



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

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Table of Contents

Combating Predatory Lending: A Top Priority 5

Executive Summary 6

I. Subprime Auto Lending: Scope and Jurisdiction 7

- Scope: National 7
- Scope: New York City 8
- DCA Data Corroborates National Trends 8
- DCA Jurisdiction 10

II. DCA Public Hearing 11

- Consumers 11
- Legal Service Providers 12
- Advocates 12

III. DCA Action 13

- Investigations 13

IV. Recommendations 14

- Disclosures 15
- Prohibited Conduct 15
- Recordkeeping and Reporting 15
- Contract Flexibility 16
- Penalties 16
- State Law 16

V. Conclusion 17

VI. Appendix

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.

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.

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.

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. Kisson 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.

