



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

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

A&T Auto Salvage Inc
170-25 Liberty Ave
Jamaica , NY 11433
718-291-3767

DMV Facility # 7118633
DCA SHDA # 2014193-DCA
DCA SHDG # 2014214-DCA

To:
Casey Adams
Deputy Director of
City Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway – 5th Floor
New York, NY 10004

Re: Proposed Rule For
Second-Hand Automobile Dealers
PUBLIC HEARING: FEBRUARY 28, 2018

Dear Deputy Director Adams,

This letter is being written on behalf of my New York City based automobile dismantling business, as well as all similarly affected dismantlers in NYC.

In New York City, a Vehicle Dismantler is required to possess a Second-Hand Automobile Dealer license from the New York City Department of Consumer Affairs. This is a requirement of the New York State Department of Motor Vehicles. This second-hand automobile dealer license is required even if the business has no intention of selling cars to consumers. These facilities that are automobile dismantlers **do NOT sell cars to consumers**. The vehicles on their premises are “end of life vehicles,” which are dismantled for parts.

At present, vehicle dismantlers must post “Notice to Our Customers” signage pursuant to Title 6 RCNY 2-103(g)(1)(v). This signage states the business certifies their second-hand cars are in safe condition at the time of sale. This sign must be displayed even if the business does not sell cars to the public. There is no

distinction in the rules between business that sell cars to consumers and those that do not. The existing language in the Rules of the City of New York requires all business that possess a second-hand automobile dealer license to display a "Notice to Our Customer" sign, no less than 30 inches x 18 inches, or risk receiving a violation.

Now your agency is proposing additional rules, pursuant to amendments in the Administrative Code, dealing with financing vehicles and a "Bill of Rights". This would require these businesses that do not sell cars to consumers to incur the cost of posting a Bill of Rights and having printed copies of the Bill of Rights to distribute to non-existent consumers, as well as possessing Finance Disclosure forms and Contract Cancellation Option forms. Failure to have the Bill of Rights posted and these forms in their possession would result in violations being issued.

To avoid the potential of violations being issued to businesses like mine, that do not sell second-hand automobiles to consumers, I am asking that your agency modify the following sections of the Proposed Rules as indicated:

2-106 Financing Disclosures

(a) To comply with Section 20-268.1(e)(2) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers**, must provide to each consumer the financing disclosure shown below on a paper no less than 8.5 inches by 11 inches in dimension in the language in which the sales or finance contract was negotiated, provided the commissioner has made such disclosure available in such language.

(b) To comply with Section 20-268.1(e)(4) of the Administrative Code, a second-hand automobile dealer, **that sells motor vehicles to consumers**, must retain a copy of each financing disclosure shown in subdivision (a), along with a written acknowledgment that the consumer received the disclosure, for a period of no less than 6 years. The written acknowledgment requirement is satisfied by obtaining the consumer's written signature or initials on the disclosure document.

(c) It is a violation of Section 20-268.1(f) of the Administrative Code for a second-hand automobile dealer to attempt to have a consumer waive any of the protections set forth in Section 20-268.1. Each attempt shall constitute a separate and independent violation.

(d) It is a violation of Section 20-268.3 of the Administrative Code for a second-hand automobile dealer to provide inaccurate translations of documents to a consumer. Each inaccurate document provided to a consumer shall constitute a separate and independent violation.

Or in the alternative:

(e) The above shall not apply to a licensed New York State Department of Motor Vehicles “dismantler” that does not sell motor vehicles to consumers.

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(a) To comply with Section 20-268.2(a) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers,** must provide to each consumer the automobile contract cancellation option form shown below on a paper no less than 8.5 inches by 14 inches in dimension, printed in color, in the language in which the sales or finance contract was negotiated, provided the commissioner has made the form available in such language.

(b) To establish that a trade-in automobile was sold or transferred inadvertently under Section 20-268.2(g)(1) of the Administrative Code, a second-hand automobile dealer, **that sells motor vehicles to consumers,** must have maintained written policies and procedures designed to avoid such sale and must have distributed such policies and procedures to all employees with responsibility in this area annually.

(c) If a second-hand automobile dealer determines that a consumer has failed to comply with the terms and conditions of a contract cancellation option under 20-268.2(g)(2), it must provide the consumer a written explanation of such determination. The second-hand automobile dealer must maintain a record of such determination for no less than 6 years and must provide a copy of such record to the commissioner upon request.

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(a) To comply with Section 20-268.4(b)(1) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers**, must post a copy of the consumer bill of rights shown below on a paper no less than 17 inches by 28 inches in dimension in English, and in any other language in which the second-hand automobile dealer transacts business, provided the commissioner has made the bill of rights available in such language. A copy must be posted conspicuously in any office or area of the dealer location where consumers negotiate and execute sales and contacts.

(b) To comply with Section 20-268.4(b)(2) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers**, must provide to each consumer a written copy of the consumer bill of rights show in subdivision (a) on a paper no less than 8.5 inches by 14 inches in dimension in the language in which the sales contact was negotiated, provided the commissioner has made the bill of rights available in such language.

(c) A second-hand automobile dealer, **that sells motor vehicles to consumers**, may comply with Section 20-268.1(e)(1) of the Administrative Code by providing each consumer with a consumer bill of rights pursuant to Section 20-284.4(b)(2) of the Administrative Code.

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(a) To comply with Section 20-268.5(a) of the Administrative Code, a second-hand automobile dealer, **that sells motor vehicles to consumers**, must maintain a copy of the consumer bill of rights signed or initialed by each consumer for six years after the date of execution of such document.

(b) To comply with Section 20-268.5(c) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers**, must maintain a automobile contact cancellation option report in the format shown below.

(c) A second-hand automobile dealer, **that sells motor vehicles to consumers,** shall be in violation of Section 20-268.5(c) of the Administrative Code for failing to make available a copy of its automobile contract cancellation option report to the commissioner within 20 business days of receiving a request. Notwithstanding the foregoing sentence, a second-hand automobile dealer shall not be in violation of Section 20-268.5(c) for such a failure where he or she received and complied with a similar request in the past 12 months.

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I thank you for your consideration when considering the comments to your proposed rules.

Very truly yours,



An Yen Ming
President of A&T Auto Salvage Inc

February 28, 2018

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

Re: Proposed rules related to secondhand automobile dealers

Dear Mr. Adams:

On behalf of the American Financial Services Association (“AFSA”),¹ thank you for the opportunity to comment on the Department of Consumer Affairs’ (“the Department”) proposed rules to implement Local Laws 197 and 198 of 2017 relating to secondhand automobile dealers. While we understand the Department’s goal is to provide consumers with more information through additional disclosures at the time of purchase, we believe the proposed disclosures would confuse consumers and provide little additional consumer benefit.

As proposed, the finance disclosure would require disclosure of three separate annual percentage rates (APR): the contract APR, the lowest APR offered to the buyer by any finance company for a loan with the same term and down payment, and the APR offered to the buyer by the selected finance company. In some cases, these three rates may be the same, but in many cases, these numbers will be different, forcing a consumer to interpret and understand as many as three different rates for the same transaction and may leave a consumer with the impression that the contract APR is lower than it actually is. Such confusion would not benefit consumers and undermines the federal Truth in Lending Act, which sought to provide consumers with a clear understanding of the cost of credit.

The Federal Reserve Board previously considered and specifically decided against requiring a similar disclosure of fees for dealer participation due to the minimal consumer benefit, noting:

The portion of the finance charge which represents the dealer's participation is not an amount which the consumer could save by obtaining a direct loan from a lending institution. . . . The addition of another disclosure requirement to Regulation Z would result in more complex disclosure statements and could lead to confusion or misunderstanding by consumers.²

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

² See *42 Fed. Reg. 19124, 19125 (April 12, 1977)*.

We urge you to reconsider the proposed financing disclosure in favor of one that would better serve consumers' interests.

Thank you in advance for your consideration. We appreciate the opportunity to work with the Department throughout the rulemaking process. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 952-922-6500 or dfagre@afsamail.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Fagre Arlowe". The signature is fluid and cursive, with a long horizontal stroke at the end.

Danielle Fagre Arlowe
Senior Vice President, State Government Affairs
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517

**ADDITIONAL 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:

FEBRUARY 28, 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. I started my first dealership 12 years ago with the help of 17 employees and now count over 200 hard working team members who are our best customers and customer advocates in the Bronx. Prior to owning stores in New York City, I started, owned, and operated a national Sub-Prime Finance Consulting Company that provided training to more than 50 dealers in over 20 states including New York.

I’m here to share comments with respect to proposed Local Laws 197 and 198 of 2017 related to second hand automobile dealers. The genesis of these laws was 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.

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. 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.

Dealers invest in finance manager training, certification, and work in one of the most highly regulated businesses within New York City and our members must contend with a host of laws and regulations by federal, state, and local agencies.

Financing Disclosure

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 buyer by any finance company for loan with same term and down payment.”

The proposed law is too vague and is destined to lead only to confusion by both the consumer and the dealer as to exactly what is required by the dealer. This puts both the consumer and the dealer in harms way.

What does the law require? Is it the lowest of rates offered by the finance companies who the dealer submits the application, the lowest of all finance companies with whom the dealer has a relationship, the lowest of all finance companies in the marketplace, or some other barometer?

It is important to understand that many factors weigh in to the financing offered to customers via the dealer. Currently, the law as proposed only identifies “term” and “down payment” as items that may affect the offered rate. There are a multitude of factors that factor into each approval even on the same vehicle with the same term 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:

Source of down payment- trade in equity, cash, third party down payment.

Stipulations which may make the approval untenable- 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.

Two seemingly similar approvals that require the same down payment and term are often not the same at all. Requiring a dealer to arbitrarily document and disclose a single interest rate as the only deciding factor of lender selection is not viable or beneficial to the customer as the approvals are extended based on the ability of the customer to meet the extended stipulations listed in the conditional approval as well as the lender guidelines. Often, business managers submit applications and receive approvals for customers and are unable to meet the conditions of the approval thereby rendering the call back an effective declined application.

It is inherently in the dealer's and customer's best interest to extend the best viable offer obtained through a third party lending source in order to help customers achieve a monthly payment that is within the customer's budget and also one that will fund when the contract is received by the lender. It is completely non-sensical to think that a dealer would have two identical approvals in every way and offer the customer the one with the higher rate. There would be as much harm to the dealer as to the customer. Dealers do not benefit in any way by providing a loan from a lender with a higher rate. When it is time to trade the vehicle in, it benefits the customer and dealer to have greater equity from reduced interest.

Furthermore, 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. Proposed law needs to be reworked so that, at a minimum, it focuses 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. Often, complex lender guidelines and conditions on approvals require exceptional amounts of investment in training so that a dealer may find the best available approval for the customer and comply with the myriad of stipulations and requirements for each loan. Providing indirect loan support is no small undertaking and frequently, customers may take delivery of the vehicle under finance terms that are later revoked by the lender in their funding process. 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 attempting to further regulate and curtail 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. Without the ability to support a business manager, it would be left to the salesperson to select a lender without the extended knowledge of programs and potentially harm the customer by not finding approval or a competitive call back.

Many of our customers, especially here in the Bronx, have bruised or no credit and being able to provide them with the opportunity to buy a car with a payment that fits their budget so that they may use that vehicle to find a job or drive to a higher paying job and establish or re-establish their credit is one of the most rewarding experiences of being a second hand dealer here in the great New York City.

It is wrong minded to think that a customer who has bruised or no credit, that is trying to establish or re-establish their credit, should be denied access to the lenders and programs that

dealers help arrange in order to secure approvals. Again, it is inherently in the best interest of the dealer to find the most competitive rate and term for every customer. Dealer's do not dictate the rate a customer may qualify for.

Further limiting and regulating the dealer's ability to provide these services to customers in New York City will disproportionately harm the very customers this law was initiated to protect. This will have a disparate impact on all customers, but mostly those that live in the most depressed and underserved areas of the city.

The most beneficial action the DCA can take is to educate customers and protect them by is by strengthening their understanding of the terms already disclosed on their finance contract. The two words at the top of every second hand auto finance contract, "Simple Interest", are often overlooked and misunderstood by customers. This means that the rate of interest will only be charged on a periodic basis based on the outstanding amount of principal. If customers wished to send a half payment in bi-weekly, rather than once a month, the customer would reduce their term and the interest paid by over 10 percent. This information and much more is included on the contract.

Unfortunately, there are so many forms and disclosures already required that the most important information becomes lost, blended in, and overlooked. Adding even a single page to the to the more than 15 documents already required in the delivery process for a finance customer will only further diminish the most important terms of their finance agreement disclosures including total interest, term, monthly payment, the ability to payoff early or in full without interest, etc...

A typical second hand delivery envelope is as thick as half an inch and often the worst performing question on the follow up customer quality survey is the time it takes to sit with the

qualified business manager and sign all of the paperwork. Improving the customer experience and protecting their interests by adding to the over 10,000 words of contract language already required by disclosing information that is secondary to the fundamental factors of the sale will only further confuse and harm customers and dealers.

By promulgating 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.

Due to the substantial impact that these proposed laws will have on franchised dealers, it is crucial that the effect or ramifications of any action or legislation enacted by the Department of Consumer Affairs be comprehensively analyzed before any action is taken. It is vital that the negative ramifications of the proposed laws that I have raised be addressed prior to the enactment of the legislation.

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

Please do not hesitate to contact me directly as I am as inspired to advocate for our customers and employees as I am for dealers. I believe there are far better opportunities to protect our residents.

Sincerely,

Brian J Dennis

President

Riverdale Chrysler Jeep Dodge Ram

Eastchester Chrysler Jeep Dodge Ram

Kia of West Nyack



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

February 28, 2018

VIA MAIL AND EMAIL TO RULESCOMMENTS@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.

February 28, 2018

Page 2

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

Best regards,

A handwritten signature in blue ink, appearing to read "William B. Mack III". The signature is fluid and cursive, with a long horizontal stroke at the end.

William B. Mack III
Shareholder

**J & V AUTO PARTS INC.
519 EAST 83RD STREET
BROOKLYN, NY 11236
(718) 241-7809**

**DCA SHDA 0784191
DCA SHDG 0783653
DMV 7003462**

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Deputy Director of
City Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway – 5th Floor
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At present, vehicle dismantlers must post “Notice to Our Customers” signage pursuant to Title 6 RCNY 2-103(g)(1)(v). This signage states the business certifies their second-hand cars are in safe condition at the time of sale. This sign must be displayed even if the business does not sell cars to the public. There is no distinction in the rules between business that sell cars to consumers and those that do not. The existing language in the Rules of the City of New York requires all business that possess a second-hand automobile dealer license to display a “Notice

to Our Customer” sign, no less than 30 inches x 18 inches, or risk receiving a violation.

Now your agency is proposing additional rules, pursuant to amendments in the Administrative Code, dealing with financing vehicles and a “Bill of Rights”. This would require those businesses that do not sell cars to consumers to incur the cost of posting a Bill of Rights and having printed copies of the Bill of Rights to distribute to non-existent consumers, as well as possessing Finance Disclosure forms and Contract Cancellation Option forms. Failure to have the Bill of Rights posted and these forms in their possession would result in violations being issued.

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Very truly yours,



GIUSEPPE LASORSA

JET AUTO WRECKERS, INC.
58-05 KINGSWAY PLACE
BROOKLYN, NY 11234
(718) 251-9204

DMV #7002812
DCA SHDA 0512702
DCA SHDG 0457193

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2-106 Financing Disclosures

(a) To comply with Section 20-268.1(e)(2) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers**, must provide to each consumer the financing disclosure shown below on a paper no less than 8.5 inches by 11 inches in dimension in the language in which the sales or finance contract was negotiated, provided the commissioner has made such disclosure available in such language.

(b) To comply with Section 20-268.1(e)(4) of the Administrative Code, a second-hand automobile dealer, **that sells motor vehicles to consumers**, must retain a copy of each financing disclosure shown in subdivision (a), along with a written acknowledgment that the consumer received the disclosure, for a period of no less than 6 years. The written acknowledgment requirement is satisfied by obtaining the consumer’s written signature or initials on the disclosure document.

(c) It is a violation of Section 20-268.1(f) of the Administrative Code for a second-hand automobile dealer to attempt to have a consumer waive any of the protections set forth in Section 20-268.1. Each attempt shall constitute a separate and independent violation.

(d) It is a violation of Section 20-268.3 of the Administrative Code for a second-hand automobile dealer to provide inaccurate translations of documents to a consumer. Each inaccurate document provided to a consumer shall constitute a separate and independent violation.

Or in the alternative:

(e) The above shall not apply to a licensed New York State Department of Motor Vehicles “dismantler” that does not sell motor vehicles to consumers.

2-107 Automobile Contract Cancellation Option

(a) To comply with Section 20-268.2(a) of the Administrative Code, each second-hand automobile dealer, ***that sells motor vehicles to consumers,*** must provide to each consumer the automobile contract cancellation option form shown below on a paper no less than 8.5 inches by 14 inches in dimension, printed in color, in the language in which the sales or finance contract was negotiated, provided the commissioner has made the form available in such language.

(b) To establish that a trade-in automobile was sold or transferred inadvertently under Section 20-268.2(g)(1) of the Administrative Code, a second-hand automobile dealer, ***that sells motor vehicles to consumers,*** must have maintained written policies and procedures designed to avoid such sale and must have distributed such policies and procedures to all employees with responsibility in this area annually.

(c) If a second-hand automobile dealer determines that a consumer has failed to comply with the terms and conditions of a contract cancellation option under 20-268.2(g)(2), it must provide the consumer a written explanation of such determination. The second-hand automobile dealer must maintain a record of such determination for no less than 6 years and must provide a copy of such record to the commissioner upon request.

Or in the alternative:

(d) The above shall not apply to a licensed New York State Department of Motor Vehicles “dismantler” that does not sell motor vehicles to consumers.

2-108 Consumer Bill of Rights

(a) To comply with Section 20-268.4(b)(1) of the Administrative Code, each second-hand automobile dealer, ***that sells motor vehicles to consumers,*** must post

a copy of the consumer bill of rights shown below on a paper no less than 17 inches by 28 inches in dimension in English, and in any other language in which the second-hand automobile dealer transacts business, provided the commissioner has made the bill of rights available in such language. A copy must be posted conspicuously in any office or area of the dealer location where consumers negotiate and execute sales and contracts.

(b) To comply with Section 20-268.4(b)(2) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers**, must provide to each consumer a written copy of the consumer bill of rights show in subdivision (a) on a paper no less than 8.5 inches by 14 inches in dimension in the language in which the sales contact was negotiated, provided the commissioner has made the bill of rights available in such language.

(c) A second-hand automobile dealer, **that sells motor vehicles to consumers**, may comply with Section 20-268.1(e)(1) of the Administrative Code by providing each consumer with a consumer bill of rights pursuant to Section 20-284.4(b)(2) of the Administrative Code.

Or in the alternative:

(d) The above shall not apply to a licensed New York State Department of Motor Vehicles "dismantler" that does not sell motor vehicles to consumers.

2-109 Records and Reports

(a) To comply with Section 20-268.5(a) of the Administrative Code, a second-hand automobile dealer, **that sells motor vehicles to consumers**, must maintain a copy of the consumer bill of rights signed or initialed by each consumer for six years after the date of execution of such document.

(b) To comply with Section 20-268.5(c) of the Administrative Code, each second-hand automobile dealer, **that sells motor vehicles to consumers**, must maintain a automobile contact cancellation option report in the format shown below.

(c) A second-hand automobile dealer, **that sells motor vehicles to consumers**, shall be in violation of Section 20-268.5(c) of the Administrative Code for failing to make available a copy of its automobile contract cancellation option report to the commissioner within 20 business days of receiving a request. Notwithstanding

the foregoing sentence, a second-hand automobile dealer shall not be in violation of Section 20-268.5(c) for such a failure where he or she received and complied with a similar request in the past 12 months.

Or in the alternative:

(d) The above shall not apply to a licensed New York State Department of Motor Vehicles "dismantler" that does not sell motor vehicles to consumers.

I thank you for your consideration when considering the comments to your proposed rules.

Very truly yours,

A handwritten signature in black ink, appearing to read 'James Serpico', with a long horizontal flourish extending to the right.

James Serpico

**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**

FEBRUARY 28, 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.

Founded in 1923, the New York State Automobile Dealers Association actively represents approximately 1000 franchised new car and truck dealers in New York State, which includes the overwhelming majority of franchised new car and truck dealers in the five boroughs of New York City. Most, if not all, of our franchised new car dealers also operate used car departments. The association is dedicated to providing the highest quality service in the areas of education, insurance and legislative and regulatory matters for New York dealers. NYSADA, the statewide advocate for franchised dealers, is committed to promoting and maintaining a competitive automotive industry for our members across the Empire State. NYSADA diligently advocates for the interests and concerns of its members with the state’s leaders. In addition to providing legislative support, and education to franchised auto dealers throughout the state, NYSADA develops, compiles and provides to the consumer, information which will promote a better understanding of the franchised motor vehicle dealers’ place in the economy and provides relevant information to regulatory and lawmaking bodies so that they may have a better

understanding of the possible effects of proposed laws, rules and regulations on the consumer and the motor vehicle industry.

NYSADA is extremely grateful to have been afforded the opportunity to provide comments with respect to proposed Local Laws 197 and 198 of 2017 relating to second hand automobile dealers. Both proposed laws raise very important concerns for both consumers and our member dealers. We are appreciative of having the opportunity to contribute to the debate before the New York Department of Consumer Affairs.

I. Financing Disclosure

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 buyer by any finance company for loan with same term and down payment.” First, and significantly, the proposed law, in practice, will discourage consumers from seeking to obtain a vehicle loan through a dealer. Specifically, consumers will 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. Importantly, 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. What needs to be emphasized is that the 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. As such, 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. Stated otherwise, it is the consumer

that needs the dealer to gain access to credit, or more favorable interest rates, that he/she would otherwise not have available to them.

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 create a delay to a consumer with respect to his ability to purchase a used vehicle. This would also negatively affect consumers with bad credit and favor consumers with the ability to purchase a used car with cash. While a dealer may make a small profit from assigning a loan to a finance company, without this profit, the dealer will have no incentive to forge relationships with numerous finance companies, which will only hurt consumers. As such, the proposed law will be detrimental to consumers and leave them with fewer loan options and higher interest rates.

Second, the proposed law, as promulgated, is too vague and seems destined to lead only to confusion by both the consumer and the dealer as to as to exactly what is required by the dealer. Simply stated, the law, as written, does little to clarify exactly what is meant by "lowest APR offered to buyer."

If a consumer needs financing for his/her vehicle purchase, then a dealer will enter into a retail installment sale contract with its customers which contains an interest rate. Normally, that rate is determined by adding the buy-rate offered by a finance company and a very slight mark-up set by the dealer. While a dealer may have relationships with a number of finance companies, it might submit a customer's application for pre-approval to only one or two finance companies. The way the law is written seems to imply that the dealer may need to submit a customer's application for pre-approval to, at a minimum, all of the finance companies with which it has a relationship. Furthermore, there is a difference between the interest rates offered by third-party

lenders to the dealer for the particular consumer (the “Buy-Rate”) and the ultimate rate that the dealer offers the consumer (which includes the “mark-up” of the Buy-Rate). Respectfully, we submit that the proposed law needs to be reworked so that, at a minimum, it focuses on the disclosure of the single best rate to be offered to the consumer.

Other issue are incentives. A finance company might pay an incentive to a dealer in the event the dealer assigns a certain volume of business to the finance company. Such incentives could be cash or credits against things like a floorplan line of credit. Would these potential incentives need to be factored-in to determine the lowest interest rate available to a customer?

Further factors that can only lead to confusion on the part of both the consumer and the dealer are that interest rates are subject to variables such as down payment amounts, credit rating, guarantors, term, the customer’s trade-in, and the like. Currently, the law as proposed only identifies “term” and “down-payment” as items that may affect the offered rate. A dealer could also offer the customer a rate below the finance company’s offered rate and absorb the difference. As you can see, there will be much confusion from both the consumer and the dealer’s perspective as to exactly what is the lowest interest rate. Is it the lowest of the rates offered by the finance companies who the dealer submits a customer's application, the lowest of all finance companies with whom the dealer has a relationship, the lowest of all finance companies in the marketplace, or some other barometer? At a minimum, the proposed law must be made clearer to identify exactly what needs to be disclosed by the dealer as to avoid confusion by both the consumer and the dealer.

The genesis of this proposed law seems to be that the Department has somehow determined that dealers are making a large profit on, or substantially marking up, the interest rate charged to bad credit customers. In reality, it is difficult for a dealer to make a profit on a bad credit customer

as the third-party lender may even charge the dealer a fee for approving the particular high-risk loan. In this sense, it is the dealer that is providing the service that enables the poor credit consumer to secure the vehicle loan.

II. Two Day Cancellation Option

The second of the proposed laws sets forth the requirement that New York City second hand automotive dealers must provide a cancellation option which allows consumers the option to cancel the transaction within two days. This proposed law also provides that, if the consumer has a trade in vehicle, the consumer has the further option of (a) leaving the trade-in with the dealer during the two-day option period or (b) utilizing his/her trade-in during the two-day option period with up to a 250-mile limit as long as the trade-in is brought back to the dealer in the same condition as when initially presented to the dealer. In theory, the reason for promulgating this proposed law seems very consumer friendly, in practice, however, the proposed law will create numerous problems for both consumers and New York City second hand automobile dealers.

1. The first scenario that could occur with the newly proposed law is that the consumer, without a trade-in vehicle, waits two days and determines to still go forward with the transaction. The dealer, however, bears the additional cost of storing, insuring and paying floor plan interest on the vehicle for two additional days. The proposed law also does not take into account the situation in which the purchased vehicle is damaged on the dealer's lot during the two days that the consumer is determining whether to go through with his/her purchase.
2. A second scenario is that the consumer has a trade-in vehicle associated with his/her purchase. The consumer may determine to leave his/her trade in vehicle with the dealer

during the two-day option period. The dealer now has to bear the risk of storing and insuring a vehicle that it does not own nor attempt to sell. Indeed, there is the risk that the consumer determines to exercise the option to cancel the transaction but his/her trade-in has been damaged while being stored at the dealership.

3. A third scenario is that the consumer has a trade-in vehicle associated with his/her purchase but determines to utilize the proposed trade-in vehicle during the two-day option period. Of course, the consumer runs the risk that the vehicle is damaged during this time period. This puts the consumer's transaction with the dealer at risk because they may need the equity of the trade-in vehicle to afford the vehicle that he/she has purchased from the dealer. Furthermore, there will not be a single dealer that will not bear the cost of re-inspecting the trade-in after it has been brought back by the consumer following the two-day option period. The extra cost of the re-inspection of the trade-in may be something that is passed onto the consumer in the transaction which is an unintended negative consequence of the proposed law whose purpose is to assist consumers with their vehicle purchases.

4. Other issues that arise from the interplay of the two-day cancellation option with the Finance Disclosure requirements. What if a customer is purchasing a certified vehicle that benefits from a manufacturer's interest rate special program that expires in one day. If the customer exercises the option to wait two days before consummating his/her purchase, they may lose out on the manufacturer's special interest rate offer. In this respect, the interest rate disclosed to the consumer two days prior will no longer be accurate. In fact, independent of any manufacturer's interest rate program, interest rates change every day.

Moreover, what if a third-party lender determines not to fund a consumer loan approved two days prior?

III. Consumer Bill of Rights

It cannot be stressed enough that, while the dealer members of NYSADA provide invaluable services to their local communities, and generate significant economic activity, including, but not limited to, employment, sales tax revenue, and property tax revenue, our members strive to provide excellent service to their communities and customers. In this respect, the dealer members of NYSADA place consumers as their number one concern. Automobile sales, however, are already one of the most highly regulated businesses within New York State and our members must contend with a host of laws and regulations promulgated by federal, state, and local agencies. Our members recognize that the purchase of an automobile is one of the largest financial commitments that any consumer makes in his or her lifetime, and, accordingly, accept this regulatory burden because of the importance of the automobile industry to our state and the public.

The introduction of a required Consumer Bill or Rights, as well as the additional paperwork and record keeping requirements of proposed Local Laws 197 and 198 of 2017, unnecessarily adds to the already excessive paperwork, record keeping and regulatory requirements that our members are required to adhere to. Furthermore, a review of the proposed Consumer Bill of Rights reveals that each of the required relate to matters that are already disclosed, in some fashion, to consumers by the dealer.

- a. With respect to the proposed newly required Financial Disclosure Statement alone, our members would be required to (i) provide to each consumer the financing disclosure in the language in which the sales or finance contract was negotiated and (ii) retain a copy of each

financing disclosure along with a written acknowledgement that the consumer received the disclosure, for a period of no less than 6 years.

- b. With respect to the proposed newly required Contract Cancellation Option alone, our members would be required to (i) provide to each consumer the automobile contract cancellation option form printed in color, in the language in which the sales or finance contract was negotiated; (ii) maintain written policies and procedures designed to avoid the inadvertent sale of a trade-in vehicle held during the consumer's two day option period to cancel which must be distributed to all employees with responsibility in this area annually (iii) provide the consumer a written explanation each time that the dealer determines that the consumer fails to comply with the terms and conditions of a contract cancellation option, maintain a record of such determination for no less than 6 years and must provide a copy of such record to the commissioner upon request and (iv) maintain an automobile contract cancellation option report and make it available to the Commission within 20 days of receiving a request in the format shown below.
- c. With respect to the newly proposed Consumer Bill of Rights alone, our members would be required to (i) post a copy of the consumer bill of rights in English, and in any other language in which the second-hand automobile dealer transacts business, in any office or area of the dealer location where consumers negotiate and execute sales contracts (ii) provide to each consumer a written copy of the consumer bill of rights in the language in which the sales contract was negotiated and (iii) maintain a copy of the consumer bill of

rights signed or initialed by each consumer for six years after the date of execution of such document.

As previously noted, our members are franchised new automobile dealers that also operate used car sales departments. As new automobile franchisees, our members should be exempted from the proposed laws as they are already held to high customer satisfaction standards by their franchisors. The abuses that these proposed laws are presumably designed to guard against do not exist with respect to used vehicle sales at franchised new vehicle dealer. Our member dealers serve a very important function in facilitating vehicle loans for consumers with poor credit, many of whom either would not be able to get any vehicle loan or would be paying a higher interest rate if not for the dealer's relationship with the vehicle lender. Dealers are able to provide this service because of the relationships that they forge with indirect automobile lenders and the high volume of auto loans that they assign.

By promulgating laws that will have the effect of eliminating or reducing a dealer's right to earn a profit 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.

Due to the substantial impact that these proposed laws will have on franchised dealers, it is crucial that the effect or ramifications of any action or legislation enacted by the Department of Consumer Affairs be comprehensively analyzed before any action is taken. It is vital that the negative ramifications of the proposed laws that I have raised be addressed prior to the enactment of the legislation.

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



Greater New York
Automobile Dealers
Association

SUBMISSION

TO: Lorelei Salas, Commissioner of New York City Department of Consumer Affairs

FROM: Greater New York Automobile Dealers Association

RE: Written Testimony on Proposed Rules Related to Second-Hand Auto Dealers

DATE: February 28, 2018

The Greater New York Automobile Dealers Association is a not-for-profit trade association representing nearly 400 franchised new vehicle dealers in downstate New York. Franchised new car dealerships are a valuable segment of the economy, generating \$48.5 billion in economic activity in metro New York, paying \$2.4 billion in state and local taxes, and generating, directly and indirectly, 68,600 jobs in the region.

New York City has added three additional forms to an already highly regulated transaction, drastically increasing the length of time each transaction takes, the costs of forms and storage, and dealers' exposure to penalties for even unintentional errors. Longer transactions will result in fewer vehicle sales, which will likely lead to higher vehicle prices and lower consumer satisfaction. These factors can push vehicle sales out of New York City, causing dealerships to close and leaving customers with fewer choices.

Increased costs, additional time to complete a transaction, and over-regulation worsen New York City's already anticompetitive business environment and are some of the reasons that the Association and our members oppose these laws. Below (and attached), please find our concerns, comments, and proposed changes.

I. Proposed Rules- Financing Disclosures

The City's new disclosure law, and proposed form, require disclosure of the lowest APR a finance institution offers to the vehicle buyer. In indirect lending transactions, which vehicle sales involving financing institutions are, the financing institution never offers the consumer an APR. Therefore, the law as currently drafted requires a legal impossibility and does not provide any guidance on how to state a non-existent number. This form must be modified for compliance to be feasible and not require an impossible action.

If DCA is requiring that dealers provide the financing buy-rate, the form must be modified to reflect this. If the forms are not modified, and dealers fill in any amount other than that which is explicitly required, they are vulnerable for claims of unfair and deceptive practices. As currently drafted, completion of the required document will result in a per se misrepresentation. Plaintiffs' attorneys could bring a class action claim alleging misrepresentation in every transaction involving this document.

In addition to the form requiring information that does not exist, disclosing the dealer's financing before execution of the retail installment contract is often impossible as the dealer may agree to finance terms before identifying a lending institution. The dealer may then need to reduce their fee for assisting in the origination of the financing in order to complete the deal without changing the terms offered to the customer.

For example, a dealer may agree to sell a vehicle to a consumer for \$12,000 for a term of 60 months with an APR of 8% without a financing institution selected. The dealer will then seek a financing institution willing to buy the loan with those terms. It is irrelevant to the consumer if one financing institution buys the loan at 7% and the dealer adds 1% as a fee or if a different financing institution buys the loan at 7.5% and the dealer adds .5% as a fee because the cost to the consumer is constant.

We suggest the following language to give customers useful information about the components of an APR:

A financing institution does not offer an APR to buyers. The APR is the cost of credit as a yearly rate. The APR includes the wholesale buy-rate offered by the financing institution to the dealership. This wholesale buy-rate is affected by:

- *Your credit score;*
- *The amount of the credit;*
- *The amount of your down payment;*
- *The length of the loan.*

You are not obligated to accept dealer originated financing. If you choose to do so, the APR calculation may include a dealer origination fee. This amount covers the dealer's expenses incurred in finding favorable financing terms for the vehicle sale and may be capped by the financing institution.

This proposed disclosure language clarifies that dealers are receiving a fee for assistance in originating financing but does not require disclosure of the fee itself since dealers earn fees differently from different financing institutions – one may pay basis points, another a percentage, and a third a flat fee. Comparing wholly disparate types of fees does not provide useful information to consumers.

Furthermore, the proposed rules do not address the problem posed by 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. Dealers submit information that consumers provide to them. While dealers are obligated to, and do, confirm certain information, if the consumer is lying to them or submitting fraudulent documents they cannot assess or know whether certain information is false or misleading. We respectfully request a clarification that such penalty would apply only if a dealer provides such information knowingly or negligently.

The information contained on this form is also going to be inconsistent when compared with federal law as embodied in the Regulation Z form, specifically, the “amount paid to others”, which will result in consumer confusion.

Finally, this law would require dealers to make multiple calculations for the same sale if there are add-on products to be included. Adding a cash calculation to this, as DCA's proposed rules do, doubles the calculations required for each sale. We respectfully ask that all requirements for dealers to provide cash price information be removed.

II. NYC Used Car Contract Cancellation Option

We have changed some language to clarify items that are unclear or inconsistent with the law. For example, DCA's proposed form provides a "Purchase Date" while we have changed that to "Signature Date (Use the later of the signature of the bill of sale or retail installment contract)" as this is consistent with the law and defined while "Purchase date" is not.

The most significant issue with the form is that the "Cancellation Deadline" reads, in relevant part, "The date and time 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." (Emphasis supplied.)

First, "earlier" is illogical here as consumers should be allowed to cancel the sales contract whenever they choose, within the time allowed by the statute; thus, we have changed it to "later." Second, and more importantly, giving customers until the second "weekday (excluding legal holidays)" is inconsistent with 20-268.2(b)(3), which 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." Changing this deadline is not workable for dealers, which are retailers operating on weekends and most legal holidays.

Additionally, DCA has added 2-107(b), which requires dealers to maintain and annually distribute "written policies and procedures designed to avoid" selling a trade-in before a customer's contract cancellation option has expired or been exercised. This requirement goes beyond the scope of 20-268(g)(1), which refers to "reasonable procedures designed to avoid that error."

Requiring written policies without providing an example of such a policy presents an enforcement risk to dealers – investigators may have inconsistent standards. We respectfully request either keeping the language of 20-268(g)(1) "reasonable procedures" or DCA giving a safe harbor. We also request that annual distribution be changed to distribution upon hire.

III. Used Car Consumer Bill of Rights

We globally changed "must" to "are required to" as the tone is less aggressive.

We revised the language in number four for clarity and to have a less adversarial tone. Importantly, DCA has yet to specify *how* dealers are to disclose fees related to financing. These fees can be expressed as a percentage, as basis points, or as a flat rate. Often, dealers will be compensated differently by different financing institutions.

Number five inaccurately states the Lemon Law applies if the car cost was more than \$1,500 or has under 100,000 miles. The Lemon Law requires that the car cost more than \$1,500 and have under 100,000 miles. Our version corrects that error.

Using the word “refuse” in number six is unnecessarily adversarial so we have suggested alternate phrasing.

We also have made minor changes to number 7, changing the word “cost” to “price” and in number 8, changing “you will be able to keep the trade-in” to “may be able to keep the trade-in.”

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

1. That dealers be provided with a “safe harbor” for compliance. We ask 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.

While we support transactional transparency and understand these new laws are well-intentioned, increased regulation, especially regarding information provided elsewhere in transaction documents, risks overloading and confusing consumers with duplicative material. Survey after survey reveals that customers feel the worst part of buying a vehicle is the time spent on financing. As customers are given more and more paperwork, some of it duplicative, to complete a vehicle purchase, it is increasingly unlikely they will read it all.

Customers will either refrain from purchasing cars within New York City, which will negatively impact dealerships and, by extension, the New York City economy, or customers may complete purchases unaware of their obligations and rights, which exacerbates the very problem disclosure seeks to cure. It is imperative that these forms be as clear as possible to provide useful information to consumers and practical compliance for dealers.

Finally, these new disclosures may limit the financing products that lending institutions allow dealers to offer to consumers, thereby giving dealers less flexibility in the financing options they are able to offer consumers – in short, consumers will have fewer, more expensive, ways to finance auto purchases.

FINANCING DISCLOSURE – SALE OF USED CAR

[NAME OF LICENSEE]

[ADDRESS OF LICENSEE] • [CITY, STATE, ZIP CODE]

DCA LICENSE # _____

[LICENSEE PHONE NUMBER]

[LICENSEE WEBSITE]

Date _____

Automobile Year _____

Buyer
(Name and
Address)

Make and Model _____

Vehicle Identification
Number (VIN) _____

Selected Finance
Company _____

SALE TERMS

FINANCING TERMS

Automobile Cash Price *without*
Add-on Products and Services _____

Total Sale Price *without* Add-ons
after Financing Charges _____

Sales Tax _____

Number of Payments _____

Down Payment (if applicable) _____

Annual Percentage Rate (APR) _____

Trade-In Amount (if applicable) _____

Lowest APR offered to buyer by
any finance company for loan with
same term and down payment*

Total Registration and Other Fees _____

APR offered to buyer by selected
finance company _____

Total Cash Price *without*
Add-on Products and Services _____

Monthly Payment *without*
Add-on Products and Services _____

*Many factors impact the financing terms you are offered. Please ask your dealer for more information about what financing product is best for you.

ADD-ON PRODUCTS OR SERVICES

Add-on Product or Service Selected (If no add-on products or services selected, write N/A below.)	Cash Price of Add-on*	Automobile Cash Price with Selected Add-on*	Monthly Payment with Selected Add-on* and Financing Charges
TOTAL PRICE OF AUTOMOBILE WITH ALL SELECTED ADD-ONS*			

*Includes down payment and trade-in amount, if applicable, and sales tax.

CONTRACT ASSIGNMENT DISCLOSURE: You If you accept dealer originated financing, you must sign a financing contract, known as a Retail Installment Contract, with the dealer. After you sign the contract, the dealer may transfer the contract to another party. That party has the right to receive payments from you under the contract. The dealer must notify you about a the initial transfer and the party to whom you owe payment immediately after the initial transfer occurs.

Commented [JM1]: Financing Disclosure Worksheet clarifies that information contained in this document is purely informational.

Commented [JM2]: Co-buyer should be included

Commented [JM3]: The APR will vary depending on the price of the vehicle so saying "Lowest APR" does not mean anything if the loan amount is subject to change, which it is depending on add-ons.

Commented [JM4]: This comment applies to all requirements to offer cash pricing: Requiring cash price goes beyond the law's requirements. The new disclosure law already requires dealers to make multiple calculations for the same sale if there are add-on products to be included. Adding a cash calculation to this doubles the calculations required for each sale. We have respectfully removed all requirements for dealers to provide cash price information as there is no basis in the law.

Commented [JM5]: Sales tax is calculated *after* the trade-in and down payment amounts are deducted and after add-ons are included. Dealers cannot calculate sales tax at this point in the transaction.

Commented [JM6]: For each box below, the APR's source is required, which APR is to go here?

Commented [JM7]: This should read "Estimated Total Registration and Other Fees" because the actual registration costs are not known until the vehicle is registered with the DMV, which does not occur at the time of delivery. It is customary for dealers to charge an estimated registration cost and refund the difference between the actual cost and the estimate.

Commented [JM8]: If the customer is purchasing the car for immediate delivery, a financing company may not yet be selected. Rather, the dealer has committed to sale terms with a customer and must find a financing institution that will buy the paper.

Commented [JM9]: Finance companies do not offer an APR to consumers so we have suggested a disclaimer on the form that explains the APR to consumers.

A financing institution does not offer an APR to buyers. The APR is the cost of credit as a yearly rate. The APR includes the wholesale buy-rate offered by the financing institution to the dealership. This wholesale buy-rate is affected by:

- Your credit score;
- The amount of the credit;
- The amount of your down payment;
- The length of the loan.

You are not obligated to accept dealer originated financing. If you choose to do so, the APR calculation may include a dealer origination fee. This amount covers the dealer's expenses incurred in finding favorable financing terms for the vehicle sale and may be capped by the financing institution.

Commented [JM10]: Dealers are not in a fiduciary position with regard to consumers. Furthermore, consumers do not believe dealers to be their fiduciary and may withhold information that would be essential to provide the credit counseling envisioned here. Is the consumer behind in rent? Do they owe money to a family member? Are there other hidden liabilities?

Commented [JM11]: This phrasing potentially conflicts with TILA so it should be changed to read "Monthly payment plus selected add-on."

Commented [JM12]: There should be a disclaimer that "This calculation assumes that the APR is the one listed above. The final APR may change, depending on the terms of the final transaction."

Commented [JM13]: We suggest adding "estimated registration and other fees" because they are a component of the total price of the vehicle and monthly payment.

Commented [JM14]: Financing contracts can be transferred multiple times, dealers would know about only the first one so this disclosure must be clarified.

CONFIRM RECEIPT

Applicant Signature _____

Date _____

Co-Applicant Signature _____

Date _____

By signing, you are only confirming that you received this form. This form is for information and reference purposes only. You are not purchasing the automobile or accepting financing because you have signed or received this form. THIS FORM DOES NOT SUPERCEDE OR MODIFY THE RETAIL INSTALLMENT CONTRACT, WHICH CONTROLS YOUR VEHICLE PURCHASE.

Commented [JM15]: This disclosure should be more robust to ensure the dealer is protected.

Commented [JM16]: We request a disclosure that "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."

NYC USED CAR CONTRACT CANCELLATION OPTION

Buying a used car can be one of the largest financial commitments you make. Under NYC law, dealers must give you this contract cancellation option, which allows you to cancel the contract within two (2) business days after the signature date below. This option gives you time to review the contract away from the dealership. Read the Terms and Conditions on the front and back of this form. This contract cancellation option must be in the language in which you negotiated the contract, if the form is available from the Department of Consumer Affairs.

BUYER'S NAME AND ADDRESS (Reference to "Buyer" or "You")		CO-BUYER'S NAME AND ADDRESS (Reference to "Buyer" or "You")	
USED CAR DEALER'S NAME AND ADDRESS (Reference to "We" or "Us")		DCA LICENSE NUMBER	
AUTOMOBILE DESCRIPTION (Reference to "Automobile")			

YEAR: MAKE: MODEL: VEHICLE IDENTIFICATION NUMBER (VIN):

PURCHASE DATE	DEADLINE TO CANCEL (DATE AND TIME)
---------------	------------------------------------

Commented [JM1]: This should be changed to "SIGNATURE DATE (Use the later of the signature on the bill of sale or retail installment contract)" for clarity and to be consistent with the law.

Commented [JM2]: We suggest the added language "You will forfeit any right to cancel that you may have if you do not do so by this deadline"

TERMS AND CONDITIONS

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.

- In order to cancel the sales contract, you must sign and personally deliver the "Notice to Cancel the Sales Contract" to the dealer by the date and time listed in the yellow box above.
- The dealer keeps the car and its title until you decline to cancel the sales contract in writing or give up your right to cancel the sales contract by failing to act before the deadline.
- If you cancel the sales contract in compliance with the terms and conditions set forth in this form, the dealer must immediately give you a full refund, including sales tax.
- You agree to execute all necessary documents in order to cancel the sale and obtain a full refund.
- The dealer cannot increase the price of the car or add a fee if you ACCEPT the contract cancellation option *except in the case of a trade-in vehicle. Trade-in vehicles require a \$100 refundable deposit and may also require a \$50 non-refundable deposit.* See the back for terms and conditions for trade-in vehicles.
- The dealer cannot require you to DECLINE the contract cancellation option or to decline cancelling a sales contract as a condition for buying the car.
- The dealer must give you a copy of this completed contract cancellation option document with your signature. If you cancel the sales contract, the dealer must give you a copy of the document you submitted to cancel the sales contract.

Commented [JM3]: This language is dense and confusing, we suggest using the below language here and included "Additional Terms and Conditions" on the opposite side

CANCELLATION OPTION: Subject to the terms and conditions of this Agreement, you may elect the Contract Cancellation Option, which will give you the right to cancel your purchase of the Vehicle and obtain a full refund.

Written notice exercising the right to cancel the purchase signed by you, which may be a copy of this Agreement with your signature in the section entitled "Notice of Election to Exercise Option to Cancel" at the bottom of this form;

The following original documents given by us to you when you purchased the Vehicle: (i) this Contract Cancellation Option Agreement; (ii) the Vehicle Purchase Contract and related documents; and (iii) all Vehicle titling and registration documents; and

All other documents necessary to cancel the sales contract.

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 can be no earlier-later than the close of business on the second weekday (excluding legal holidays) business day after you sign the sales contract or the retail installment contract, whichever is later.

TRADE-IN VEHICLES: SEE THE BACK OF THIS FORM FOR ADDITIONAL TERMS AND CONDITIONS.

Sign here to ACCEPT option
By signing below, you and the dealer agree to the terms and conditions on both sides of this form. You acknowledge that you received and read this form. **BY**

Sign here to DECLINE option
By signing below, you voluntarily give up the right to cancel your car purchase. You acknowledge that you received and read this form. **BY SIGNING HERE, YOU**

SIGNING HERE, YOU ELECT TO ACCEPT * THIS OPTION.

ELECT TO DECLINE THIS OPTION.

Buyer's Signature

Buyer's Signature

Co-Buyer's Signature

Co-Buyer's Signature

*You are accepting the option to cancel the contract, not cancelling the contract. To cancel the contract, you need to complete the Notice below and follow terms and conditions.

NOTICE TO CANCEL THE SALES CONTRACT

By signing below, you are exercising your right to cancel the purchase of the used car described in this form. The personal delivery of this notice to the dealer is sufficient to exercise the option to cancel the sales contract.

Cancellation Deadline: Date _____ Time _____

Buyer's Signature Date / Time Co-Buyer's Signature Date / Time

NOTICE TO DECLINE CANCELLATION OF THE SALES CONTRACT

By signing below, you ~~are declining your right to cancel the purchase of the used car described in this form~~ electing to complete the purchase and take delivery of the Automobile described in this Agreement.

Commented [JM4]: "Notice to Decline Cancellation of the Sales Contract" is confusing wording. We suggest "Notice of Election to Complete the Vehicle Purchase." We have made this a global change.

Buyer's Signature Date / Time Co-Buyer's Signature Date / Time

ADDITIONAL TERMS AND CONDITIONS

TRADE-IN VEHICLES: If you have agreed to trade in a vehicle and you ACCEPT the contract cancellation option, you must pay a refundable deposit of \$100. You may either USE the trade-in vehicle during the cancellation period for an additional non-refundable fee of \$50 or LEAVE the trade-in vehicle with the dealer until you cancel the sales contract or ~~the option expires~~ complete the vehicle purchase. Select one option below.

Leave the Vehicle: By signing below, I, _____, (name) choose to leave the trade-in vehicle with the dealer until I choose to cancel the sales contract or ~~the option expires~~ complete the vehicle purchase.

TRADE-IN AUTOMOBILE DESCRIPTION

YEAR: MAKE: MODEL: VEHICLE IDENTIFICATION NUMBER (VIN):

I agree to the following terms and conditions:

- If I cancel the sales contract, the dealer may keep the \$100 deposit and must return the trade-in vehicle to me on the day I exercise the cancellation option.
- If I ~~do not cancel the sales contract~~ complete the vehicle purchase, the dealer must immediately refund the \$100 deposit when I pick up the automobile I purchased under the sales contract.

The dealer cannot sell my trade-in vehicle until either I have declined to exercise the cancellation option or ~~the time to do so has expired~~ completed my vehicle purchase and accepted delivery. If the dealer inadvertently sells or otherwise transfers the title to my trade-in vehicle, the dealer must pay me the retail market value of the trade-in vehicle or its value as stated in the sales contract, whichever is greater.

Buyer's Signature Date Co-Buyer's Signature Date

Use the Vehicle: By signing below, I, _____ (name) _____, choose to use the trade-in vehicle during the cancellation period for a non-refundable fee of \$50. I agree to the following terms and conditions:

- During the cancellation period, I cannot drive more than 250 miles in the trade-in vehicle.
- I must return the vehicle in the same condition as when I presented it as a trade-in vehicle, except for any reasonable wear and tear.
- If I comply with the terms and conditions and do not cancel the sales contract, the dealer must immediately refund the \$100 deposit when I pick up the automobile I purchased under the sales contract.
- If I do not comply with the terms and conditions, the dealer may either cancel the sales contract or keep the \$100 deposit.
- The dealer does not have to give me the car I purchased until I deliver the trade-in vehicle in the same condition as when I presented it as a trade-in vehicle, reasonable wear and tear excepted.

Buyer's Signature Date Co-Buyer's Signature Date

Seller's Representative's Signature Seller's Representative's Name

LICENSEE ACKNOWLEDGEMENT OF BUYER ELECTION

We acknowledge that you have elected to CANCEL / NOT TO CANCEL your sales contract for a used car.
 You have complied with the terms and conditions of the contract cancellation option, including the personal delivery of the "Notice to Cancel the Sales Contract" before the cancellation deadline.
 You have failed to comply with the terms and conditions of the contract cancellation option in the following way(s), giving up your right to cancel the sales contract:

Licensee Representative's Signature Date/Time DCA License Number

Commented [JM5]: We request a disclosure that "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."

Additional Terms and Conditions

1. Refund: The Contract Cancellation Option gives you the right to cancel the purchase and obtain a full refund. The right to cancel will apply only if, before the Cancellation Deadline, those items listed on the front of this Agreement are personally delivered to the Seller along with the Automobile no later than the second day following the day on which you exercise the right to cancel the purchase, we will cancel the contract and provide you with a full refund of amounts paid to and received by us, including sales tax collected in connection with the purchase.

2. Check & Credit Cards: We may refund amounts paid to us by check, credit card or other instrument by returning to you the uncashed check or instrument, or by providing you reasonable assurance that the check or instrument has not been and will not be cashed. If the Dealer received a portion of the purchase price by credit card, or other third-party payer on the Buyer's account, the Dealer may refund that portion of the purchase price to the credit card issuer or third-party payer for credit to the Buyer's account.

3. Document Execution: You agree to execute documents necessary to effectuate the cancellation and refund and to comply with applicable law.

4. Cancellation Rights: The only cancellation rights we are extending to you are those stated in this agreement. This agreement supersedes other agreements or understandings, if any, granting cancellation rights to you. This agreement is not effective until signed by us. No modification of or waiver of rights under this agreement will be effective unless in writing and signed by you and by one of our authorized department heads. To the extent permitted by law, we will have no liability under this agreement for indirect or consequential damages, such as lost income or transportation expenses. In this agreement, we make no representations, promises, or warranties, express or implied, concerning the Automobile other than those required by law.

5. Return of Trade-In: If you wish to use a Trade-In to pay for all or part of the value of the Automobile, you must provide the Dealer with a \$100 deposit, which is refundable if you complete the Automobile purchase.

If you leave the Trade-In with the Dealer, the Dealer will retain it until you exercise the cancellation option or complete the Automobile purchase. If the Dealer inadvertently sells or otherwise transfers title to the Trade-In as a result of a bona fide error, the full refund described above shall include the fair market value of the Trade-In or its value as stated in the contract or purchase order, whichever is greater.

If you continue to use the Trade-In during the cancellation period, you must pay a non-refundable fee of \$50 to the dealer. During the cancellation period, you may not drive more than 250 miles in the Trade-In and must return it in the same condition as when it was presented to the dealer, excepting any reasonable wear and tear.

6. Option Agreement: A Dealer shall not sell a used vehicle at retail to an individual for personal, family, or household use without offering a Contract Cancellation Option.

7. Prior Option Agreement: A Dealer is NOT required to offer a Contract Cancellation Option Agreement to an individual who exercised his or her right to cancel the purchase of a vehicle from the Dealer pursuant to a Contract Cancellation Option Agreement during the immediately preceding 90 days. A Dealer is NOT required to give notice to a subsequent Buyer of the return of a vehicle.

8. User Liability: This does not affect or alter the legal rights, duties, obligations, or liabilities of the Buyer, the Dealer, or the Dealer's agents or assigns, that would exist in the absence of a Contract Cancellation Option Agreement.

February 28, 2018

USED CAR CONSUMER BILL OF RIGHTS

Buying a used car can be one of the largest financial commitments you make. Used car dealers ~~are required to post this *Used Car Consumer Bill of Rights* and give you a copy before you sign a sales contract.~~ The *Consumer Bill of Rights* ~~must-is required to~~ be provided to you in the language in which you negotiated the contract if a translated version is available on the Department of Consumer Affairs (DCA) website at nyc.gov/dca. Take the time to read and understand the *Consumer Bill of Rights* before you sign that you received it.

Commented [JM1]: We request a disclosure that "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."

Commented [JM2]: We changed "must" to "are required to" globally.

Your Rights

1. **You have the right to buy a car at the price advertised.**
Used car dealers ~~must-are required to~~ display prices on cars. A used car dealer may not sell you a car at a price that is more than the price advertised, quoted, or posted on the car. The dealership cannot increase the price of the car because you do not finance the car with the dealership.
2. **You have the right to know the details of your financing agreement before you sign anything.**
3. **You have the right to decline financing or a loan arranged by a dealer.** You may pay cash or seek financing elsewhere.
4. **You have the right to written disclosures about important terms of your financing contract.**
Federal law requires that you get written disclosure of terms such as your annual percentage rate (APR), the amount of money you have agreed to finance, and the total amount you will have to pay to completely satisfy the terms of the financing contract.

~~Under NYC law, the dealership must give you written disclosures about you are also entitled to know the lowest APR offered by the financing companies solicited by the dealer to you and any fees the dealer is charging you for originating financing. These disclosures must-are required be in the language in which you negotiated the contract, provided DCA has made these disclosures available in such language.~~

Commented [JM3]: This language has also been changed for clarity. As raised in our comments, without specifying in what format that disclosure is to be made, it is unlikely to convey any meaningful information to consumers.

5. **You have the right to the Federal Trade Commission (FTC) Buyer's Guide for any used vehicle and a written warranty if the vehicle is primarily for personal or household use, has under 100,000 miles, and you pay more than \$1,500 for it.**
The Buyer's Guide gives important information about the car and warranty and ~~must-is required to~~ be posted on each car.

Commented [JM4]: These changes are to make the statements factually accurate.

Under the New York State Lemon Law, used car dealers ~~must-are required to~~ provide written warranties on used cars that ~~are primarily for personal or household use~~ cost more than \$1,500 ~~or that and~~ have fewer than 100,000 miles. The warranty covers the engine, transmission, drive axle, brakes, radiator, steering, and alternator. Never buy a car "as is."

Read both the Buyer's Guide and warranty closely before you buy.

6. **You have the right to refuse are not obligated to purchase any add-ons.**
The dealership cannot require you to buy any add-ons as a condition of buying or financing the car at an offered price.

Commented [JM5]: Using the word "refuse" is unnecessarily adversarial so we have suggested alternate phrasing.

7. **You have the right to get the cost-price of each add-on in writing.** The dealership is required to give you, in writing, the itemized cost-price of each add-on product and/or service, including the monthly and total cost of financing with and without each product and/or service.

Commented [JM6]: "Cost" is an unclear term – it could refer to the wholesale price so we have changed it to "Price" so it is clear each customer is entitled to know the retail rate of each add-on.

8. **You have the right to be offered a cancellation option.**

Dealers must are required to offer you a contract cancellation option, which allows you to cancel the contract within two (2) business days. This option gives you time to review the contract and any financing agreement away from the dealership. You will not be able to take the car home, but if you are trading in a car, you will may be able to keep the trade-in. The contract cancellation option must is required to be given to you in the language in which you negotiated the contract, provided DCA has made this form available in such language. Learn more about the contract cancellation option at nyc.gov/dca.

9. **You have the right to be free from discrimination when you apply for credit.** Credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or use of public assistance is illegal under federal law.

10. **You have the right to file a complaint.** You can file a complaint against a used car dealer, regardless of your immigration status. Used car dealers are required to must have a Department of Consumer Affairs (DCA) license in order to operate. You can **call 311** to be transferred to DCA to check a dealership's license status and complaint history. If you believe a used car dealer has violated your rights or taken advantage of you, file a complaint at nyc.gov/dca or **contact 311** (212-New-York outside NYC).

Comment Submitted via rules.cityofnewyork.us

2/27/2018 3:48 PM

Author: Sara Shields

Comment: With respect to the Proposed Amendment to the Rule associated with Second-Hand Auto Dealers, I would like to address an item that affects dealer adoption. It is common for dealers to have multi-part versions of forms printed. Use of multi-part forms 1) improves dealership efficiency - no need to make copies to retain or distribute 2) professional, consistent format – whether the original or subsequent copies. The process to create multi-part forms typically requires 2 months advance preparation to print, distribute and have forms programmed for use by dealership management systems. Is it feasible for the required adoption period be deferred to allow for this? Other issues that dealers may experience are associated with the use of forms in a laser print environment. Can laser printable forms be used in the environment? If so, the challenges to dealers will be:

- 8 ½ x 14” form files – dealers may not have access to a printer with a 14” tray or will have to exchange 11” paper with 14” creating an interruption in process
- Colored ink on form files – requires a color printer and color toner. Use of color may affect the quality of images scanned for storage purposes.
- Two sided forms in a laser print environment require a duplexing printer which may not be broadly used by dealers.
- Detaching sections of forms will require dealers to manually cut or tear the section