American Property Casualty Insurance Association
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Donald L. Griffin
Department Vice President
& Project Coordinator

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Acting Secretary April Tabor
Federal Trade Commission
600 Pennsylvania Ave NW
Suite CC-5610 (Annex C)
Washington, DC 20580

Re: Comment Letter for Notice of Proposed Rulemaking of Motor Vehicle Dealers Trade Regulation Rule (Motor Vehicle Dealers NPRM, File No. P204800)

Secretary Tabor:

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. Members of the American Property and Casualty Insurance Association (APCIA) have extensive involvement in the motor vehicle industry, including, vehicle protection product providers, administrators, and retailers offering service contracts covering motor vehicle repairs, homes, and consumer goods, as well as GAP administrators throughout the country. Our members offer a wide variety of vehicle protection products (VPPs) for consumers that motor vehicle dealers make available with financial transactions at the time of sale.

APCIA appreciates the FTC's intent to protect consumers, but we suggest the Proposed Rulemaking of Motor Vehicle Dealers Trade Regulation Rule (Motor Vehicle Dealers NPRM) ("Proposed Rule") would not achieve that goal and in fact would have the opposite effect. The Proposed Rule's provisions would establish new dealer practices and disclosures that would unnecessarily prohibit consumers from the opportunity to purchase products that help consumers who often need it most. These include products that, for example, waive consumer auto loan balances when a vehicle is destroyed or stolen, or help make payments when the consumer is unable to pay the loan due to job loss, disability or death. It is often those consumers lowest on the socioeconomic scale who reap the largest benefit from the products included in the Proposed Rule.

Due to the limited time given to respond to this rule, APCIA offers the below general comments to the proposed General Questions listed in the Proposed Rule.

QUESTIONS FOR COMMENT

1. ***Does the proposed rule further the Commission's goal of protecting consumers from unfair or deceptive acts or practices in the motor vehicle marketplace? Why or why not?***

We do not believe the Proposed Rule would further the Commission's goal of protecting consumers from unfair and deceptive acts or practices in the motor vehicle marketplace. Although presumably well-intentioned, the Proposed Rule would conflict with already existing practices and state laws and regulations and would confuse consumers and limit consumer choice. In addition, efforts promoting the Proposed Rule focus are a misguided use of the Commission's resources, as more time and energy should be directed to enforcement of entities that are violating the already robust and abundant existing local, state, and federal laws.

First, voluntary protection products (VPPs cited in the rules as "add-on" products) protect consumers from unintended expenses – VPPs are vital and important products for many consumers' financial security. VPPs not only provide monetary benefits to consumers at time of processing a claim but, as importantly, provide financial security and peace of mind. Certainly, we agree that they should not be marketed in a misleading or deceptive way and the consumer should decide what is valuable to them in a clear and fair manner. The Proposed Rule, however, would dismiss the value of VPPs and would likely impact the availability and cost of these products. Generalizing VPPs as invaluable and inhibiting consumers' ability to make financial decisions for themselves is contrary to the goal the Commission. The Proposed Rule would force dealers to only sell manufacturers' products and limit third-party options for the consumer. Dealers will likely not be willing to continue selling third-party products if they are concerned about increased liability due to the Proposed Rule's ambiguity and confusion, thereby limiting competition in the marketplace, and reducing and restricting consumer choices.

Second, the Commission repeatedly cites to the biased report "Buckle-Up: Navigating Auto Sales and Financing". [1] Buckle-Up was based on the auto buying study performed and originally published as a Joint Staff Report of the Bureau of Economics and Bureau of Consumer Protection Federal Trade Commission as "The Auto Buyer Study: Lessons from In-Depth Consumer Interviews and Related Research" in July 2020. (Referred to hereinafter as "BCP Staff Report".) The BCP Staff Report notes: "The study is qualitative and exploratory, with a sample of 38 in-depth interviews and associated purchase and financing documents. Because this is a qualitative study of a small, non-representative sample of consumers, the data generated are not useful for forming quantitative or generalizable conclusions."[2] Yet, this BCP Staff Report was rewritten without any additional research or data by the staff of the Bureau of Consumer

[1] This report is issued by the staff of the Bureau of Consumer Protection ("BCP Staff Report") separately from the staff report issued jointly by BCP and the Bureau of Economics ("Joint Staff Report"). This BCP Staff Report summarizes particular results of the auto buying study that are consistent with the Commission's enforcement experiences and is not a general summary of the study results as represented in the Joint Staff Report. Page 3 of https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf

[2] Page 5 at: https://www.ftc.gov/system/files/documents/reports/auto-buyer-study-lessons-depth-consumer-interviews-related-research/bcpreportsautobuyerstudy.pdf

Protection. Buckle-Up is a biased rewrite of the BCP Staff Report. There is no new data or research, yet, it is the basis for the Commission's Proposed Rule in which it is cited more than 15 times. A sample size of 38 participants is statistically insignificant and disproportionate to the expansive impact the Proposed Rule would have on the industry. The Commission cannot protect consumers from unfair and deceptive practices with minimal data. Without statistically relevant data, only generalizations and assumptions can be made which cannot be the basis for rulemaking. Rulemaking without proper data would only harm both the industry and consumers, rather than deter bad actors.

4. ***Portions of the proposed rule contemplate additional disclosures in an already lengthy, confusing and disclosure-heavy but low-comprehension transaction. Would any of the additional proposed disclosures do more harm than good? If so, is there another measure that should be used to address the consumer protection concerns described herein?***

Yes, the additional disclosures of the Proposed Rule would cause more harm than good. If the Commission feels the current vehicle purchasing process is already lengthy, confusing, and a disclosure-heavy transaction, adding more documents and unnecessary requirements would not serve the Commission's goal of making things easier for the consumer. Again, although well intentioned, the focus is on the wrong areas. The Commission has not tested any disclosures to determine if they will indeed facilitate the consumer buying experience. The Commission indicates that the new requirements will reduce the consumer's buying time. We fail to see how the addition of untested disclosures would aid consumers or reduce transaction time.

The Commission cites a 2020 Cox Automotive study that is outdated. The updated 2021 study is found at: https://www.coxautoinc.com/wp-content/uploads/2022/01/2021-Car-Buyer-Journey-Study-Overview.pdf . The 2021 study indicates that the time period for consumers in the vehicle purchase process is already reduced from the time cited in the 2020 study. In addition, the Commission ignores the significant changes in auto buyer habits and seller processes imposed due to the pandemic and in recent years.

Take also, the "Add-On Product List" as another example. Given the range of products and their varying cost based on make, model, value, etc., it is impossible to implement. To properly reflect all available voluntary protection products for each vehicle listing undoubtedly would result in a list of hundreds of products which will cause substantial confusion. It would be irresponsible of the Commission to pursue such rulemaking without the insight of statistically relevant market research to determine whether consumers would benefit from seeing such a list. Further, the idea of solving a "lengthy" process with an even lengthier list of requirements is counterintuitive and counterproductive.

5. ***Should the Commission provide more detailed requirements regarding the content or form of any of the proposed disclosures?***

From a practical standpoint we find the disclosures hard to implement and would require substantially more detail on how the requirements would be expected to work. As noted above, the Commission has not identified what this disclosure should look like and has not subjected any disclosure to consumer testing to determine its need or efficiency.

7. Does the proposed rule adequately address sales and leasing practices that take place partially or completely online? If not, should there be different or fewer or additional requirements for online sales and leasing?

The rule does not address online sales. In fact, the Proposed Rule would discriminate against certain dealers, delineating them from others, which would cause unfair competition. The Proposed Rule does not take into consideration the many changes occurring in the vehicle sales market. As stated previously, the Commission should continue its research to determine what is needed in the differing market and transactional segments. Not doing so will stifle competition and innovation and will not result in a fairer application.

10. Are the proposed definitions clear? Should any changes be made to any definitions? Should the scope of any of the proposed definitions be expanded or narrowed, and if so, why?

We believe several definitions within the Proposed Rule are unclear and would need revision.

Some examples include:

- The definition of clear and conspicuous conflicts with already established federal law (17 CFR Sec 162.2 (b)). Further, it is overly broad and unreasonable making it impossible for dealers to comply.

- The definition of dealer or motor vehicle dealer also conflicts with federal law (12 USC § 5519(f)(2)) and state definitions.

- The definition of express informed consent is so proscriptive as to be impossible for dealers to comply. This level of scrutiny is not even found in states' use of express and informed consent in medical conditions, medication, and treatment where explanation potentially impacts the health and welfare of a patient. To impose such a strict requirement in a retail sale transaction would be arbitrary and capricious. There is also no way to prove compliance outside of video recording the entirety of the purchasing process, which would be onerous and could potentially violate consumers' privacy rights.

- The definition of add-on product also has several issues. The term "voluntary protection product" is the term used to generally reference motor vehicle service contracts, GAP waivers, and vehicle protection products. The term "add-on" can incorporate many different items in the car and does not adequately capture the products of interest in this rule making.

- The definition of add-on product as drafted would also put independent programs not associated with a vehicle manufacturer at a competitive disadvantage. As the language currently reads, any product or service provided or installed by the motor vehicle manufacturer is exempt from the definition. As stated previously, the dealer would likely choose to offer consumers products provided by a manufacturer because it would not be subject to this Proposed Rule. This should not be the intent of the Commission's

proposed definition, as the definition would undoubtedly result in smaller companies being driven out of the marketplace in favor of larger vehicle manufacturers.

11. Are additional definitions needed?

Yes, a definition of consumer has not been included. Consumer is an already defined term in federal law and to avoid conflict, a same or substantially similar definition should be used.

28. Proposed § 463.4(b) would require dealers to disclose an Add-on List in certain circumstances.

a. How many add-ons do dealers typically offer, and how many of those are sold regularly? Would this disclosure require such a lengthy list of add-on products and services that the list would be too long to be meaningful to consumers? If so, are there changes that could be made to this proposed requirement to reduce the amount of information disclosed while preserving the benefits to consumers? For example, would limiting this requirement to add-ons that are proposed by the dealer to a prospective buyer, as opposed to raised by the consumer, adequately address the harms that occur to consumers in the context of these transactions? Or, should the Add-on List be limited to a certain number (e.g., 15) of add-on products and services most frequently sold by the dealer in the previous quarter?

Yes, as alluded to earlier, the "add-on" list disclosure would be too long to be meaningful to consumers. A product can be tailored and offered in such a way that includes purposeful disclosures and affirmative acceptance. When pricing out various voluntary protection products, consideration of relevant factors such as the make and model of a vehicle, year, mileage, and MSRP/Kelley Blue Book value, etc. are considered. A luxury model is not going to cost the same as a base model. Having a full list is not only impractical, but a waste of time to all involved. Dealers should not have to limit products and stifle consumer choice just to keep a list short. Again, more time and consideration (i.e., market research and data) needs to be taken to determine what consumers may want and what might be more helpful.

33. This provision is intended to prevent conflicting and otherwise deceptive representations, and to protect consumers without requiring additional disclosures in an already lengthy, disclosure-heavy process. Given these concerns, should additional restrictions be placed on all add-ons? In particular, the Commission is contemplating whether any final Rule should restrict dealers from selling add-ons (other than those already installed on the vehicle) in the same transaction, or on the same day, the vehicle is sold or leased. Would such a provision better protect consumers without unduly burdening competition?

No, additional restrictions should not be placed on voluntary protection products. First, doing so would go beyond the bounds of the Commission's purported purpose of restricting deceptive representations and could lead to a complete prohibition of selling a product. We do not think that is what the Commission intends. Perceived issues, based on statistically dubious evidence and limited anecdotes, should not determine the availability of a whole classification of products in any given marketplace.

Secondly, the proposal to restrict dealers from selling vehicle protection products (other than those already installed on the vehicle) in the same transaction, or on the same day, the vehicle is sold or leased would cause harm to consumers. Without the ability to finance the voluntary protection product with the vehicle purchase, consumers will either have to elect to pay for the product(s) in cash, put the price of the product on a credit card (at a significantly higher interest rate), or forego valuable coverage afforded by voluntary protection products altogether and be forced to take on the risk of the vehicle experiencing a breakdown or total loss.

Most if not all the states regulate vehicle protection products in such a manner that provide a free look period during which consumers have the ability to cancel within a specified period of time. If consumers cancel within the predetermined amount of time and if they did not file any claims, then they receive a full refund of the product purchase price. Therefore, if the consumer were to change their mind or decide they do not need the coverage, they have the right to cancel for a refund of all or a part of their purchase price. This provides more options and is more beneficial to the consumer than not having an option at all to purchase such products because the consumer cannot add their desired product with the financing of the vehicle later.

35. The proposed rule would also prohibit dealers from charging for GAP Agreements if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio would result in the consumer not benefitting financially from the agreement. Should any final Rule set forth how to calculate the loan-to-value ratio? If so, what should such a provision require?

No, we do not support a final rule that sets forth how to calculate loan-to-value (LTV) ratios. The lender can best determine the LTV that would be most beneficial to the consumer without a set calculation which could be quite unworkable. In addition, lenders are highly regulated and the reasons for the way LTVs are established is vast.

36. Proposed § 463.5(b) would prohibit a dealer from charging for optional add-ons unless the dealer first discloses the vehicle's Cash Price without Optional Add-ons and records that a consumer has declined to purchase the vehicle at that price. Should the Commission consider means to require more affirmative engagement by consumers to consciously select add-on products and services? In particular, the Commission is contemplating whether any final Rule should require separating the purchase of add-ons from the vehicle sale or lease transaction, or permit consumers to cancel add-ons (that do not involve physical alteration to the vehicle) within a short time after the sale or lease transaction is concluded. What practical limitations might such additional requirements impose?

No, the Proposed Rule should not require separating the purchase of voluntary protection products from the vehicle sale or lease transaction. As noted above, the consumer can cancel within the free look period as these products are optional and voluntary. Separating the transaction would be confusing to the consumer and put them in a difficult position in terms of financing the price of such products as part of the overall transaction. It would also add time associated for the transaction. Separating the purchase of vehicle protection products to another point in time would require the consumer to take a second day to purchase, possibly having to

take off work in a separate instance, which is in direct contradiction to the goals of the Proposed Rule.

48. Does any portion of the proposed rule duplicate, overlap, or conflict with any federal, state, or local laws or regulations?

Yes, several portions of the Proposed Rule duplicate, overlap, and conflict with federal and state laws.

First, at the federal level, the Used Motor Vehicle Trade Regulation Rule outlines deceptive acts and practices for used vehicle dealers. Additionally, the Truth in Lending Act's Regulation Z Part 226 outlines the disclosures required for credit insurance and voluntary products. Additionally, Regulation Z has a definition of cash price that conflicts with the proposed rule.

Second, many states have already adopted Model Acts provided by associations, such as the National Association of Insurance Commissioners (NAIC), Service Contract Industry Council (SCIC), the Guaranteed Asset Protection Alliance (GAPA) and the Motor Vehicle Protection Product Association (MVPPA) whose model acts have many overlapping requirements with the Proposed Rule. These models already require the disclosure of the purchase price of the voluntary protection product to consumers, the voluntary nature of the transaction, and require separate recordkeeping methods.

Third, other states' laws have their own regulation of motor vehicle dealers via licensing and ongoing compliance requirements. Some examples include:

- Alaska - outlines dealer advertising practices and prohibitions that include a requirement specific to service contracts where they must be clearly and conspicuously described.
- California ("CA")– has a car buyers disclosure requirement specific to voluntary protection products. The CA Car Buyer's Bill of Right includes:
  - Purchase Price Disclosure for Items Included in the Monthly Payment.
  - The dealer must provide a written document with the price of specified items purchased and their effect on installment payments.
  - Items requiring disclosure include a service contract, insurance product, debt cancellation agreement, theft deterrent device, surface protection product, and contract cancellation option agreement.
  - No charges may be added to the contract without full disclosure and consent.
  - The document must include the cost of the monthly installment payments with and without items listed.
- Florida - requires that applicants seeking a motor vehicle dealer license provide proof of completing a pre-licensing dealer training course unless otherwise exempted. Such course includes training in titling and registration of motor vehicles, laws relating to unfair and deceptive trade practices, laws relating to financing regarding buy-here/pay-here operations and other information that will promote good business practices as determined by the Florida Department of Highway Safety and Motor Vehicles

- Indiana: has the Indiana Auto-Buyer's Bill of Rights, which outlines consumers' rights when purchasing both new and used vehicles and which advises constituents that they have the right to file a Consumer Complaint with the Indiana Attorney General's Office, should they feel that any of their rights had been violated throughout the purchasing process.

Lastly, additional states have advertising and other consumer protection statements and guides including but not limited to: Arizona, Georgia, Illinois, Maine, Massachusetts, Michigan, New York, Oklahoma, Oregon, Texas, Vermont, and Washington.

We request that the Commission take our concerns into consideration. As previously stated, this rule has not been adequately researched and lacks the statistically relevant and necessary data to make meaningful changes that will help consumers. In fact, we previously requested an extension of the comment period to further review your questions and obtain more direct data and detailed responses, but an extension was refused. The Commission explains on its own website that the public will have at least three opportunities to comment on proposed rules and within its own process indicates an Advance Notice of Proposed rulemaking and informal hearings[3]. This process has not been followed in this rulemaking.

We understand that the Commission's intention is to help consumers and our goal is the same. However, meaningful changes should not be rushed. Such changes should include sufficient research, thorough discussion, and exploration of various perspectives. Simply put, more time and significantly more data are needed ahead of further rulemaking.

As the Commission continues to consider the Proposed Rule, APCIA encourages the Commission to engage with us on these issues.

Respectfully submitted,

Donald L. Griffin, CPCU, ARC, ARe, ARM, AU

[3] How does the FTC's Section 18 rulemaking process work?
So-called "Section 18 rulemakings" address unfair or deceptive practices. In this process, you have three opportunities to weigh in by:
responding to an Advance Notice of Proposed Rulemaking;
responding to a Notice of Proposed Rulemaking; and
presenting your views at an "informal hearing," if a hearing is held and you request to speak.
https://www.ftc.gov/enforcement/rulemaking/public-participation-section-18-rulemaking-process