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Congress, States Need to Better Protect Used-Car Buyers to Help Families Remain Financially Stable, New Report Says

Policy reforms needed to protect working families from deception, abusive practices and fraud so that a used car does not become a burden

WASHINGTON, D.C. (March 5, 2009) – Buying a reliable, quality used car for a fair price is nearly impossible for America’s working families who often fall victim to unfair financing ploys, deceptive sales practices, exorbitant fees, and fraud, according to a report released today by the National Consumer Law Center (NCLC).

The report was released at a hearing held by the House Subcommittee on Commerce, Trade and Consumer Protection to discuss consumer protection in the used and subprime car market. John Van Alst, author of “Fueling Fair Practices: A Road Map To Improved Public Policy For Used Car Sales And Financing,” said Congress could take a number of steps to address abuses in the used-car market, some as simple as updating existing protections or allowing consumers to take on abuses through private actions.

“In this economy it’s especially important for families to be able to purchase and keep a good, reliable used car that can help them reach jobs, take their children to daycare, get from work to community college classes,” Van Alst, a NCLC attorney, said prior to his testimony. “Many need to cobble together several part-time jobs just to make ends meet. Having a car is a necessity. Buying a used car shouldn’t subject families to unfair financing and deceptive dealer sales tactics and it shouldn’t have to be a grueling ordeal. When American consumers try to support the car industry by spending their hard-earned dollars, they should be able to expect value and fair treatment in return.”

In his testimony, Van Alst said common dealer abuses include:

- Selling cars in poor or dangerous condition that are presented to the consumer as sound and reliable;
- Taking kickbacks from lenders to place families in higher interest loans than they actually qualify for;
- Using deceptive and misleading sales practices, such as “yo-yo sales,” where the customer drives off the lot with a newly purchased car, only to be called back several days later and told financing could not be arranged for the original terms and the customer needs to sign new documents at worse terms;
- Pushing products such as “window-etching” and other unnecessary services and add-on fees that only pump up a car’s cost and the dealer's profit;
- Giving higher interest loans to minority car buyers than non-minority car buyers with similar credit worthiness;
- Requiring excessive interest rates and long-term loans that ensure the customer will owe more than the vehicle is worth for years after the purchase.

The NCLC report, which was made possible by funding from the Annie E. Casey Foundation, said customers face substantial roadblocks in trying to address these problems. Many of the abuses are currently legal. Even if the dealer's abuses are actionable, customers often are prevented from holding the dealer responsible due to language in the purchase contract that denies consumers the right to go to court and forces them to settle disagreements through arbitration. The arbitration process is often prohibitively expensive, is presided over by an arbitration service provider picked by the dealer, and the arbitration hearings are conducted in private and are not a matter of public record, so the general public is unaware of actions involving unscrupulous dealers and finance companies.

According to Van Alst, there is broad public support for policy improvements to protect consumers who are buying used cars, and a growing number of policymakers are beginning to focus on these issues. Even some car dealers and finance companies would welcome a more level playing field that would allow them to compete based upon the

price of the car, rather than lowballing the car price and making their profit through financing and add-ons. Instead, the existing market forces dealers who would provide quality cars for fair prices to compete with dealers who now are employing unfair but lucrative practices.

Both state and federal policy improvements are needed, Van Alst said. He told the subcommittee that on the federal level:

- A data collection system for automobile financing should be created, similar to the existing Home Mortgage Disclosure Act data collection. This would help to track sales and financing and combat discrimination in such transactions.
- Pre-dispute binding arbitration should be prohibited in auto sales and financing transactions.
- The Federal Trade Commission’s “used car rule” should be improved.
- Restrictions on modification of car loans in bankruptcy should be removed.
- Jurisdictional and damage amounts under the Truth in Lending Act should be adjusted for inflation.
- Impediments to proper operation of the Motor Vehicle Information and Cost Savings Act should be eliminated.

At the state level, NCLC recommends:

- Protecting buyers from sales and financing abuses by instituting a right of rescission or “cooling off” period, eliminating or limiting dealer finance charge markups to a dollar amount, capping document preparation fees, requiring posted pricing and simpler rebate calculation for add-ons, creating dealer-funded consumer compensation funds and increasing existing dealer bond requirements.
- Protecting used car buyers from dangerous and unreliable vehicles by passing used car lemon laws and required warranties, prohibiting disclaimers of implied warranties and “as is” sales, and requiring inspection of and minimum condition for used cars for sale.

- Protecting buyers and the public from arbitrary and dangerous repossession by regulating or banning self-help repossession and by giving families a right to cure or reinstate a loan if they fall behind.

“Changes are urgently needed,” Van Alst said. “The current system results in unfair transactions. It hamstring working families that have to have a car. Ultimately, the fraud and abuse in these individual transactions aggregate into a dysfunctional credit economy.”

The full report is posted to the NCLC website at www.consumerlaw.org. An Executive Summary also is available.

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