

Congress of the United States

Washington, DC 20515

August 12, 2022

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

Dear Chair Khan,

We are writing today in support of the Federal Trade Commission's (FTC) proposal to protect consumers by banning auto dealers' abusive junk fees, surprise fees, and bait-and-switch advertising tactics.¹ In March 2022, we raised concerns about unchecked deceptive advertising practices and consumer fraud by automobile dealerships, and its harmful impact on inflation and individual consumers.² The long list of auto dealers' tactics used to rip off consumers violates the standards of a fair market, and the FTC should exercise its power under the *Dodd-Frank Act* and the *FTC Act* to put a strong rule in place to protect consumers.

American consumers have long faced a complex and opaque market when they purchase new or used cars, with prices varying wildly around the Manufacturers' Suggested Retail Prices (MSRP) and dealers employing high-pressure sales tactics, hidden fees, confusing offers for their used cars, and pressure to accept financing proposals that put buyers at risk of scams.³ Widespread deceptive practices in the automobile industry include dealers' refusal to honor online or previously agreed-upon prices, surprise fees, and "add-on" products used to deceive consumers into paying higher prices.⁴ A 2017 FTC investigation found that dealerships frequently sold optional products as necessities, and either hid their costs or revealed it late in the process to pressure buyers to pay higher prices.⁵ The fees, which can include dealer markups, extended warranties, preparation fees, and documentation fees,⁶ constitute "drip pricing," slowly revealing information and additional fees throughout a long and convoluted process.⁷ As early as 2012,

¹ Federal Trade Commission, "FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers," press release, June 23, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers>.

² Letter from Senator Elizabeth Warren to FTC Chair Lina Khan, March 30, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.03.30%20FTC%20Deceptive%20Practices%20Automobiles%20Letter.pdf>.

³ CBS News, "The hidden fees that can drive up the cost of what you buy," Irina Ivanova, July 25, 2022, <https://www.cbsnews.com/news/hidden-fees-cars-hotels-restaurants-inflation-drip-pricing/>.

⁴ CBS Boston, "I-Team: Consumers Report Car Dealers For Using Deceptive Advertising Tactics," September 27, 2021, <https://boston.cbslocal.com/2021/09/27/massachusetts-deceptive-advertising-car-sales/>; National Consumer Law Center, "Auto Add-Ons Add Up: How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing," October 2017, https://www.nclc.org/images/pdf/car_sales/report-auto-add-on.pdf.

⁵ Federal Trade Commission, "Buckle Up: Navigating Auto Sales and Financing," Carole L. Reynolds and Stephanie E. Cox, July 2020, <https://www.ftc.gov/reports/buckle-navigating-auto-sales-financing>.

⁶ Carvana, "8 hidden dealer fees to watch out for," Chris Courtney, November 4, 2020, <https://blog.carvana.com/2020/12/8-hidden-dealer-fees-to-watch-out-for/>.

attorneys general from around the country were condemning widespread fraud in the industry and asking the FTC to crack down on these practices.⁸

As we noted in my March letter, these abuses have become even more acute over the past year, as ongoing supply chain shocks empowered dealers to “routinely” charge thousands of dollars more than the advertised prices.⁹ In January 2022, more than 80 percent of U.S. car buyers paid above the MRSP, compared to 2.8 percent just one year earlier in January 2021 and 0.3 percent in January 2020.¹⁰ The FTC disclosed in July 2022 that the agency had received more than 100,000 complaints in each of the past three years regarding the automobile industry.¹¹

Deceptive practices and consumer fraud in the automobile industry have jacked up car costs, even as increased prices for new and used cars continue to be a major driver of inflation. According to the Bureau of Labor Statistics, prices for new vehicles increased 10.4 percent from July 2021 to July 2022, while prices for used cars and trucks increased 6.6 percent in the same time period, together accounting for more than 8 percent of the total Consumer Price Index increase.¹² If car prices remain elevated, “it will be hard for inflation overall to moderate as much as economists expect.”¹³ An analysis of inflation indicators in the automobile industry found that “virtually all the price increase consumers experienced took place on the dealership side” rather than on the manufacturer side – meaning that “dealerships have gotten away with enormous markups on the price of cars as they take advantage of reduced production and surging demand.”¹⁴ Even auto manufacturers have raised concerns about the tactics of their affiliated dealers, with brands including Ford and General Motors warning dealers about inflated mark-ups and indicating that these practices were “negatively impacting customer satisfaction and damaging to the [...] brand and Dealer Body reputation.”¹⁵

Given the impact of automobile dealerships’ practices on individual consumers, inflation, and the larger economic recovery from the coronavirus disease 2019 (COVID-19) pandemic, we support the FTC’s proposed rule to prohibit deceptive advertising practices and improve disclosures in

⁷ CBS News, “The hidden fees that can drive up the cost of what your buy,” Irina Ivanova, July 25, 2022, <https://www.cbsnews.com/news/hidden-fees-cars-hotels-restaurants-inflation-drip-pricing/>.

⁸ Federal Trade Commission, “The FTC’s Increased Role in Regulating Auto Advertising, Sales and Lease Practices,” https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00112/00112-82927.pdf.

⁹ Washington Post, “Car dealers are raising prices. Automakers are pushing back. Consumers are stuck in between.” Jacob Bogage and Aaron Gregg, February 12, 2022, <https://www.washingtonpost.com/business/2022/02/12/ford-gm-dealer-markups/>.

¹⁰ *Id.*

¹¹ Federal Trade Commission, Federal Register Notice, “Motor Vehicle Dealers Trade Regulation Rule,” July 13, 2022, <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.

¹² U.S. Bureau of Labor Statistics, “Economic News Release,” August 10, 2022, <https://www.bls.gov/news.release/cpi.t01.htm>.

¹³ New York Times, “Few Cars, Lots of Customer: Why Autos Are an Inflation Risk,” Jeanna Smialek, April 10, 2022, <https://www.nytimes.com/2022/04/10/business/economy/cars-inflation.html>.

¹⁴ Forbes, “Car Prices Are Above MSRP Because Of Price Gouging Rather Than Inflation,” Raul Elizalde, February 23, 2022, <https://www.forbes.com/sites/raulelizalde/2022/02/23/car-prices-above-msrp-reflect-price-gouging-rather-than-inflation/?sh=37c1ec10b\60a>.

¹⁵ MotorBiscuit, “Ford Threatens to Cut Dealer Inventories to Demolish Price Markups,” Joe Santos, February 9, 2022, <https://www.motorbiscuit.com/ford-threatens-cut-dealer-inventories-demolish-price-markups/>.

the automobile buying process. Specifically, preventing misrepresentations on the “costs or terms of purchasing, financing, or leasing a vehicle” both before consumers arrive at the dealership and after the purchasing process has begun, requiring “informed consent” for any charges, and banning the sale of add-on products and services that do not materially benefit the consumer would dramatically level the playing field for buyers and cut down on profiteering in the industry.¹⁶ In addition, the FTC’s proposed rule would prevent further consumer harm by requiring car dealerships to be upfront about costs for leasing and financing vehicles, preventing dealers from taking advantage of the disproportionately low-income buyers who are trapped into predatory leases.¹⁷ Finally, the FTC’s provision preventing dealers from advertising rebates or discounts that are not accessible to all customers will further protect low-income and first-time buyers who are disproportionately harmed by these practices.¹⁸

The FTC’s proposed rule follows more than 50 motor vehicle-related enforcement actions over the past ten years, and fulfills the FTC’s mission under Section 1029 of the 2010 *Dodd-Frank Act* that charged the agency with investigating and authorizes rulemaking to prevent unfair or deceptive acts by motor vehicle dealers.¹⁹ This rule will be an important step to protect consumers and help rein in corporate profiteering that exacerbates inflation, and we support the FTC’s efforts to level the playing field for consumers across the country.

Sincerely,



Elizabeth Warren
United States Senator



Katie Porter
Member of Congress

¹⁶ Federal Trade Commission, Federal Register Notice, “Motor Vehicle Dealers Trade Regulation Rule,” July 13, 2022, <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.

¹⁷ The Drive, “Lease Here, Pay Here Dealerships: A Guide to a Predatory Industry’s Bad Idea,” Kevin Williams, April 12, 2022, <https://www.thedrive.com/article/lease-here-pay-here-explained>.

¹⁸ Federal Trade Commission, Federal Register Notice, “Motor Vehicle Dealers Trade Regulation Rule,” July 13, 2022, <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.

¹⁹ *Id.*