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New York City Department of Consumer Affairs

Before the
New York City Council Committee on Consumer Affairs

Hearing on
Introductions 1539-A & 1540
in relation to financing by secondhand automobile dealers

April 26, 2017

Introduction

Good morning, Chairman Espinal and members of the committee. My name is Amit S. Bagga and I am the Deputy Commissioner of External Affairs for the New York City Department of Consumer Affairs ("DCA"). I am joined today by several colleagues from the agency and we are particularly pleased to be here on behalf of Commissioner Lorelei Salas. I would like to thank the committee for the opportunity to offer testimony about Introduction 1539-A ("1539"), which would increase protections for consumers that buy or finance used cars in New York City, and Introduction 1540 ("1540"), which would require secondhand auto dealers to post and distribute a consumer bill of rights. As you know, protecting New Yorkers from predatory lending and deceptive business practices are top priorities for DCA, and we strongly commend Chair Espinal and Council Member Garodnick for introducing bills that will help the City address our slice of this growing national problem.

The Department is proud to have partnered with the Council on this package of legislation and we look forward to working with you during the legislative process to enshrine the strongest possible protections for consumers into law. Today, I will detail for the committee how DCA identified and investigated used car financing as a consumer issue, surfaced stories of consumer harm, and has taken strong enforcement action against dealers engaged in predatory and deceptive business practices here in New York City. As DCA licenses approximately 780 used car dealers in New York City, the potential scope of consumer harm could be quite large.

Background

We know that risky and predatory lending can derail the lives of individuals and destabilize entire communities. Unclear or confusing terms and high pressure sales tactics can leave consumers saddled with loans they don't understand, didn't want, and can't afford. These loans trap consumers in a cycle of debt that is difficult, and in many cases, impossible, to escape. Victims of predatory lending may be forced to forego educational opportunities and delay or abandon other necessary investments in their careers, families, and futures. Ruined credit scores can prevent victims from accessing mainstream financial products, purchasing a home, or, in many jurisdictions, securing new employment opportunities, robbing them of the chance to improve their lives and deepening the cycle of debt. Predatory lenders also often target minority communities where use of alternative financial services is higher, English proficiency is lower, and more individuals are likely to lack access to a bank account or other basic mainstream financial services.

The Scope: A National and Local Problem

Since the Great Recession in 2008, lending by secondhand auto dealers has become big business with national implications. Like the risky mortgages that precipitated the credit market collapse in 2008, many loans issued by secondhand auto dealers are issued to subprime buyers and are loaded with complex terms and risk-spreading mechanisms. Auto loans have grown to over $1.2 trillion[1] and a quarter of those loans are now classified as "subprime" or "deep subprime"[2]- a figure that has doubled since 2009.[3]

DCA's investigations and research suggest that secondhand auto lending, and its attendant problems, are likely widespread and growing in New York City, at least within certain populations. Demographic and socioeconomic factors make our city a prime target for predatory lenders: 20.6% of New York City families live in poverty,[4] more than 1.1 million households are unbanked or underbanked,[5] and almost 40% of the city's population is foreign born.[6] DCA data bear out that this issue is affecting consumers in our city: since 2013, the agency has received more than 800 complaints from consumers related to purchase or payment issues in connection with secondhand automobiles. In light of these factors, it is crucial that our City government step up to protect New Yorkers and our local economy from deceptive practices and predatory lending.

Shining a Light on Predatory Lending

DCA's mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. In pursuit of that mission, we have set out to identify areas where we could leverage our existing tools to have the most positive impact on the lives of consumers or communities. An analysis of DCA complaint data and investigative files, information gathered from other City agencies, and external reports confirmed that secondhand auto dealer lending is a major issue for New York City consumers. Complaints from consumers are concentrated in

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[1] Research and Statistics Group, FEDERAL RESERVE BANK OF NEW YORK, *Quarterly Report on Household Debt and Credit* 3 (Feb. 2017), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2016Q4.pdf.
[2] Melinda Zabritski, EXPERIAN AUTOMOTIVE, *State of the Automotive Finance Market* 19 (2015), http://www.experian.com/assets/automotive/quarterly-webinars/experian-auto-2015-q4.pdf.
[3] Andrew Haughwout et al., FEDERAL RESERVE BANK OF NEW YORK, *Just Released: New and Improved Charts and Data on Auto Loans* (2015), http://libertystreeteconomics.newyorkfed.org/2015/11/just-released-new-charts-new-data-on-auto-loans.html.
[4] UNITED STATES CENSUS BUREAU, *American Community Survey 5-year estimates* (2015), https://www.census.gov/quickfacts/table/RHI105210/3651000.
[5] The term "unbanked" means that an individual has no checking or savings account, and "underbanked" means that an individual may have a bank account but will also use alternative financial services such as a check casher from time to time. *See* Caroline Ratcliffe et al., URBAN INSTITUTE, *Where are the Unbanked and Underbanked in New York City?* (2015), http://www.urban.org/sites/default/files/publication/71511/2000430-Where-Are-the-Unbanked-and-Underbanked-in-New-York-City.pdf.
[6] N.Y.C. DEP'T OF CITY PLANNING, *The Newest New Yorkers* 2 (2013), https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/nny2013/nny_2013.pdf.

neighborhoods with large minority, immigrant, or low English proficiency populations and high poverty rates, mostly in the outer boroughs.

The pre-existing regulatory relationship we have with the used car industry presented us with a unique opportunity to study and understand the problem and leverage all of its existing tools to target predatory lending while working with the Council to develop new policy approaches.

In October of 2016, DCA invoked its Charter authority to hold public hearings on issues affecting consumers. In partnership with Chair Espinal, the agency invited consumers to share their stories by testifying about their experiences with secondhand auto dealers. DCA also invited legal experts and advocates who work with consumers to speak about common problems faced by consumers and discuss possible solutions. Over several hours, DCA heard stories from consumers who had been rushed, misled, duped, and deceived by secondhand auto dealers into taking on unaffordable loans for unreliable vehicles.

Rhoda Branche of Coney Island, who was at that time a caretaker for the mentally ill, needed a car to get to her job in Port Washington on Long Island. After her car was flooded during Superstorm Sandy, she visited a dealership in Bay Ridge looking for a replacement. The "young and charming" salesman rushed her through the purchasing process without walking her through the terms of the financing agreement, allowing her to take the vehicle for a test drive, or even asking her for proof of income. The salesman simply assured her that the vehicle was top quality and pushed her to sign a stack of paperwork. Ms. Branche ended up with a large loan at an annual percentage rate of 23.5% for a car that soon proved to be a lemon, leaving her on the hook for repayment and still without reliable transportation.

DCA is also using its legal authority to investigate dealers that may be violating the law and move aggressively to hold them accountable. In the course of our enforcement work, we have identified used car dealers engage in what we believe to be many different types of predatory or deceptive conduct, such as the falsification of consumer income and expense information on credit applications, and falsely inflating the value of automobiles so consumers could secure loans from finance companies. We have also found that dealers often target advertising on consumers with limited proficiency in English.

Reports of harrowing consumer experiences, compounded by the findings of DCA's legal investigations, make clear that the City needs to take action to protect consumers. Given that predatory lending is a complex issue, we have adopted a comprehensive strategy to address it, particularly in the used car context.

DCA's Approach

DCA uses a three-prong plan to tackle predatory lending in New York City: education, enforcement, and legislation. The bills before you today are a critical part of this plan.

I. *Education*

The first step to tackling predatory lending is arming consumers with the knowledge they need to protect themselves from scams and make informed decisions. DCA has a strong history of direct outreach, consumer education, earned and paid media investments, and partnerships with community organizations. We plan to use this experience to engage with communities and stakeholders to raise the alarm about common predatory practices and educate consumers before they step onto the lot.

II. *Enforcement*

Secondhand auto dealers who prey on vulnerable consumers and use deceptive practices must be held accountable. DCA is using its legal authority and investigatory resources to root out consumer harm and punish dealers who break the law. Rigorous enforcement of the law, both through patrol inspections and legal actions, will put unscrupulous dealers on notice and promote a culture of compliance among other businesses.

III. *Legislation*

DCA will leverage its experience as a licensing authority and regulator for secondhand auto dealers, an educator of consumers and businesses, and a consumer watchdog to help forward-thinking lawmakers craft thoughtful legislation like 1539-A and 1540 to expand consumer protections and deter predatory practices.

Taken together, we believe that this comprehensive approach will help the City make real, measurable progress against predatory lending by secondhand auto dealers. I will now turn to the specifics of the two bills before us, a package which the Administration strongly supports.

<u>Introduction 1539-A</u>

1539 would make major improvements to the law in the areas of prohibitions, contract flexibility, disclosures, and enforcement and DCA is proud to support its passage. Specifically, the bill would prohibit secondhand auto dealers from requiring a consumer to accept financing through the dealer as a condition of purchase or making a contract voidable if the dealer isn't able to sell or assign the loan to a third party. The bill would also require clear disclosure of "price packing," a common practice that involves dealers informing buyers that they must purchase expensive add-on services or accessories to qualify for financing. In addition, dealers would be required to clearly itemize and disclose the cost of any such add-ons or accessories to the consumer and obtain written acknowledgement of the disclosure if the products are purchased. DCA believes that the price packing provision could be strengthened by prohibiting dealers from conditioning the financing of a vehicle on the purchase of add-ons or accessories, in addition to requiring disclosure. This approach would be consistent with our other laws as dealers are already barred from conditioning the *sale* of a vehicle on additional purchases pursuant to an earlier price posting law.

This bill would also prohibit dealers from submitting false information to lenders or finance companies. Predatory dealers often modify incomes, expenses, or employment histories on credit applications without the knowledge of consumers in order to qualify them for excessively large loans. During a recent investigation, DCA found that the company had turned an applicant from a grocery store clerk into a grocery store owner, substantially inflated his income and slashed his monthly rent in half.

1539 would also dramatically increase contract flexibility for consumers by giving them the opportunity to purchase a contract cancellation option for a nominal fee. Dealers would be required to offer this option, which would allow the consumer to pay no more than $50 for the ability to cancel their contract and receive their money back within 2 days of when the purchase is made, subject to a maximum $200 restocking fee. This change would give consumers the ability to think over their purchase and uncover any problems with the car that they couldn't identify from just a test drive around the lot.

Dealers would also be required to disclose important information about transactions to consumers. A new statement required in every retail installment contract would clearly alert buyers of their right to receive a copy of the contract, the lowest APR loan that was solicited from financing companies by the dealer, the amount of any fee the dealer is charging for arranging financing, and that they are not required to obtain financing through the dealer. The dealer would also be required to offer the contract cancellation option in a separate document.

Finally, 1539 would give DCA the tools to hold predatory secondhand auto dealers accountable and assist the customers they harm. The bill would allow DCA to impose penalties of up to $1,000 for violations and revoke the licenses of second-hand dealers if they commit three violations in a three-year span. The bill would also create robust recordkeeping requirements. These recordkeeping requirements are absolutely essential to DCA's enforcement -without clear, complete records, DCA cannot reconstruct transactions to determine how and whether a consumer was harmed. In cases where DCA cannot prove a sequence of events because the dealer, perhaps deliberately, failed to keep records, the penalties for recordkeeping deficiencies can stand in as a proxy punishment for the consumer harm that has been concealed.

Introduction 1540

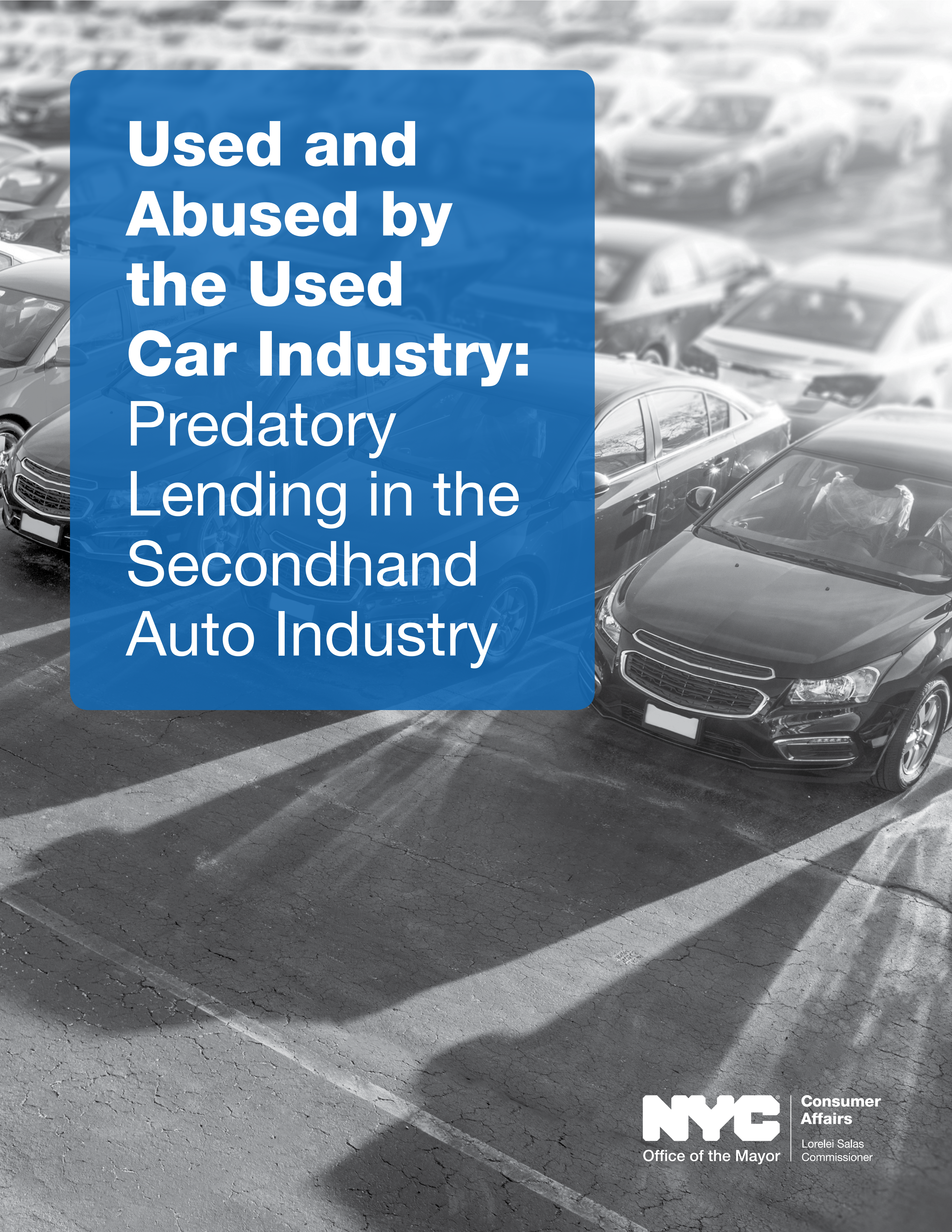
1540, sponsored by Council Member Garodnick, would create a brand new consumer bill of rights to educate and inform consumers about their rights and protections under the law. DCA has found these documents to be helpful and informative in other regulated industries, like tax preparers, and we support the passage of this bill. The consumer bill of rights would be prepared by DCA and would contain, at a minimum, information about the following: the contract cancellation option, the prohibition on mandatory financing, the requirement that dealers sell a car at the price advertised, quoted, or posted on the vehicle, the ability to file a complaint or retrieve dealer complaint histories from 311, the right to receive the Federal Trade Commission's "Used Car Buyers Guide" and information about the New York State Lemon Law, the requirement that dealers clearly disclose certain information in the sales contract, and the requirement that dealers clearly disclose and itemize the cost of any add-ons or extras.

Dealers would be required to post the bill of rights conspicuously at their place of business. In addition, the dealer must provide a copy of the bill of rights to each customer individually and in the language used to negotiate the sale or financing of the car. This bill will arm consumers with information about the protections and information to which they're entitled, help to level the playing field between buyers and sellers, and curb common predatory practices that rely on consumers being thrown off balance and unaware of their rights under the law.

Conclusion

I would like to thank the committee for the opportunity to offer testimony today. DCA is grateful for the thoughtful leadership of Chair Espinal and the members of this committee in taking on this important issue. Today, you've once again heard Rhoda Branche's story, which highlights the importance of cracking down on predatory lending and its associated practices. Rhoda is an example of thousands of New Yorkers we believe we already be victims of, or could easily fall prey to, unscrupulous dealers who exploit our city's residents, often in their greatest time of need.

We look forward to working closely with you on the passage of 1539 and 1540; my colleagues and I are happy to answer any questions you might have.



Used and Abused by the Used Car Industry: Predatory Lending in the Secondhand Auto Industry

Office of the Mayor
Consumer Affairs
Lorelei Salas
Commissioner

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Table of Contents

Combating Predatory Lending: A Top Priority

In fall 2016, under the leadership of Commissioner Lorelei Salas, the New York City Department of Consumer Affairs (DCA) launched its new mission: to protect and enhance the daily economic lives of New Yorkers to create thriving communities. The Agency fulfills this mission by protecting consumers and workers, empowering residents to build assets, reduce debt, and improve their financial health, and by educating businesses, as well as enforcing consumer protection, licensing, and key workplace labor laws.

The 2008 subprime mortgage crisis clearly showed that predatory lending destabilizes not only individuals and families, but also entire communities. Combating this type of lending is one of the Agency's key goals in the pursuit of its mission.

Predatory lending has detrimental long-term consequences. Unsuspecting borrowers can find themselves saddled with unaffordable loans that leave them ensnared in a cycle of debt from which it can be very hard to emerge. Predatory lending is also disproportionately concentrated in communities of color, and also among individuals with unstable sources of income, many of whom rely on alternative financial services. [1,2] In New York City, where household budgets are already strained by the high cost of living, the impact of a predatory loan is compounded by such factors.

Based on complaints, investigations, research, and reporting, DCA has found predatory lending in the used car industry in New York City to be a growing and dangerous problem. As of March 2017, the Agency licenses, inspects, and regulates 775 secondhand automobile dealers in New York City. This regulatory relationship means that DCA can leverage all of its existing tools to target predatory lending while working with our legislative partners to develop new policy approaches that better protect consumers.

DCA is tackling predatory lending in this industry with a three-pronged approach:

- **Education**: The Agency is building on its long history of direct outreach, consumer education, earned and paid media investments, as well as partnerships with community organizations to raise the alarm about the dangers one faces when walking onto a used car lot.
- **Enforcement**: DCA is aggressively investigating a number of dealers for deceptive and illegal practices, including Major World, a conglomeration of Queens-based dealerships that advertises itself as the largest car dealership in the world.
- **Legislation**: The Agency is working with the City Council and key stakeholders to craft and pass a thoughtful, nuanced set of bills to further tackle predatory lending locally, as the regulatory field is already largely occupied by state and federal law. The Agency believes that there is ample room for the City of New York to fill the gaps left by existing law, and we look forward to working with the Council to determine how best to meet those needs.

Taken together, this three-pronged approach will protect and empower consumers, serve as a clear warning to predatory businesses, and promote a healthier lending ecosystem across the city, beginning with the used car industry.

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[1] The National Community Reinvestment Coalition, *The Broken Credit System: Discrimination and Unequal Access to Affordable Loans by Race and Age*. (2003), http://www.ncrc.org/images/stories/pdf/research/ncrcdiscrimstudy.pdf; *see also*
Preeti Vissa and Christian González-Rivera, The Greenlining Institute, *Good Enough for Subprime, but Not Good Enough for Prime?* (2010), http://greenlining.org/wp-content/uploads/2013/02/hmdafy2008issuebrief10810.pdf.

[2] Susan Burhouse et al., Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households*. (2015), https://www.fdic.gov/householdsurvey/2015/2015report.pdf; *see also* Consumer Financial Protection Bureau, *FactSheet: The CFPB Considers Proposal to End Payday Debt Traps*. (2015), http://files.consumerfinance.gov/f/201503_cfpb-proposal-under-consideration.pdf.

Executive Summary

On October 18, 2016, DCA Commissioner Lorelei Salas and Council Member Rafael Espinal, Chair of the New York City Council's Committee on Consumer Affairs, co-chaired a public hearing on the sales and financing practices of used car dealers. DCA had proposed a hearing after an analysis of both internal and external data revealed a troubling pattern of predatory practices associated with used car dealer financing. DCA reviewed its own consumer complaint data, investigative files, and data aggregated from City agencies and the Urban Institute. Together, these data sets revealed that the individuals most affected by used car dealer predatory financing practices lived in areas of the city populated primarily by New Yorkers of color, those with limited English proficiency, or those who were "unbanked" or "underbanked."[3] These findings corroborate national reporting that predatory lending disproportionately affects the country's most vulnerable populations.

DCA's hearing brought together New Yorkers, legal service providers, and leading experts in the field so that each group could collectively share their experiences and perspectives on the issue of used car dealer financing. The chairs of the hearing heard personal accounts of those suffering from the negative impacts of used car dealer predatory lending, asked questions, and discussed potential solutions.

As a result of the hearing, DCA and Council Member Espinal have identified several proposals that would curb instances of used car dealer predatory lending. These proposals would update the City's Licensing Law to:

1. Prohibit the falsification of consumer information on credit applications
2. Prohibit consumers from being required to obtain financing through a dealership
3. Prohibit the issuance of "conditional contracts"
4. Require dealers to offer a "time to think" option
5. Prohibit the inclusion of "add-on" products as a condition of sale
6. Require robust recordkeeping and reporting by used car dealers
7. Mandate increased disclosures
8. Increase penalties for violations

While some of these practices are already unlawful, rendering these practices specifically unlawful under New York City's Licensing Law gives the City of New York greater authority to hold dealerships accountable for predatory business practices in addition to enhancing the City's ability to suspend or revoke the licenses of Secondhand Automobile Dealers specifically for engaging in this type of behavior.

DCA believes that such legislation, accompanied by additional regulation of financing companies at the state level, will enable the City of New York to ensure that its more vulnerable consumers are not being harmed when they buy a used car, which, for many, might be one of the biggest purchases they ever make.

[3] The term unbanked means that an individual has no checking or savings account, and underbanked means that an individual may have had a bank account but also uses alternative financial services such as a check casher from time to time. *See* Caroline Ratcliffe et al., Urban Institute, *Where Are The Unbanked And Underbanked In New York City?* (2015), http://www1.nyc.gov/assets/dca/CitywideFinancialServicesStudy/Research-Brief.pdf

I. Subprime Auto Lending: Scope and Jurisdiction

Scope: National

Having access to a car often means the difference between poverty and opportunity. In many parts of New York City, residents need cars to be able to take their children to school, to get to work, or to fulfill basic needs such as grocery shopping or going to the doctor. A March 2014 study by the Urban Institute found that automobile access has a direct, positive impact on economic opportunity—particularly among those with low incomes.[4]

Given the costs and consequences associated with purchasing a car, consumers should expect and are, in fact, entitled to a transparent and fair marketplace, free from deceptive and unfair practices. National reporting indicates, however, that the automobile market is riddled with deceptive and predatory practices.[5] In the aftermath of the 2008 Great Recession, the prevalence of high-interest loans to individuals with below-average credit and limited liquidity originated by auto dealers has increased precipitously. According to a 2015 study by the Federal Reserve Bank of New York, the total number of subprime auto loans has approximately doubled since 2009.[6] This increase in predatory lending has potentially dire consequences—both for consumers and the economy.

One of the causes of the Great Recession was the rampant extension of unaffordable credit to subprime homebuyers. A similar dynamic exists in the subprime auto lending market.[7] According to the Federal Reserve Bank of New York, auto loan debt is one of the fastest growing household debt levels with Americans having nearly $1.2 trillion in outstanding debt at the end of 2016.[8] Experian, one of the largest consumer credit reporting agencies, notes that more than 25 percent of auto loans are classified as subprime, and more than 30 percent are for used car loans.[9] Many of these loans have complex product features like risk layering, high interest rate markups, and financing add-ons. The rapid expansion of the market and the proliferation of complicated fees and features both ominously parallel the subprime mortgage market before 2008.[10]

For consumers, the consequences of predatory lending are significant. While consumers may drive off the lot with their preferred vehicle, they are often saddled with unfavorable financing terms that were not fully explained or disclosed to them at the time of purchase.

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[4] Rolf Pendall et al., Urban Institute, *Driving to Opportunity: Understanding the Links among Transportation Access, Residential Outcomes, and Economic Opportunity for Housing Voucher Recipients*. (2014), http://www.urban.org/research/publication/driving-opportunity-understanding-links-among-transportation-access-residential-outcomes-and-economic-opportunity-housing-voucher-recipients/view/full_report.

[5] Center for American Progress, *Don't Exempt Car Dealers: They Need to Follow Basic Consumer Protection Rules*. (2010), https://www.americanprogress.org/issues/economy/news/2010/06/07/7895/dont-exempt-car-dealers-they-need-to-follow-basic-consumer-protection-rules/.

[6] Andrew Haughwout et al., Federal Reserve Bank of New York, *Just Released: New and Improved Charts and Data on Auto Loans*. (2015), http://libertystreeteconomics.newyorkfed.org/2015/11/just-released-new-charts-new-data-on-auto-loans.html#.VvRPdaZ0CC5.

[7] Center for Responsible Lending, *Reckless Driving: Implications of Recent Subprime Growth*. (2015), http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/recklessdriving_implications_subprime_autofinance_growth.pdf.

[8] Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit*. (February 2017), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2016Q4.pdf.

[9] Zabritski, Melinda., Experian Automotive, *State of the Automotive Finance Market: A Look at Loans and Leases in Q1 2016*. (2016), http://www.experian.com/assets/automotive/quarterly-webinars/2016-q1-safm.pdf.

[10] Id.

Common tactics used by secondhand automobile dealers include:

- Deceiving consumers into loans with longer-than-necessary repayment terms, making the car much more expensive for the consumer
- Deceiving consumers into agreeing to purchase a car with expensive "add-on" products that are often misrepresented as "mandatory" for obtaining financing
- Falsely lowering disclosed monthly payment amounts
- Failing to disclose dealer markups of lender financing rates, total interest rate, and the total amount a consumer will pay for a car over the life of a loan

As a result of these tactics, consumers are being pressured into loans they cannot afford. As with other forms of predatory lending, the tactics in the secondhand auto industry disproportionately affect people of color or those with low incomes, and have already been the subject of inquiry by federal agencies, including the Department of Justice (DOJ) and the Consumer Financial Protection Bureau (CFPB).[11]

Being that dealers have an obvious financial incentive to sell as many cars as possible, trends suggest that systemic abuses ensure larger profit margins for dealers at the expense of consumers.[12]

Scope: New York City

While the breadth of subprime auto lending in New York City has not been independently studied in a thorough manner, anecdotal information suggests that the scope of used car sales in the city is significant.

According to the 2014 National Independent Automobile Dealers Association (NIADA) Used Car Industry Report, 16 percent of new loans originated in New York State were subprime.[13] Further impressing upon the need for action on behalf of consumers in New York City are economic indicators and New Yorkers' financial habits that cultivate a consumer environment that lends itself to predatory financial practices. For example, in New York City, 17.5 percent of families live in poverty, compared to 11.6 percent nationally and 12.1 percent in New York State. In addition, approximately 360,000 households in the city are considered unbanked, and an additional 780,000 households are considered underbanked.[14] DCA's *Immigrant Financial Services Study* concluded that many immigrant communities, including Hispanic populations often marketed to by predatory used car dealers, have misconceptions about their eligibility to open a bank account and a hesitancy to pursue opportunities as a result of language barriers.[15] As a city with over three million foreign-born residents, these trends serve to magnify opportunity for predatory behavior and trigger concern for consumer advocates.

DCA Data Corroborates National Trends

From October 2013 through March 2017, DCA received 826 complaints from consumers related to purchase or payment issues in connection with secondhand vehicles. Such complaints range from instances of forgery on contracts to a lack of material disclosures on the part of dealership staff. These complaints are concentrated in boroughs outside of Manhattan where most of DCA's licensees are located and customers are more likely to rely on automobiles for transportation.

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[11] Zabritski, Melinda., Experian Automotive, *State of the Automotive Finance Market: A Look at Loans and Leases in Q1 2016*. (2016), http://www.experian.com/assets/automotive/quarterly-webinars/2016-q1-safm.pdf.

[12] Id.

[13] National Independent Automobile Dealers Association, *Used Car Industry Report*. (2014), Print. NIADA's Used Car Industry Report.

[14] Caroline Ratcliffe et al., Urban Institute, *Where Are The Unbanked And Underbanked In New York City?* (2015), http://www1.nyc.gov/assets/dca/CitywideFinancialServicesStudy/Research-Brief.pdf.

[15] NYC Department of Consumer Affairs, *Immigrant Financial Services Study. (November 2013)*, https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf.

Table 1. Consumer Complaints by Borough

Borough	Number of Complainants
Bronx	139
Brooklyn	191
Manhattan	65
Outside NYC	183
Queens	221
Staten Island	27
Total	**826**

Table 2. Consumer Complaints: Top ZIP Codes

ZIP Code	Neighborhood
11208	Cypress Hills
11236	Canarsie
11207	East New York
11385	Ridgewood
11212	Brownsville

The top five ZIP codes by number of complaints received are mostly located in Brooklyn, with the exception of Ridgewood in Queens. The characteristics of these neighborhoods suggest that used car dealer financing issues are concentrated in areas that are traditionally unbanked or underbanked, have populations that are largely New Yorkers of color, or have sizable communities of individuals with limited English proficiency.[16]

There are a number of factors, including economic, demographic, and social, that contribute to potential susceptibility to predatory lending. For example, a community health profile of these neighborhoods conducted by the New York City Department of Health and Mental Hygiene found that significant percentages of these neighborhoods are minority communities with limited English proficiency.[17] For example, in Canarsie, 60 percent of the population is Black and 15 percent has limited English proficiency.[18] This analysis suggests that financing issues related to the used car dealer industry, much like other types of predatory financing practices, disproportionately affect minorities and individuals with limited English proficiency.

As corroborated by Federal Deposit Insurance Corporation (FDIC) data, educational attainment and income data indicate an individual's likelihood to use traditional banking services as opposed to more costly alternative financial products.[19] Nationally, nearly a quarter of households surveyed with incomes less than $15,000 and with

[16] Caroline Ratcliffe et al., Urban Institute, *Where Are The Unbanked And Underbanked In New York City?* (2015), http://www1.nyc.gov/assets/dca/CitywideFinancialServicesStudy/Research-Brief.pdf.
[17] New York City Department of Health and Mental Hygiene, *Community Health Profiles 2015*. (2015), https://www1.nyc.gov/site/doh/data/data-publications/profiles.page.
[18] Id.
[19] Susan Burhouse et al., Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households*. (2015), https://www.fdic.gov/householdsurvey/2015/2015report.pdf.

no high school diploma were unbanked as opposed to less than 1 percent of households earning at least $75,000 and 1 percent of those with a college degree who used traditional banking services.[20]

American Community Survey data aggregated by the City between 2010 and 2014 similarly show that our top complainant neighborhoods have significant populations of individuals without a high school diploma and living in poverty. In Cypress Hills, for example, approximately 22 percent of the neighborhood does not have a high school degree and nearly 30 percent live in poverty.

The table below breaks out socioeconomic indicators of predatory lending by percentage of population of the top five neighborhoods from which DCA receives complaints, including the percentage of linguistically isolated households, or those households with individuals who have some limitation communicating English.[21] The data suggests that it is not wholly unsurprising that DCA is hearing about predatory financing from these constituencies.

Table 3. Socioeconomic Indicators

Neighborhood	Less than High School Degree	In Poverty	Foreign Born	Linguistically Isolated
Cypress Hills	22.45%	29.50%	40.24%	18.94%
Canarsie	10.70%	15.08%	46.72%	5.93%
East New York	14.00%	34.20%	30.60%	6.12%
Ridgewood	15.14%	20.10%	44.75%	14.50%
Brownsville	16.05%	35.78%	28.35%	4.54%

DCA Jurisdiction

DCA licenses 775 secondhand automobile dealers in New York City. In addition to complying with all aspects of the Licensing Law, secondhand automobile dealers must also comply with the City's Consumer Protection Law, as well as a variety of state and federal laws with respect to the sale of cars.

DCA enforces the various signage and recordkeeping requirements mandated by law. In particular, DCA requires dealers to:

- Post their licenses conspicuously for customers
- Post the total selling price for each used car offered for sale
- Post a Federal Trade Commission (FTC) Buyer's Guide on each used car offered for sale
- Post a refund policy in the office where sales take place
- Maintain records of sales, purchases, and deposits received
- Certify that each car sold is in safe condition at the time of sale and agree to repair any defects

[20] Susan Burhouse et al., Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households*. (2015), https://www.fdic.gov/householdsurvey/2015/2015report.pdf.
[21] Data aggregated based on 2010-2014 American Community Survey (ACS) Five Year Sample.

Additionally, the New York City Charter empowers the Agency to investigate abuses and bring legal action against businesses for engaging in deceptive practices.[22] As such, the Agency can investigate complaints and bring cases against businesses, seeking fines, consumer restitution, and license suspension or revocation.

In addition to DCA's regulatory work, the Agency provides critical services and conducts important advocacy with respect to issues of financial stability and empowerment. The Agency's Office of Financial Empowerment (OFE), a first-of-its-kind local government initiative, provides all New Yorkers with access to free, one-on-one, confidential financial counseling, as well as safe and affordable financial products. Since their inception in 2008, DCA's Financial Empowerment Centers have helped New Yorkers understand and take control of their finances. Whether an individual or family wants to manage their debt, improve their credit, create a budget, or open a bank account, trained counselors can assist. Counselors at the Centers have helped more than 40,000 clients reduce their collective debt by over $50 million and increase savings of more than $4 million as of the end of calendar year 2016. DCA also partners with the Mayor's Office to facilitate and grow the banking access component of the City's municipal identification card, IDNYC. More than a dozen financial institutions citywide accept IDNYC as a primary form of identification to open a bank account. The Agency remains steadfast in advocating for financial literacy, expanding affordable credit access, protecting the integrity of the state's usury law, and limiting access to costly alternative financial services.

II. DCA Public Hearing

On October 18, 2016, DCA used its City Charter-granted authority to hold a joint public hearing with Council Member Rafael Espinal in order to solicit testimony about experiences New Yorkers, legal service providers, and policy advocates had with respect to predatory lending in the used car industry, both nationwide and in New York City.

Consumers

The hearing featured testimony from advocates, legal service providers, and consumers, including Rhoda Branche of Coney Island, Brooklyn and Samuel Kissoon of Ozone Park, Queens. In their testimonies, both Ms. Branche and Mr. Kissoon spoke in detail about the critical importance of having access to a car, which enabled them to get to work and also take care of their families.

Ms. Branche, a caretaker for the mentally ill, reported needing a car to travel from her home in Coney Island to her job site in Port Washington on Long Island. This is a distance that would likely require at least three hours of travel time via public transportation, but could be covered in approximately an hour by car.

Mr. Kissoon, a car mechanic, reported needing the car to travel from Ozone Park, deep in South Queens, to Red Hook, at the very western edge of Brooklyn, in order to be able to get to work. This is a distance that would likely require more than one hour of travel time via public transportation in each direction, but could be covered in approximately 35 minutes by car.

Unfortunately, both Ms. Branche and Mr. Kissoon were victims of predatory and pernicious practices by dealers that sold them their cars.

As a result of Superstorm Sandy, which had a disproportionately negative impact on New York City's coastal neighborhoods, including Coney Island, Ms. Branche found her car completely flooded and unusable. Desperately in need of a vehicle to commute to work, she went to Giuffre Auto Group in Brooklyn in

[22] New York City Charter § 2201 et seq.

November 2012. In Ms. Branche's own words, she was rushed through the sales process by a "young and charming" salesman who promised an easy fix to her troubles. Feeling disarmed by the salesman, she was taken advantage of by signing a financing agreement for a vehicle that turned out to be a "lemon." Her agreement had a 23.5 percent annual percentage rate (APR), and she was required to put $1,500 down. She was never asked for proof of income, was never walked through the terms of the financing agreement, and was never allowed to take her new vehicle for a test drive. Instead, she was merely told by the dealership that the car was suitable for her needs after being presented a large stack of paperwork and told where to sign and initial.

Mr. Kissoon visited Nemet Nissan in Jamaica, Queens in December 2011 after seeing an Internet advertisement about the dealership. It isn't a coincidence that Mr. Kissoon was drawn to Nemet, as it is a dealership that caters to foreign-born consumers with limited English proficiency by offering advertising in at least six different languages. Without any credit check, Mr. Kissoon was advised by Nemet's staff that he could not purchase a car with a $5,000 down payment and to return with $10,000. After having returned with the additional money, he was told to wait for over two hours until closing and then rushed through the financing terms of his car purchase. Despite paying a $10,000 down payment on a $23,844 Nissan Maxima, he was required to finance the remaining $13,844 at a rate of 24.9 percent APR. In sum, Mr. Kissoon contracted to pay a total balance of $42,342 for a car worth $23,844. Mr. Kissoon, like Ms. Branche, was never walked through his financing agreement and was simply presented with a large stack of paperwork and told to sign and initial the documents in various places.

Unfortunately, the stories of Ms. Branche and Mr. Kissoon are not unique. Both consumers fit the profile of those who are targeted by predatory used car dealers: each earn moderate to low incomes, are immigrants, and lack familiarity with the car purchasing process.

Legal Service Providers

Shanna Tallarico, Supervising Attorney with the Consumer Protection Unit at New York Legal Assistance Group (NYLAG), described the devastating impact predatory loans have on New Yorkers and noted that NYLAG often encounters clients victimized by the deceptive auto lending practices of "overzealous and under-regulated" lenders. Ms. Tallarico noted that people in communities of color, in particular, are targeted by dealers. Similarly, those who must rely on "deceptive sources of credit" are targeted. Ms. Tallarico identified one NYLAG client, Scott, who was attracted to a dealership that promised "no credit, no problem." Not only was Scott grossly overcharged for a vehicle with 96,000 miles, but he could not afford to make requisite monthly payments. Scott was sued, his credit further tarnished, and he was unable to make necessary expenses until NYLAG stepped in to assist.

NYLAG's recommendations to curb predatory used car dealer lending included requiring additional disclosures for consumers to ensure they have a clear understanding of the purchase terms and their rights under the law. Additionally, NYLAG suggested mandating a "cooling off period" for the purchase of a used car bought at a dealership. This proposal would allow consumers the opportunity to reconsider their purchase within a designated period of time.

Advocates

Joe Valenti, Director of Consumer Finance at the Center for American Progress (CAP), noted that in the case of secondhand auto loans, the borrower's and lender's incentives are usually not in alignment. Whereas consumers are looking for the lowest interest rates, they instead face lenders "who profit not from the buyer's success, but from his or her failure." CAP's recommendations to curb predatory used car dealer lending included requiring clear disclosures of financing terms and assurances that lenders assess a borrower's ability to repay based on documented income and expenses.

Neighborhood Trust Financial Partners (NTFP), a nonprofit committed to empowering the lives of the working poor in the city, was invited to testify to highlight the needs of everyday New Yorkers who may find themselves in financial strife. Natalia Joaquin, Senior Financial Counselor at NTFP, stressed how important it was for consumers to seek financial counseling, especially in cases where New Yorkers are about to make a consequential financial decision. NTFP, which is responsible for the day-to-day management of some of DCA's Financial Empowerment Centers, have expert counselors available who can facilitate thoughtful and informed financial decisions or advise individuals on their options to seek financial relief.

Rafael Monge Portaro, President of Neighborhood Trust Federal Credit Union (NTFCU), a partner of NTFP, described the reasons why he believes borrowers apply for financing at used car dealers. He noted that, in most cases, consumers will seek financing at used car dealers because (1) they lack information about alternative sources of financing and affordable products; (2) it is perceived to be more convenient; and (3) many consumers with low incomes are unable to qualify for other financing options.

III. DCA Action

Investigations

In 2014, after uncovering information that suggested that New York City-based used car dealers were peddling predatory loans, DCA launched investigations into the practices of certain dealers. Many of these dealers were selling cars to consumers financed by Santander Consumer USA, Inc. and Santander Consumer Funding 3 LLC, auto finance companies owned by Banco Santander S.A.

According to Santander USA's 2013 annual report to the U.S. Securities and Exchange Commission (SEC), Santander USA had relationships with nearly 14,000 automotive dealers in the United States, including dozens of car dealerships in New York City. To obtain more information about these loans, DCA subpoenaed Santander Consumer USA, Inc. and Santander Consumer Funding 3 LLC. At the time the subpoenas were issued, used car financing represented nearly two-thirds of Banco Santander's outstanding installment loans, 88 percent of which were issued to subprime borrowers, according to the SEC.[23]

DCA's investigations into different dealers, some of which remain ongoing at the time of the publication of this report, have found that dealers have engaged in a variety of predatory and deceptive practices specifically designed to ensnare unsuspecting consumers into buying cars they often can't afford which, for the dealers, generally means large profits. These practices include but are not limited to:

- Falsifying consumer income and expenses on credit applications
- Inflating the value of automobiles to satisfy finance companies' lending requirements
- Concealing the disadvantageous terms of sale and financing agreements from consumers
- Pressuring limited English proficiency consumers into reviewing and signing contracts and other supporting documents in English without providing translation
- Falsifying vehicle pricing on dealership advertising

One of DCA's largest settlements was the result of a five-year investigation into deceptive advertising and high-pressure sales tactics at a used car dealership, Planet Automotive, previously known as Planet Auto Mall. Among the Planet Automotive practices that DCA investigated were misrepresentations of the prices of its automobiles, restrictions on the right of consumers seeking financing from other lenders, and forcing consumers to sign

[23] United States Securities and Exchange Commission, *Form 10-K: Santander Consumer USA Holdings Inc.* (2013), https://www.sec.gov/Archives/edgar/data/1580608/000119312514085124/d684259d10k.htm .

incomplete or unclear financing contracts. Ultimately, Planet Automotive paid $441,000 in penalties and restitution to consumers.

Since 2014, DCA has obtained approximately $1.6 million in fines and over $900,000 in consumer restitution as a result of its investigations of used car dealers.

Most recently, in March 2017, DCA brought an enforcement action against Major World, a conglomerate of dealerships that together likely formed one of the largest dealerships in New York City. Three Major World dealerships were charged with using deceptive and illegal practices to profit from vulnerable low-income and immigrant consumers. DCA alleged numerous violations and wide-ranging consumer harm, and the Agency is seeking more than $2 million in consumer restitution and fines (approximately $770,000 in restitution and $1.7 million in fines). DCA is also seeking revocation of the company's three licenses and the creation of a trust fund for any unidentified consumers who have been harmed.

DCA's investigation included 30 consumers, a fraction of the number of people likely harmed by Major World. The Agency alleged that the dealerships had a long-standing practice of luring unsuspecting consumers, particularly those with limited English proficiency, with promises of great deals on used cars and financing, regardless of credit history, income, or income-to-debt ratios. DCA found that Major World had been submitting false information on consumers' credit applications, such as nature of employment, income levels, and monthly rent obligations, in addition to falsely inflating car values. Major World presumably engaged in these practices to make car deals more attractive to financing companies, who then issued loans to consumers, who might not in fact be qualified to receive those loans. In the end, consumers, who have not been informed of their loans' financing terms, are left with overpriced and sometimes defective cars and saddled with high-interest loans that they never should have received and may not have been able to afford.

As of the publication of this report, DCA continues to investigate other large dealerships across the city for engaging in a variety of predatory financing practices.

IV. Recommendations

DCA's October public hearing confirmed that predatory lending in the used car industry is a problem of significant concern in New York City. Those who fall prey to predatory used car dealer behavior may not always know, or feel empowered to exercise, their rights as consumers. Further complicating matters are overzealous dealers motivated to spike their short-term profits by offering egregious financing terms at the expense of consumers.

While New York City cannot legislate financing requirements such as establishing a maximum interest rate, it can make it more difficult for predatory used car dealers to take advantage of consumers. By amending the Licensing Law, the City Council can mitigate alarming trends among used car dealers. Specifically, DCA recommends curbing predatory financing practices through additional disclosures; prohibitions on the most egregious predatory practices; recordkeeping and reporting requirements; increased contract flexibility for consumers; and enhanced penalties for unlawful activity.[24]

[24] For a complete summary of the proposed legislation, see Appendix A.

Disclosures

Mandate conspicuous disclosure of used car dealer requirements and consumer rights.

Increased transparency for consumers will promote confidence in the marketplace and limit opportunities for unscrupulous dealers to take advantage of potential customers.

A common element in witness testimony at the public hearing was that used car dealers often employ processes and procedures that prevent consumers from understanding the terms of their sales contract. For example, Ms. Branche testified that she had been presented with a large stack of papers to sign without having the terms of the contract explained to her. To help prevent future instances of similar consumer deception, we recommend a series of consumer disclosures. The disclosures would condense and summarize key information about the financing agreement, including charges imposed by the used car dealer for arranging the financing. Additionally, we recommend mandating a "secondhand automobile dealer consumer's bill of rights." The bill of rights would reiterate certain consumer disclosures and should be presented to each consumer and conspicuously displayed in any room a contract is executed.

Prohibited Conduct

Prohibit used car dealers, as a condition of their ability to operate in New York City, from mandating financing through their dealership, falsifying consumer finances, and price-packing contracts.

Explicit prohibitions of common predatory tactics in the City's Licensing Law will ensure that unlawful dealers are duly penalized for their actions.

In her testimony, Ms. Tallarico identified many of the issues New York City consumers face when dealing with used car dealers. In particular, Ms. Tallarico noted that NYLAG's clients regularly encounter misrepresentations by the dealer that impaired their ability to make informed decisions about their purchases. Ms. Tallarico's testimony confirms a trend that DCA has identified in its legal investigations of used car dealers—misrepresentations by dealers as to the prices of automobiles and the financing terms offered to consumers. Accordingly, DCA proposes explicitly prohibiting dealers from mandating financing through their dealership, falsifying consumer's financial information to lenders or finance companies, and price-packing contracts with optional goods and services as a condition for arranging financing.

Recordkeeping and Reporting

Require used car dealers to keep all documents related to sales for a minimum of six years and empower DCA to audit and inspect for these records.

Access to customer sales records will allow DCA to more clearly understand the circumstances of a consumer's experience at the dealership and ensure the dealer is abiding by City, state, and federal law.

Mr. Kissoon testified that he did not recall if the used car dealer he visited ever asked him for any proof of income despite assuring him that he could not finance his car with only a $5,000 down payment. Recordkeeping requirements offer DCA the opportunity to inspect and audit used car dealers to ensure the businesses are complying with the applicable laws and rules. Under the proposal, used car dealers would be required to keep all disclosures and documents related to sales on file for at least six years. Additionally, used car dealers would be required to submit to DCA the aggregate amount of sales so that the Agency may continue to study consumer need in this area.

Contract Flexibility

Enshrine in statute consumer choice when purchasing a used car.

Facilitating choice will help combat sales pressure tactics and ensure that consumers have the opportunity to get the best deal possible.

As noted earlier, a car is often one of the largest purchases an individual or family will make. A consumer financing the purchase may benefit from the opportunity to consider an offer and compare it to what other dealers are offering before finalizing their purchase. The witnesses from NTFCU and NTFP, Mr. Monge Portraro and Ms. Joaquin, noted that alternative financing opportunities may exist for consumers and that financial counseling is available for proactive financial planning. DCA's proposal calls for requiring all used car dealers to offer consumers a two-day contract cancellation option subject to certain conditions. This will give consumers the option of thinking over their purchase and exploring alternative options if they choose to do so. Making this arrangement optional will promote informed decision-making and give consumers leverage in their transactions without unduly delaying those consumers who need to purchase a vehicle quickly in order to take advantage of an employment opportunity, care for friends or family, or for other reasons.

Penalties

Limit instances of recidivism among unlawful used car dealers and revoke the ability of the city's most egregious dealers to legally operate.

The specter of consumers being mired in significant debt speaks to the magnitude of consumer harm caused by predatory lending. Repeated or egregious offenders of the law will be held accountable under more stringent penalties.

A high recidivism rate among used car dealers, paired with the potential for long-term financial consequences for consumers victimized by predatory lending, demands heightened and progressive penalties that promote accountability.[25] DCA's proposed penalties include the authority to seek suspension or revocation of a Secondhand Automobile Dealer license for certain violations of the Licensing Law and a requirement that DCA suspend or revoke a license if the licensee violates certain laws three or more times within a three-year period.

State Law

While the City of New York is legally preempted from legislating specific financing terms, DCA believes that stronger underwriting requirements and interest rate caps for Retail Installment Sales Contracts would be powerful tools to reduce unscrupulous and overzealous used car dealer behavior. DCA has advocated, and will continue to advocate, at the state and federal levels for policy approaches that will reduce predatory lending and empower consumers.

[25] DCA has identified several used car dealers that have committed repeat violations through its legal investigations and enforcement actions.

V. Conclusion

The factors and circumstances that enable predatory auto lending are complex, but the consequences to consumers and the city's economy are clear and too significant to ignore.

DCA is committed to raising awareness and urging the City Council to enhance the Agency's authority to curb the consumer harm caused by used car dealers. The analysis of policy experts, and the experiences of New Yorkers who turn to DCA for assistance, strongly supports increased regulation of used car dealer sales practices. DCA encourages the City Council to act accordingly to protect New Yorkers from predatory lending and to empower consumers to make informed decisions about their financial futures.

VI. Appendix

Summary of Legislative Proposal

Disclosures

- Prior to executing a Retail Installment Sales Contract, Secondhand Automobile Dealers must disclose to the consumer:
  - The lowest annual percentage rate offered by a finance company to the consumer;
  - Any charge imposed by the Secondhand Automobile Dealer for arranging financing, including markup charges and processing fees;
  - A statement that the consumer is not required to obtain financing through the Secondhand Automobile Dealer;
  - The price of each additional good, accessory, service, product, or insurance offered for sale with the automobile; and
  - The total cost and monthly payments, including financing, to purchase the automobile with each item included, without any items included, and with all items included.
- Secondhand Automobile Dealers are required to post conspicuously in their showrooms, and in areas where they discuss financing, the "second-hand automobile dealer consumer's bill of rights." This document must also be provided to consumers before any contract is executed.
- Secondhand Automobile Dealers must provide all notices to the consumer in the language used to negotiate the sales contract.

Prohibited Conduct

- Secondhand Automobile Dealers may not:
  - Mandate financing through the dealership as a term of selling the particular vehicle;
  - Offer conditional contracts that are voidable or modifiable by the dealer after they are executed;
  - Price-pack contracts, for example by offering additional goods or accessories as a condition for arranging financing;
  - Participate in the falsification of consumer information to a lender or finance company.

Recordkeeping and Reporting

- Secondhand Automobile Dealers are required to keep for six years after the date the contract was executed:
  - Documents related to the sale;
  - All written disclosures provided to and signed by the consumer.
- Secondhand Automobile Dealers are required to keep, for six years after the date acknowledged, a signed or initialed copy of the consumer bill of rights;
- DCA is empowered to conduct inspections and audits of records maintained by Secondhand Automobile Dealers;
- Secondhand Automobile Dealers are required to report annually to DCA the total number of secondhand automobiles sold by the dealer in the last 12 months and the number of those sales in which the automobile was financed by the dealer.

Contract Flexibility

- Secondhand Automobile Dealers are required to offer each consumer a contract cancellation option, which, if agreed to, will give the consumer the right to cancel the sales contract and return the automobiles within two days of the sale, subject to certain conditions;
- This option will, in effect, give consumers the option to think over their contract if they choose to do so.

Penalties

- The proposal would seek to limit recidivist behavior by empowering DCA to suspend or revoke a Secondhand Automobile Dealer license for any violation, and it requires that DCA suspend or revoke a license if the licensee violates the law three or more times within a three-year period.

NYLAG
NEW YORK LEGAL ASSISTANCE GROUP

Testimony of the New York Legal Assistance Group ("NYLAG")

before New York City Council's Consumer Affairs Committee regarding:

The Sale and Financing of Used Automobiles by Secondhand Automobile Dealers.

April 26, 2017

Council Member Rafael Espinal, Jr., Council Member Daniel Garodnick and members of the Committee on Consumer Affairs, thank you for the opportunity to offer testimony and submit recommendations concerning the regulation of the sale and financing of used automobiles offered by secondhand auto dealers.

My name is Shanna Tallarico and I am a Supervising Attorney with the Consumer Protection Unit of the New York Legal Assistance Group (NYLAG). NYLAG is a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves low-income consumers, immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBT community, Holocaust survivors, and veterans, as well as others in need of free legal services.

Thank you for considering this testimony and for the opportunity to comment on this vital issue that affects thousands of New Yorkers. In this testimony I will address the impact of predatory secondhand auto dealer financing and share stories of clients who have suffered because of these loans.

NYLAG commends this Committee for recognizing the devastating impact that unfair and predatory auto lending can have on New Yorkers, particularly on economically vulnerable populations.

Predatory loans have a devastating impact on New Yorkers who are forced to rely on these deceptive sources of credit to meet basic needs, such as transportation. Our consumer protection attorneys often encounter clients directly impacted by deceptive auto lending practices due to overzealous and under-regulated lending. We assist clients who are being pursued for the collection of an auto loan that threatens to impair their ability to meet basic expenses like rent and utilities because they are being held responsible for unfair loans that they are unable to pay. We have detailed several recommendations to alleviate the issue of predatory auto loans below.

Automobile loans are often one of the largest purchases households will make, after the purchase of a home.[1] Due to the size of the purchase, the sale must often be financed. For prospective buyers with limited income, the options for financing are often limited, and prospective buyers often rely on the auto dealer to provide financing for the purchase of a vehicle.[2] The lack of availability of credit is particularly problematic in light of the fact that cars are often essential to ensuring that someone can get to a job they need to support their families. When the only credit available to secure this necessary purchase is through the dealer, consumers are tricked into deceptive and predatory loans with extraordinarily high interest rates, hidden fees, and unnecessary "add-ons."

Though some regulations for auto-lending are already in place, these regulations are insufficient to adequately protect consumers. The lack of New York State laws designed to regulate auto lending is particularly problematic, given the rampant level of fraud that exists in the secondhand auto dealer market. In particular, people of color and minority communities are particularly targeted for predatory lending, and are more likely to have a dealer misrepresent the value of the car, fitness of the vehicle, the terms of a loan or have optional add-ons portrayed as mandatory purchases.[3] Ultimately, these loans become unsustainable for purchasers – especially when most secondhand dealers push consumers into buying low-price, high-mileage cars that are not sold to outlast the life of the loan, and often malfunction almost immediately after the cars are driven off the lot. Predictably, most consumers cannot afford these predatory loans, or cannot afford the loan payments and the cost of repairing the faulty vehicle. As a result, consumers surrender the vehicles and default on the loans. Such delinquency can negatively impact an individual's credit, leading to difficulties obtaining jobs or housing, or making other necessary purchases.

The impact of these predatory loans can be devastating on purchasers. One of NYLAG's clients, Wanda purchased a car from a dealer in Queens who promised a reliable car that would be "fully checked from top-to-bottom," and ready to drive off the lot that day. Wanda told the dealer that she had a total budget of $8,000 for a car. Wanda saved approximately $4,000 for a down payment so that she would have to finance approximately half of the car's cost. After Wanda purchased the car, the vehicle started experiencing mechanical problems almost immediately; mechanical problems so severe that she stalled while driving on the expressway.

[1] Auto Loans: The State of Lending in America & its Impact on U.S. Households, Center for Responsible Lending, December 2012, *available at* http://www.responsiblelending.org/state-of-lending/reports/4-Auto-Loans.pdf
[2] *Id.*
[3] Non-Negotiable: Negotiation Doesn't Help African Americans and Latinos on Dealer-Financed Car Loans, Center for Responsible Lending, January 2014, *available at* http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/CRL-Auto-Non-Neg-Report.pdf.

Wanda also later learned that the total cost of the car was not $8,000, as she was led to believe, she had financed $8,000, but the total cost of the car was actually $16,000. Wanda tried to stay current on the car payments but at some point she had to stop because she could not afford the cost of the payments and the constant cost of the repairs to the car. Wanda is disabled, she lives on Staten Island, and she has difficulty walking because of an arthritic knee. At the moment, Wanda is defending a collections suit in Queens where the lender sued her for defaulting on the installment contract. She lives primarily on her social security income with occasional earned wages that she earns caring for her autistic grandchild. This deceptive loan impacted Wanda's credit and her ability to meet her necessary expenses, and has left her without reliable transportation for which she relies on given her disability and limited access to public transportation on Staten Island.

Another NYLAG client, Johnson, was fraudulently induced into purchasing a brand new vehicle -- that he did not want – after the car dealer misrepresented to Johnson that he could not purchase a used, less expensive car because his credit was so poor. Johnson is a recent immigrant with little knowledge about credit and has very basic English language skills. He works as a home health aide earning $10 an hour, and cares for his two young children. Johnson repeatedly stated to the dealer that he wanted time to consider the deal but the dealer kept providing excuses to keep him at the dealership. After being told to wait at the dealership for 10 hours, Johnson walked out of the dealership with a brand new car and $688 monthly payments. The dealer told Johnson that his payments would be around $250 per month, and Johnson did not realize that this was a lie until he received his first statement from the financing company. Johnson immediately tried to return the car but the dealer refused. A month later the car was repossessed. At this time, Johnson is facing debt collection letters and calls from the lender, and is threatened with having to take time off work to defend a $13,000 collections lawsuit.

Sadly, Wanda's and Johnson's stories represent the typical experiences of so many New Yorkers. All too often consumers fall victim to misrepresentations and falsehoods. Consumers are defrauded by dealers into purchasing cars that are more expensive than what was initially represented either based on a misrepresentation as to the cash value of the car or the interest rate or both. Consumers are deceptively provided blank contracts to sign, which are later filled in with unaffordable terms; dealers misrepresent the necessity of add-on products; vehicles with serious mechanical problems are sold to consumers; interest rates are marked up; monthly payments are highlighted and overall cost of the loan is downplayed or not disclosed at all. These actions are all too common and are done at the expense of New Yorkers and can wreak financial havoc on many folks who are already living paycheck-to-paycheck.

New Yorkers deserve to have all of the facts before entering into a lending contract to purchase a vehicle. The legislation announced by the DCA today aims to provide that transparency, and this legislation, along with robust enforcement, will help combat predatory lending and its deleterious effects on hardworking families in New York.

We would be happy to discuss our testimony further and look forward to working together to ensure that New Yorkers are protected from predatory loans. Again, we commend all those who are working to address these important issues. Thank you for the opportunity to testify today and provide feedback on this important issue.

Respectfully submitted,

/s/ Shanna Tallarico, Supervising Attorney
New York Legal Assistance Group

GNYADA
Greater New York
Automobile Dealers
Association

FOR THE RECORD

April 25, 2017

Balqees Mihirig, Esq.
New York City Council
250 Broadway
New York, NY 10007

Dear Ms. Mihrig:

The Greater New York Automobile Dealers Association is a not-for-profit trade association representing nearly 400 franchised new vehicle dealers in the downstate region of New York. GNYADA members are engaged in the retail sale and leasing of new and used vehicles, as well as servicing, repairing, and supplying parts for new and used vehicles.

On behalf of the Association, we strongly oppose bills 1539-A and 1540 as currently written. Int. 1539-A, as proposed, is unworkable, and its effects on New York City small businesses and consumers could be detrimental.

Franchised new car dealerships are a valuable segment of metropolitan New York's economy, generating $41.6 billion in economic activity, paying $2.26 billion in state and local taxes, and generating, directly and indirectly, more than 67,000 jobs in the downstate region. However, dealerships operating in New York City will face significant competitive disadvantages due to the additional cost of compliance caused by this legislation. These new expenses may result in higher vehicle and service costs for customers, ultimately pushing them towards buying their cars outside of the City or in bordering states, negatively impacting New York City's economy.

The Greater New York Automobile Dealers Association is a strong proponent of educating consumers about their rights when purchasing a vehicle. However, increased requirements, especially regarding disclosures provided elsewhere in transaction documents, runs the risk of overloading consumers with material and may overwhelm them, which will have the opposite effect that the legislation intends.

The Association has produced many consumer guides that assist customers with the purchasing and servicing of automobiles. The Association has also worked with State, Federal, and City legislatures and agencies to develop legislation, regulations, and auto retail guidelines that assist customers with the car buying process. Part of those laws include penalizing dealers for unscrupulous practices, such as accepting customer contracts that are not fully filled out, which is barred according to NY Pers. Prop. L §302 (2012). Enforcement in existing State and Federal laws will achieve this goal, without the need for duplicative legislation.

Greater New York
Serving Our Members Since 1910!
Automobile Dealers Association

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The most significant problem throughout **20-268.1 Financing Terms for Purchase of Secondhand Automobiles** is that it is redundant with Federal regulations that address the credit information that must be given to consumers before a transaction is completed. The Equal Credit Opportunity Act (12 CFR 1002) and Fair Credit Reporting Act (15 USC 1681m) require that consumers be given an adverse action notice when they are denied credit or credit terms are not accepted at the terms offered. The Risk Based Pricing Rule Notice (16 CFR 640) and Fair and Accurate Credit Transactions Act (15 USC 1681) give consumers notice of credit terms in relation to other consumers if a credit report is used in a credit decision. The Truth in Lending Act (12 CFR 226) requires that the APR, term of the loan, and total costs to the borrower be conspicuous on documents presented before (s)he signs.

Additionally, this section asks dealerships to separate their financing fees in a manner that is not required of any other industry. The disclosure format contemplated by this section creates the impression of an adversarial relationship between the dealership and the customer when dealerships, in fact, work diligently to obtain favorable financing for customers.

There has been much review and examination of dealer financing, resulting in an overall agreement that dealers attain much more favorable interest rates for their customers than those customers are able to secure on their own. Dealers receive what are equivalent to wholesale rates from financial institutions with which they often have longstanding business relationships, compared to individuals who may only purchase a vehicle once every several years. Another reason that licensed new car dealers receive below-market rates is that banks hold dealers financially liable if they omit or inaccurately enter information on customers' loan applications, putting the financial responsibility on the licensed dealer.

20-268.2 Automobile Contract Cancellation Option Agreements, which would allow customers to purchase the option of a two day "cooling off" period after vehicle delivery, is unnecessary from a consumer protection standpoint and harmful from a dealership standpoint. The Federal Trade Commission's cooling-off rule (16 CFR 429) has specifically exempted vehicle purchases for more than thirty years.

New York customers have additional protections, such as the cancellation period provided by New York's Personal Property Law, making such rule unnecessary. NY Pers Prop L §302 (2012) says that until the customer receives a copy of the contract signed by the seller, a customer who has not received delivery of the vehicle "shall have an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded-in."

Imposing a rule that New York City dealers must provide customers with a cooling-off period will have a detrimental effect on the way vehicle transaction are handled. There is significant cost and time associated with delivering a vehicle to a customer, from the administrative paperwork of the transaction, to assuring that the vehicle meets State regulations that require it to be certified as ready for highway use (Certificate of Adequacy), to preforming the State Emissions and Safety tests.

Many dealers are now using automated registration processing systems, approved by DMV, to register and title vehicles with the State. If the customer has the ability to take delivery of a vehicle for what would be considered a multiple-day test drive and can then return the vehicle at virtually no expense to them, the dealer would then have to reverse the ownership and register it back to the dealership. This process could take more than a month before they receive a permanent title in the dealership's name in order to offer it for sale again.

In addition, passing this bill would be akin to allowing customers to treat dealerships like rental car companies. It is certainly feasible that someone may buy a convertible on a Friday, enjoy a weekend in the Hamptons, and return it on Sunday before the "cooling off" period has elapsed. The dealer would then have to absorb the expense, which is certainly more than the effective restocking fee of $200, of repairing any wear and tear on the vehicle and completing DMV required title and registration documents.

This negative effect on business would have unintended consequences for consumers and the New York City economy. Placing this financial burden on New York City dealerships may make operating within City limits financially unviable, leading to fewer jobs for City residents, less dealership choice for customers, and likely less commerce in the city – all of which lead to less revenue for the city.

The Association supports transparency in used vehicle transactions, and wishes to work with the City Council on developing a beneficial used car bill of rights document. We believe that, if we work together on this issue, we can lend our support to proposed bill 1540, relating to **20-268.4 Secondhand Automobile Dealer to Post Consumer Bill of Rights**, provided changes tracked in the attached document are made.

Thank you for your time, and we look forward to discussing our proposed changes to bill 1540 with you.

Very truly yours,

Mark Schienberg
President

cc: Rachel Cordero, Esq.
NYC Council
250 Broadway, 14th Floor
New York, NY 10007

OFFICE OF THE BROOKLYN BOROUGH PRESIDENT

Testimony

Brooklyn Borough President Eric L. Adams

April 26, 2017

I want to thank the City Council, Chair Rafael L. Espinal Jr., and the Committee on Consumer Affairs, for giving me the opportunity to provide comments at this hearing.

I applaud the City Council for looking for ways, through the New York City Department of Consumer Affairs (DCA), to prevent predatory, secondhand automobile dealers from taking advantage of individuals seeking a used car.

Currently, the system allows for secondhand automobile dealers to take advantage of individuals, most notably those with a language barrier who have bad credit and limited to no savings. This is not to say that all secondhand automobile dealers are bad actors, but rather this is legislation that empowers DCA to uphold lending practices outlined in federal and state guidelines while providing consumers with information clearly outlined in their native language.

I support the City Council's effort to amend the Administrative Code of the City of New York, Intro. 1539, in relation to the financing and sale of used automobiles by secondhand automobile dealers. Additionally, I support the amendment to local law outlined in Intro. 1540 that requires secondhand automobile dealers to post and distribute a consumer bill of rights to prospective buyers. Paired together, these legislative measures seek to curtail predatory lending practices for vulnerable populations while providing DCA with necessary data collection and enforcement mechanisms.

My primary suggestion is that DCA do more to provide information in the buyer's native language by expanding languages covered in their language access plan. While I understand it is extremely difficult to provide documents in more than 200 languages spoken in New York City, there should be services available to consumers and secondhand automobile dealers to access documents in the many native languages not included in the language access plan. In addition, dealers should be required to verbally review the consumer bill of rights in the language that the deal is being negotiated in to ensure that those who have limited English language reading proficiency are made aware of their rights. Only then can we begin to stamp out predatory lending practices.

Thank you.

# # # #

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