



National Association of  
Consumer Advocates

## Military Consumer Justice Project

March 13, 2013

Federal Trade Commission  
Office of the Secretary, Room H-113 (Annex T)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Used Car Rule Regulatory Review, Project No. P087604**

On behalf of the National Association of Consumer Advocates' (NACA) Military Consumer Justice Project (MCJP) we submit the following comments in response to the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking published on December 12, 2012, regarding the agency's Used Car Rule.

Thank you for the opportunity to comment on this proposed rule. NACA is a non-profit association of attorneys and consumer advocates committed to representing consumers' interests. NACA established the Military Consumer Justice Project (MCJP) to provide training opportunities to the military to educate military attorneys and servicemembers about critical consumer protection rights. Our interaction with legal assistance attorneys, financial counseling staff and servicemembers provides first hand observations of the consumer challenges faced by military personnel. The MCJP has serious concerns about the FTC's proposed Used Car Rule and the impact this rule will have on Servicemembers.

Although many experienced and financially sophisticated are among the enlisted and officer ranks serving in our military, a large population of junior servicemembers are financially inexperienced and unsophisticated. Junior military personnel ages 18 – 24 are a unique group, separate and distinct from the civilian population. They have left their homes, parents, family, familiar surroundings and resources to serve their country. Servicemembers are trained in boot camp to trust the military as their new family, to respect authority, and to follow orders. Servicemembers have a guaranteed job and paycheck. Because of their guaranteed job and pay, they represent a target market that is sought after by lenders, merchants, and car dealerships. Although they have access to credit in tight markets because of their reduced risk, the trust and

willingness of young military personnel to follow authority, especially from persons claiming military affiliation, makes them easy victims of deceptive and dishonest behavior. Any instrument or tool that does not require transparency and full disclosure of the consumer's rights and responsibilities allows a lender, merchant or car dealership to interpret, re-characterize, and misrepresent the law, facts, and truth of the matter.

Business exists to make a profit and regulations exist to keep the market fair. Servicemembers have elected to serve our country, including, if necessary, making the ultimate sacrifice of their lives. Safe and reliable transportation is an absolute requirement for servicemembers, for whom absence and tardiness to work is a criminal act. Their vehicles must work, must get repaired when they break down, and the time and cost involved must not distract them from their duties. We owe it to these brave men and women to provide them a fair market to conduct business, and at the very minimum, not to support disclosure instruments that make it easier to mislead. Mistakes in the consumer market risk the servicemembers career and our national security. We ask the FTC to consider the segment of the population represented by our Servicemembers and thoroughly review the reasonableness of the rule and its application in this market.

### **How Car Buyers in the Military are Harmed by the FTC's Used Car Rule Proposal**

- The proposed rule FAILS because it places vital information on the back of the form. The Used Car Buyers Guide is usually placed on the inside of the vehicle window facing out. If this document is disclosed to the servicemember at all it is disclosed after the purchase contracts are signed. The information on the Buyers Guide is substantial and material to the purchase decision. Placing critical information on the back of the form greatly increases the likelihood that this information will never be considered by the servicemember prior to the sale. Critical Information in the Used Car Buyers Guide, including the Non-Dealer Warranties and Service Contract sections, must be moved to the front of the form.
- The proposed rule FAILS to provide meaningful disclosures for "AS IS" language. The language is misleading and potentially harmful to servicemembers/consumers. The rule requires automobile dealerships to provide advice that is overbroad, misleading, and inaccurate regarding the meaning of "AS IS" sales. This language will discourage servicemembers and consumers with valid fraud claims from seeking advice and assistance. The existing language is misleading, particularly because a whole body of case law now establishes that selling vehicles "AS IS" is not a shield for committing fraud. The proposed language is even worse than the existing language. Instead, the AS IS disclosure should state "THE DEALER DENIES RESPONSIBILITY FOR ANY REPAIRS."
- The proposed rule FAILS to inform consumers of meaningful protections under state and/or federal law. The FTC should mandate transparency and fair dealing by requiring the Buyers Guide to provide notice of consumer rights under Magnuson-Moss and state law.

- The proposed rule FAILS to require dealers to inspect vehicles prior to sale to determine their condition for the servicemember/consumer and public safety. Whether dealership acquires its inventory from another dealership, at auction, or from an individual, as a business seeking to make a profit it will determine the costs and risks associated with the acquisition of the product it sells. Everything from minor cosmetics to substantial mechanical and structural damage and title history will be evaluated prior to the dealership making the purchase. A thorough inspection by an experienced employee makes the dealership more profitable because of fewer expenses in preparing the vehicle for sale. The dealership has a significant amount of information about the product it is selling to the consuming public. The FTC should mandate transparency and fair dealing by requiring inspections, including title histories, of used vehicles sold by dealerships in the market place. Because these inspections should already be performed, the requirement is not an additional burden on the industry, it is a standard of knowledge the public expects from an industry. This inspection protects the consumer, public safety, and the market.
- The proposed rule FAILS to require dealerships to disclose KNOWN vehicle defects, which place servicemember/consumers at risk of incurring burdensome unnecessary repair costs. Automobile dealerships are licensed and regulated companies. They are owned and operated licensed professionals. Consumers seek and trust professionals because they have a higher standard of knowledge about the products they sell. By not requiring inspection followed by disclosure, the FTC allows the sales person to convey false information about the condition of the vehicle and the dealership to profit from that misrepresentation. False information leads to market failure. The FTC should mandate transparency and fair dealing by requiring dealerships to disclose known operational and safety defects in the products it sells to the public. Hiding this information from the consumer increases profit at the risk of public safety and market stability.
- The existing rule FAILS to provide open market negotiations on dealership issued “50/50” service contracts. The current rule allows dealerships to require that the servicemember/consumer bring the vehicle to them for repair and to divide the costs for the repair equally. The current FTC system, by not requiring inspection and disclosure and by allowing mandatory dealership repairs, creates a market condition in which it is more profitable to sell damaged vehicles that get repaired by the dealership or allow the dealership to disclaim responsibility with no notice of recourse to the consumer. The consumer’s ability to negotiate and price-compare for repairs in the market place is eliminated under this rule. This situation is even more problematic for the servicemember who is unable to repair his vehicle and relies on it for work because any absence and tardiness to work becomes a criminal act. Additionally, a business controlling its profit margin has incentive to adjust prices for labor and parts and place an increased burden on the consumer. The FTC should mandate transparency and fair dealing by requiring that dealerships offering a 50/50 service contract allow open market

negotiation and comparison for the best price on the repair. A well maintained vehicle places less risk of default on the lending institution and a safer vehicle on our roads.

- The proposed rule FAILS to require dealers to provide complete results of vehicle history reports from NMVTIS or commercial providers to consumers. Where the dealership offers to provide a vehicle history report, they should be required to provide a complete report. Some dealerships provide a partial report disclosing the lack of salvage status and not service or accidents. Servicemember/consumers may lack access to a computer at the dealership and may not be aware of what is in the complete report. This partial disclosure is misrepresentation by omission. Dealerships could offer this service at a substantial cost savings and pass the reduced cost on to the consumer. The FTC should mandate transparency and fair dealing by requiring dealerships offering a history report to provide a complete report prior to executing contracts for sale.

Requiring transparency in consumer transactions by timely notice and disclosures of information relevant to the decision making process is fundamental to a fair and competitive market place for servicemembers, consumers, and automobile dealerships. The best parties to regulate the market are those with a vested interest, the merchant and consumer. That regulation cannot occur unless the parties are equally informed so they can make educated decisions. As stated by the United States Supreme Court, "blind economic activity is inconsistent with the efficient functioning of a free economic system such as ours, whose ability to provide desired material at the lowest cost is dependent on the asserted preferences and informed choices of consumers." *Mourning v. Family Publications Svc., Inc.* 411 U.S. 356, 364 (1973). Therefore, the goal of the Buyers Guide should be to deliver as much information as possible into the hands of servicemembers and consumers who are looking at vehicles.

In addition to the above disclosures, the FTC should also prevent dealerships from hiding negative equity in an inflated purchase price. Also, it should prohibit yo-yo sales where car dealers misrepresent or treat a sale as final when the dealers know that the sale will not be honored unless the dealer sells the credit contract.

Thank you for the opportunity to comment on the FTC's Used Car Rule. If you have any questions regarding our comments, please contact Ellen Taverna, NACA's Legislative Director, at [ellen@naca.net](mailto:ellen@naca.net) or (202) 452-1989 ext 109.

Sincerely,

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