by curtailing or chilling the dealer's ability to make a profit on a vehicle loan, the proposed law will just expedite our members exit from the indirect lending business and they will begin to simply advise consumers to obtain their vehicle loans on their own. This would also negatively affect consumers with bad credit and favor consumers with the ability to purchase a used car with cash.

In sum, while the purpose of the proposed legislation is an admirable one, to provide customers with a clear understanding of their automobile financing options and the opportunity to review them prior to completing the final purchase of their vehicle, the proposed legislation would actually restrict the dealer's ability to provide important financial services to customers in New York City.

I am again, on behalf of the NYSADA, extremely grateful to have been asked to provide testimony on the very important issue before the New York City Department of Consumer Affairs.

Sincerely,
Brian J Dennis
President

Riverdale Chrysler Jeep Dodge Ram
Eastchester Chrysler Jeep Dodge Ram
Kia of West Nyack

From: Brad Peters <brad8844@gmail.com>
Sent: Saturday, May 05, 2018 5:38 PM
To: Rulecomments
Subject: Proposed Rules for Second Hand Automobile Dealers

As a vehicle dismantler I would like to thank whoever made the change to the original proposed rules adding to the section of the Used Car Bill of Rights requirements the language in this section shall apply only to second-hand automobile dealers that sell second-hand automobiles to consumers. I have this license only because it is a requirement of having a NYS Department of Motor Vehicles Dismantler license.

Can this language also be incorporated in to the sections dealing with Financing Disclosures as well as the Automobile Contract Cancellation Option and Records and Reports? I am concerned an inspector will come into my place of business and the fact that I possess a Second Hand Dealer - Auto license.

Additionally, can this same language be added into Section 2-103
(g) (1) (i) No dealer shall sell or offer for sale to a person other than another dealer a second-hand automobile unless such second-hand auto mobile has been inspected in accordance with § 301 of the Vehicle and Traffic Law and certified in accordance with § 417 of the Vehicle and Traffic Law.

(ii) After January 31, 1971, all contracts for sale of second-hand automobiles shall contain the following provisions, in type which is 10 point or larger in scale, on that face of the contract to which the buyer's signature is affixed:

IMPORTANT NOTICE TO BUYER

(A) STATE LAW REQUIRES THAT SELLERS OF SECOND HAND CARS CERTIFY IN WRITING TO THE BUYER THAT EACH CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(B) THIS CERTIFICATION IS A GUARANTEE THAT THE CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(C) YOU HAVE A RIGHT TO REQUEST THE DEALER TO REPAIR OR TO PAY IN FULL FOR REPAIRS OF ANY UNSAFE CONDITION IN THE CAR WHICH DOES NOT COMPLY WITH THIS CERTIFICATION.

(D) THIS BUSINESS IS LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, (INSERT THE DEPARTMENT'S CURRENT ADDRESS), COMPLAINT PHONE: (212) (INSERT THE DEPARTMENT'S CURRENT TELEPHONE NUMBER).

license, he or she would look for my Financing agreement and Cancellation Option Forms and absent these forms would issue a violation(s).

We are presently required to post this signage, even if we do not sell cars to consumers. Many dismantlers have received violations over they years for not having this signage posted, simply because we possess the Second Hand Dealer - Auto license from your agency.

I thank you for your consideration.
Brad Peters