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Acting Secretary April Tabor
Federal Trade Commission
600 Pennsylvania Ave NW Suite CC-5610 (Annex C)
Washington, DC 20580

Re: Comment to FTC Motor Vehicle Dealers Trade Regulation Proposed Rule - No. P204800

Dear Secretary Tabor:

The Consumer Credit Industry Association (CCIA)¹ appreciates the opportunity to comment on the proposed Federal Trade Commission (FTC) Motor Vehicle Dealers Trade Regulation Rule (“Rule”) published July 13, 2022, in the Federal Register.

CCIA shares your commitment of protecting all Americans from unfair or deceptive acts or practices and providing clear and transparent disclosures to consumers when purchasing voluntary protection products (VPPs) such as guaranteed asset protection (GAP), debt cancellation agreements, and motor vehicle service contracts (VSC), referred to in the proposed Rule as “Add-On Products” consumers through motor vehicle dealers. However, we respectfully submit that the proposed Rule is unwarranted and the process for its adoption rushed and lacking sufficient input and data from industry including the dealers it intends to subject to the Rule and the public. We recommend the FTC should not adopt the proposed Rule but continue to add clarity to which specific practices it finds to be unfair and deceptive through selective enforcement actions, promoting best dealer practices, and relying upon the marketplace to identify unscrupulous dealers.

As proposed the Rule would limit or eliminate VPPs available to consumers, stifle competition among dealers and VPP providers, provide for an unfair advantage for manufacturer VPPs, lead to price fixing for VPPs, limit negotiations over VPP price, and subject dealers to subjective “findings” of unfair and deceptive practices. Further, state regulated credit-related products like credit insurance, GAP insurance, and other types

¹ CCIA represents providers that distribute and service consumer asset and credit protection products to consumers nationwide. Made available through lenders, retailers and auto dealers, products such as credit insurance, debt cancellation, guaranteed asset protection, and service contracts (“Voluntary Protection Products”) help consumers meet their payment obligations should an unforeseen event arise such as disability, job loss, death, theft or loss of a motor vehicle, or vehicle mechanical repairs.

of insurance do not require over-lapping or conflicting regulation from the proposed Rule and should be exempted from the Rule.

I. The FTC Must Consider the Existing Regulatory Regime and Data Concerning Consumer Understanding of Voluntary Protection Products

CCIA urges the FTC to approach any policy interventions related to purchasing VPPs only after careful consideration of the existing regulatory framework and available relevant data, consistent with its obligations under the Administrative Procedure Act. In proposing the Rule, the FTC is expediting fundamental changes in the dealership-customer transaction experience issuing a trade regulation rule through the Administrative Procedures Act's notice and comment rulemaking process instead of the process provided by the Magnusson-Moss Act, requiring prior notice of the rulemaking for this Rule to Congressional committees and sufficient advance notice to the public in the Federal Register which would afford more input from stakeholders regarding the need for scope of, and other alternatives to reach the desired goals of these proposed Rules and for the Rules themselves. As precedent, the public had a period over the course of almost three years to comment on changes to the Safeguards Rule.

Most troubling is that the proposed Rule would be implemented with no regard to the consequences for consumers who purchase vehicles and VPPs. If the proposed rules are to effectively address which unfair and deceptive practices the FTC is claiming are prevalent in the dealer market, it should use all the tools available to it to account for the possible effects of the changes for purchases of vehicles and Add-On Products such as through quantitative consumer studies.

Yet, the FTC by this proposed Rule is skirting its authority to only issue rules regarding practices that are either "deceptive" or "unfair" within the meaning of Section 5 of the FTC Act and that are "prevalent" in the market.² "Prevalence" must be based on previously issued cease-and-desist orders (i.e., litigated administrative orders) or any other information available to the FTC that indicates a "widespread pattern" of unfair or deceptive acts or practices.

The information the FTC relies upon as indicating a 'widespread pattern of unfair or deceptive acts for dealership sales of Add-On Products' is thin. Although Add-On Products are a key focus of this proposed rule, only one of the 16 misrepresentations listed in the proposed Rule addresses them. The FTC also points to few targeted enforcement actions against dealers and a 2017 qualitative study of 38 consumers who had recently purchased and financed a vehicle, only a few of which expressed experiences in purchasing VPPs.

² 15 U.S.C. § 57a(b)(3).

The FTC also repeatedly cites to the biased report “Buckle-Up: Navigating Auto Sales and Financing”.³ Buckle-Up was based on the auto buying study performed and originally published as a Joint Staff Report of the Bureau of Economics and Bureau of Consumer Protection Federal Trade Commission as “The Auto Buyer Study: Lessons from In-Depth Consumer Interviews and Related Research” in July 2020. (Referred to hereinafter as “Joint Staff Report”.) The Joint Staff Report notes: “The study is qualitative and exploratory, with a sample of 38 in-depth interviews and associated purchase and financing documents. Because this is a qualitative study of a small, non-representative sample of consumers, the data generated are not useful for forming quantitative or generalizable conclusions.”⁴ Yet, this Joint Staff Report was rewritten without any additional research or data by the staff of the Bureau of Consumer Protection. Buckle-Up is a biased rewrite of the Joint Staff Report. There is no new data or research. But it is the basis for the FTC’s proposed rule cited more than 15 times in the proposed Rule.

The FTC cites a Cox Automotive Car Buyer Journal of 2020 to claim that consumers spend “5 hours or more – or even days” purchasing a vehicle at a dealer⁵, and that implies that the vehicle buying consumer experience reflects unfair and deceptive practices. That study is dated and not reflective of the high customer satisfaction purchasing vehicles at the dealer as found by the 2021 Cox Automotive Car Buyer Journey Study⁶. That study indicates time spent at the dealership by buyers to be 2:36 hours⁷ and overall satisfaction of buyers with dealership experience of 75%⁸. The FTC ignores the significant changes in auto buyer habits and seller processes imposed due to the pandemic including transactions conducted partly or fully online.

The “evidence” of unfair and deceptive practices presented by the FTC does not indicate a systemic or prevalent problem with dealer sales of vehicles or Add-On Products that warrant changes for the motor vehicle trade which encompasses tens of millions of new and used motor vehicle transactions. In fact, it appears from the proposed Rule “questions” for comment that the FTC is still seeking information to provide the “need” for the proposed Rules.

³ This report is issued by the staff of the Bureau of Consumer Protection (“BCP Staff Report”) separately from the staff report issued jointly by BCP and the Bureau of Economics (“Joint Staff Report”). This BCP Staff Report summarizes particular results of the auto buying study that are consistent with the Commission’s enforcement experiences and is not a general summary of the study results as represented in the Joint Staff Report. Page 3 of https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf

⁴ Page 5 at: <https://www.ftc.gov/system/files/documents/reports/auto-buyer-study-lessons-depth-consumer-interviews-related-research/bcpreportsautobuyerstudy.pdf>

⁵ Supplementary Information of Proposed Rule, p.4 citing [*Cox Automotive, 2020 Cox Automotive Car Buyer Journey 6 \(2020\)*](#),

⁶ [*2021 Cox Automotive Car Buyer Journey Study Overview*](#)

⁷ Id. p.23

⁸ Id. p.24

II. Proposed Rule Will Limit Consumer Choice and Competition

A. Add-On Products Definition

CCIA notes that the FTC's reference to voluntary protection products as "Add-On" or "Add-On Product(s) or Service(s)" in the proposed Rule or as comprising "junk fees" in other publications as further bias by the FTC. The products are actually referred to in the market and state law as "voluntary protection product(s)" (VPPs). We will refer to them in this comment letter as such to help deter such bias and confusion and reflect the prevalent use of voluntary protection products in the marketplace.

The proposed Rule defining Add-On Products or Services, or more accurately VPPs, in § 463.2 excludes the optional manufacturer provided services and products for a separate price which compete with third party provided voluntary products and services. The FTC has not provided a reason for excluding manufacturer products from the Rule. Yet, the manufacturer may add to the total price of the vehicle the cost of a service contract for a separate fee, for example, which unfairly competes with the same or substantially similar products from third party providers which must comply with the Rule disclosures and provisions. Not including all providers of voluntary protection products under the Rule puts smaller companies at a gross disadvantage and is anti-competitive. This works against FTC's mission in protecting consumers by preventing anti-competitive business practices. If need be, the definition could exclude those manufacturer products covered under Magnuson-Moss⁹

The Add-On Product definition should be further revised to exclude optional insurance products such as credit insurance, GAP insurance, and other insurance coverages. State laws exclusively regulate insurance¹⁰ through insurance departments or other state regulatory agencies. Ample consumer protections are afforded as state insurance regulators: review all forms, terms, and provisions, set maximum pricing, license sellers as agents, mandate training and licensing requirements, and conduct periodic data and market conduct reviews to assure insurers and their agents are complying. Purchasers may also be afforded the right to cancel some insurance products at any time, especially credit insurance with no charge if canceled within first 30 days with a mandated refund if canceled thereafter.

Optional credit insurance also adheres to the Truth-In-Lending Act (TILA)¹¹, as implemented by Regulation Z¹², requiring consumer disclosures: that the purchase of credit insurance is not required to obtain credit, what the additional charge is for the product, notice of key product terms and provisions, and that the borrower must make an affirmative written election.

⁹ 15 U.S.C. §§ 2301-2312

¹⁰ McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015

¹¹ 15 U.S.C. §§ 1601-1667

¹² 12 CFR Part 1026

In adopting the proposed Rule, it is important that the FTC aim to harmonize any new regulatory requirements with existing rules. Such harmonization is critical to helping consumers understand their rights and responsibilities and cannot be achieved, however, by newly adopted and ambiguous regulations. Proposed Rules to further regulate insurance sold during the vehicle loan process are unnecessary and may conflict with state insurance regulations. Insurance products should be carved-out of the Add-On Product definition.

B. Add-On List Disclosure Requirements

Proposed Rule § 463.2 requiring dealers to post for the public in the dealership or on its websites an itemized, master list of Add-On products including many of CCIA member VPPs with their prices will lead to less choices for consumers or possibly eliminate the opportunity to purchase any VPPs. This could perversely lead to less competition among providers with less innovation and pricing in consumer products.

- Dealers often have available many VPPs and services and use numerous providers of these products and services to sell which could translate to an extensive listing for public notice, and which also may require constant updating as dealers add new and innovative products or providers or drop current ones from the list. Many of the product prices also vary on the type of vehicle, term, mileage, and coverage selected (such as vehicle service contracts). Requiring a list of products without a reasonable disclosure of what the product is and what it does for the consumer will be confusing for consumers to understand. Furthermore, maintaining this list is burdensome and may cause dealers to limit the number of product providers or products available to consumers. VPPs are offered at the end of negotiations over the price for the vehicle with all the necessary disclosures to inform the consumer of what a product is, does, its terms and conditions, and price. A product can be tailored and should be offered as such with the proper disclosures and affirmative acceptance and by which would be most beneficial to a particular customer, such as GAP. A mandated list of products for customers to view would add little benefit or use and only generate confusion and less choice for consumers. Dealers shouldn't have to limit their products to avoid having to comply with extensive disclosures.
- The Rule would have the Add-On Product List include prices and even a range of prices for the products. It would be difficult to provide a meaningful range of pricing for certain products based on the variations of products. Listing the prices could also prove anti-competitive as dealers viewing others' pricing lists could use them to set similar pricing. A price list with a range of prices is also unworkable in the dealer sales process or any product or service process as a specific product or service cannot realistically have a range of prices, i.e., pick a price you want to pay that is not based upon any variation of the product or service. It is difficult to identify an industry where a specific product or service is offered at a range of prices and the consumer can just pick out the price that suits them.

- A pricing list also discourages “bundling” of Add-On Products together with one price. This can lead to the elimination of benefits to consumers when the product prices can be discounted when purchased together. This is a selling tool that is used in numerous industries (e.g., McDonalds selling a bundle of food and drink or AT&T bundling cell phone and cable services at prices less than that if each item were sold separately).

C. “Express, Informed Consent”

The proposed Rule § 463.2(f) provides examples of what does not constitute Express, Informed Consent: “(i) a signed or initialed document, by itself, (ii) prechecked boxes, or (iii) an agreement obtained through any practice designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice”.

The current practice for vehicle sales transactions involves negotiation between the consumer and dealer on the material terms of the transaction, including the vehicle price, trade-in value, financing or leasing terms, selection of voluntary protection products and their cost. When all the terms are agreed, they are compiled into a retail installment sales contract or a lease agreement that represents the terms of the transaction in its entirety.

This consolidation has proved effective for all stakeholders, and it complies with state laws that require the entire sale or lease agreement between the parties to be on one document.¹³ The Rule proposes to require dealers to create new documentation to be signed by the dealer and consumer when the dealer offers voluntary protection products to the consumer.¹⁴ Current dealership transactions often involve upwards of 60 pieces of paper due to state and other lender disclosure requirements. From the proposed addition of more disclosure forms, it is clear that the FTC has not reviewed the existing disclosures made at the time of vehicle sale or it would see the duplication. Creation of such documents by dealers will violate state laws requiring the entire transaction to be on one document. For this reason and to assist in streamlining the vehicle purchase or lease transaction, the Rule should be modified to eliminate requirements to create new documents beyond the retail installment sales contract or lease agreement.

Further, the definition of express informed consent is so proscriptive as to be impossible to comply with. The transaction would have to be video recorded to prove compliance with the many facets of this proposed definition. States have used express and informed consent in medical conditions, medication, and treatment where explanation potentially impacts the health and welfare of a patient. To impose that strict requirement in a retail sale transaction is arbitrary and capricious.

¹³ See Ohio Rev. Code § 1317.07. See also Fla. Stat. §520.07. See also Cal. Civ. Code § 2985.8.

¹⁴ 16 C.F.R. §§ 463.5(b)(1)(iii) and (b)(2)(iii).

D. Dealer Charges for Add-Ons and Other Items

The proposed Rule would consider a charge to be unfair and deceptive and in violation of Section 5 of the FTC Act if an Add-On Product sold has no benefit (**§ 463.5.(a)**).

Assessing violation of subsection (a) as whether Add-On Product provides value is a subjective evaluation by the regulator. Whether a product provides benefit to the consumer is also up to the consumer. The FTC lacks authority under Section 5 of the FTC Act to prevent the sale of a product where the product is marketed without using an abusive or deceptive act or practice. The FTC does not have the statutory authority to take products off the market, only the authority to see that products are marketed and advertised fairly and honestly.

Proper disclosure of the benefits and value of the product should be the standard for unfair or deceptive, just like any other product sale in the markets. Consider the following products that provide benefits and are available to consumers from dealers:

- GAP could still be sold on a low loan to value (“LTV”) loan if the product provides additional benefits such as deductible assistance (a non-total loss benefit) or GAP Plus. Additionally, a loan with low LTV at its inception could change based upon changes in vehicle valuations (as has been seen nationally during the pandemic and due to supply chain issues).
- VSC could still be sold on a vehicle that has manufacturer’s warranty coverage (1) if the VSC product provides more coverage than the manufacturer’s warranty (even if some of the coverage is duplicative) and/or (2) if the term of the VSC product will provide coverage after the manufacturer’s warranty expires.

Faced with a Rule which leaves the discretion in hindsight to the regulator as to whether a product has sufficient benefit for a specific consumer, to avoid being designated as an unfair or deceptive sale dealers may stop offering any Add-On Products.

E. Requirements for Dealers to Charge for Optional Add-On Products Are Burdensome and Duplicative

The proposed Rule **§ 463.5.(b)** is not clear as to the disclosure process for a cash customer vs. a finance customer.

Specifically, if a consumer is a finance customer, must the dealer go through the cash offer/declination, then the finance offer/declination, then present Add-On Products. If yes, this seems intensely burdensome and duplicative. The likely effect of this process is that the consumer will accept the cash or finance offer and the dealer will not be able to offer any optional VPPs which are sold during the sales process when the vehicle purchase is top of mind and there is an ability to finance the product purchase along with the vehicle. Alternately, the consumer will be confused if both a cash and financed offers are provided. Further, the necessity of a manager presently signing off on each of

the offer/declination offers is also burdensome as this necessitates having adequate managerial staff available to for each stage of the offers. This requirement would actually add more time to the sales process, which this proposed Rule is allegedly meant to cure. This is likely to discourage offering customers at least the opportunity to consider VPPs, many of which they may view as important for protection of the second largest if not the largest purchase that they will make.

Finally, certain VPPs, like the GAP waiver product, can only be purchased by the consumer with a vehicle loan, (and credit insurance if not excluded from the definition of Add-On Products), and are not available to the consumer if not offered at vehicle purchase. The proposed Rule's burdensome process for offering VPPs will put consumer's ability to pay loans and protect their credit at risk to "solve" a problem, alleged unfair practice of selling consumers VPP, that doesn't exist even according to the FTC's proffered evidence of such alleged practices.

CCIA recommends that the FTC engage with industry including dealers and lenders who can provide input on more informed options to assure consumers have the information they need to make a decision.

III. VPPs Provide Value and are a Necessary Tool to Protect Consumers

The FTC refers to Add-On Product for VPP fees or charges as "Junk Fees" in its public releases describing the proposed Rule and the alleged need for it to combat unfair and deceptive practices. This negative connotation placed upon VPPs is unfair and unwarranted.

VPPs are a necessary tool to protect consumers when unexpected events put them at financial risk. American family finances are in a fragile state already, especially with historically high inflation increasing the cost of necessities:

- 40% of American households said an unforeseen \$400 expense would be challenging to pay off in the same month¹⁵
- Just 39% percent of Americans surveyed say they could comfortably cover an unexpected expense of \$1,000¹⁶
- 75% of Americans would find it difficult or somewhat difficult to meet their current financial obligations if their paycheck was delayed for one week¹⁷
- Only 50% of American adults indicate they have enough savings to cover three months of living expenses in the event they're not earning any income¹⁸

¹⁵ Bankrate, "Bankrate's January Financial Security Index," January 2021, [link](#)

¹⁶ American Payroll Association, "Getting Paid in America" Survey, 2019, [link](#)

¹⁷ Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2018, May 2019, [link](#)

¹⁸ Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2018, May 2019, [link](#)

Approximately 28 million U.S. households hold some form of VPP and received \$1.2 billion in benefits in 2020¹⁹. It's no surprise then that academic research fielded by the highly regarded University of Michigan Survey Research Center shows that: 85% of installment loan borrowers indicated VVPs, credit insurance and debt protection, are a good idea -- *a consistently high rating over a 40-year span of similar surveys*.²⁰

GAP waiver can only be purchased and financed during dealer transactions because it amends the lending agreement. Unnecessary obstacles to their sale or unfair allegations as to its value only damage the consumer who would voluntarily purchase GAP to protect their loan and credit.

GAP waiver provides an important protection against the potential financial burden of excess car loan repayment in the event of total loss. Often when a car is totaled the insurance payout does not cover the balance of the loan. GAP waiver covers all or part of the difference between the loan balance and the insurance settlement at the time of the loss. Coupling the fragile state of American households with data showing 44% of trade-in vehicles had negative equity in 2020 and it is clear why GAP is an important tool for consumer financial risk management.²¹

Consider how GAP could fill the financial hole for a vehicle purchaser losing their vehicle with an unpaid-up loan:

- Purchaser borrows \$30,000 to purchase a vehicle
- Purchaser still owes \$22,000 at the time their vehicle is stolen or declared a total loss
- Insurer values the vehicle at \$17,000 at the time of the loss
- Purchaser still owes \$5,000 in loan payments for a vehicle they no longer have
- GAP waiver coverage would waive all or a part of the \$5,000 balance and allow the purchaser to replace the vehicle

A new academic paper by three financial experts, including two economists with the Board of Governors of the Federal Reserve System, concludes that consumers find tremendous value in Guaranteed Asset Protection (GAP) waivers that are available to them when financing the purchase of a vehicle from auto dealers.

GAP waiver, available from lending institutions and automobile dealerships, is an optional consumer financial protection product that waives all or part of the debt the

¹⁹ CCIA member data.

²⁰ Durkin, Thomas A., and Gregory Elliehausen (2017). "New Evidence on an Old Unanswered Question: Why Some Borrowers Purchase Credit Insurance and Other Debt Protection and Some Do Not," Finance and Economics Discussion Series 2017-122. Washington: Board of Governors of the Federal Reserve System, <https://doi.org/10.17016/FEDS.2017.122>.

²¹ During the first nine months of 2019, 33% of people who traded in cars to buy new ones had average negative equity of \$5,000, a 74% increase from 10 years prior (Wall Street Journal, November 9, 2019). According to Edmunds, this increased to 44% of people with \$5,600 negative equity during the pandemic (Edmunds.com, "Negative Equity Is Surging During Coronavirus," May 2020).

consumer owes when their financed vehicle is a total loss or unrecovered theft and shields purchasers from financial risks of losses exceeding insured collateral values.

The study, [Consumers and Guaranteed Asset Protection \(“GAP Protection”\) on Vehicle Loans and Sales-Financing Contracts: A First Look](#), highlights that purchase of GAP waivers on auto loans has “become fairly common since its introduction about three decades or so ago.” More than 90% of GAP waiver purchasers reported their view that GAP waiver purchase is a good idea and would purchase the product again, while 40% of non-GAP waiver purchasers agreed that the voluntary product is useful.

Vehicle prices have been continuously increasing as new vehicle technologies emerge and considering customer preference for CUVs, SUVs and light-duty trucks. In June 2022, the average transaction price for a new light-vehicle was the highest on record at \$45,844²². Consumers are taking out longer term loans which means it takes longer to build up their equity in the purchased vehicle. Of consumers who financed a new car purchase in June 2022, 36.1% opted for a loan term of between 73 and 84 months, compared to 32.8% in June 2021²³.

According to the paper’s authors: “As vehicle values have increased over this period and credit requirements have eased with widespread prosperity and improved credit-granting ability through statistical credit scoring, it has seemed likely that the potential for “gaps” might have grown along with ready credit availability and the desire for GAP might have become more common.”²⁴ GAP waiver purchase is more likely to be purchased when the amount financed is greater, loan terms are longer and existing loan balances are rolled into a new loan balance, and a purchasers’ income is lower.

The paper underscores that customers falling into one of these categories may feel unsuited to take on financial risks and, consequently, may become candidates for the financial protection GAP waivers offer. “Although there always will be risk associated with any credit transactions, it appears that many potential vehicle purchasers have chosen to purchase GAP [waiver] as a means of managing some of this risk and purchasers report their satisfaction with the product,”²⁵ the paper states.

VSCs provide vehicle owners protection from unexpected and costly repairs. They provide protections beyond the manufacturer’s warranty, offering such benefits as comprehensive end-to-end coverage for the electrical system, the engine, gas tank, air conditioner and even leather seats. Many also include access to pre-qualified auto technicians, discounted maintenance, and roadside assistance.

²² J.D. Power [Press Release June 24, 2022](#), New-Vehicle Transaction Prices Hit All-Time High Despite Rising Interest Rates

²³ Edmunds Data, June 30, 2022 [link](#)

²⁴ Id 20 at page 17

²⁵ Id 20 at page 18

Auto repairs can cost around \$7,500 for engines, \$4,000 to \$5,000 for transmissions, airbags around \$2,500 to \$4,000, and suspension systems between \$2,500 and \$3,500.²⁶

According to a recent survey²⁷, more than half of Americans (52%) have purchased a vehicle service contract, known by many as an “extended warranty.” Among those who have done so, more than 3 in 4 (76%) say they would recommend vehicle service contracts to family and friends. The most common reasons for purchasing a vehicle service contract include: the higher expense of repairing today’s more sophisticated cars (43%), peace of mind knowing repairs will be covered (40%), lack of funds to cover the cost of repairs (21%), belief that service contracts are generally a good deal (18%), and the tendency to buy products that minimize risk (12%).

Vehicle purchasers need access to VPPs at the time of purchase, when the products are most available to them, and they can better afford them through vehicle financing that often offer lower rates than other forms of credit.

IV. Responses to Questions Asked in the Proposed Rule

CCIA responds to selected Questions posed by proposed Rule as follows.

- **Question #4: Portions of the proposed Rule contemplate additional disclosures in an already lengthy, confusing, and disclosure-heavy but low-comprehension transaction. Would any of the additional proposed disclosures do more harm than good? If so, is there another measure that should be used to address the consumer protection concerns described herein?** The Add-On Product List limits products available to consumers which is not consumer protection. Consumers in this market should be treated similarly to other retail business selling options, higher priced items, choices of items, warranties where disclosure and document affirmation by the consumer is accepted. In these retail markets the consumer doesn’t have to sign off on buying the initial item or goods before they decide to purchase optional items.
- **Question #7: Does the proposed Rule adequately address sales and leasing practices that take place partially or completely online? If not, should there be different or fewer or additional requirements for online sales and leasing?** The Rule does not adequately address or consider online sales or aggregators of a motor vehicle process as the Rules overwhelmingly contemplate or view the process from “face-to-face” sales by dealers. The Rule does not take into consideration the many changes occurring in the auto sales market. Therefore, the Rule should not apply to online sales or sales where much of the sales process is occurring. The FTC should continue its research prior to imposing rules that would stifle innovation.

²⁶ 15 Most Expensive Car Repairs You Should Know – Rx Mechanic [link](#)

²⁷ Service Contract Industry Council August 30, 2022, Survey [link](#)

- **Question #10: Are the proposed definitions clear? Should any changes be made to any definitions? Should the scope of any of the proposed definitions be expanded or narrowed, and if so, why?**

The definitions for “Add-On” products and “Express, Informed Consent” should be revised as provided in our comments to these sections above.

The definition “Clear and Conspicuously” (“easily noticeable and easily understandable”) conflicts with Federal law (17 CFR Sec 162.2 (b)) (“clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information presented in the notice), making it overly broad and impossible to comply with.

The definition of “Dealer” or “Motor Vehicle Dealer” conflicts with federal law (12 USC § 5519(f)(2)) and state definitions.

- **Question #28 a: How many add-ons do dealers typically offer, and how many of those are sold regularly? Would this disclosure require such a lengthy list of add-on products and services that the list would be too long to be meaningful to consumers? If so, are there changes that could be made to this proposed requirement to reduce the amount of information disclosed while preserving the benefits to consumers? For example, would limiting this requirement to add-ons that are proposed by the dealer to a prospective buyer, as opposed to raised by the consumer, adequately address the harms that occur to consumers in the context of these transactions? Or should the Add-on List be limited to a certain number (e.g., 15) of add-on products and services most frequently sold by the dealer in the previous quarter?** The choices of Add-On Products can be numerous and vary sometimes by vehicle (ex. service contracts) and by what would be most beneficial to a particular customer (ex. service contracts and GAP). So, a product can be tailored and should be offered as such with the proper disclosures and affirmative acceptance. Dealers shouldn’t have to limit their products to avoid having to comply with extensive disclosures or worry of running afoul of ambiguous and uncertain rules. Dealers should be able to offer those VPPs which are responsive to each of their customers’/consumer needs.
- **Questions 33 This provision is intended to prevent conflicting and otherwise deceptive representations, and to protect consumers without requiring additional disclosures in an already lengthy, disclosure-heavy process. Given these concerns, should additional restrictions be placed on all add-ons? In particular, the Commission is contemplating whether any final Rule should restrict dealers from selling add-ons (other than those already installed on the vehicle) in the same transaction, or on the same day, the vehicle is sold or leased. Would such a provision better protect consumers without unduly burdening competition?**

and 36: Proposed Section 463.5(b) would prohibit a dealer from charging for optional add-ons unless the dealer first discloses the vehicle's Cash Price without Optional Add-ons and records that a consumer has declined to purchase the vehicle at that price. Should the Commission consider means to require more affirmative engagement by consumers to consciously select add-on products and services? In particular, the Commission is contemplating whether any final Rule should require separating the purchase of add-ons from the vehicle sale or lease transaction or permit consumers to cancel add-ons (that do not involve physical alteration to the vehicle) within a short time after the sale or lease transaction is concluded. What practical limitations might such additional requirements impose?

The FTC has not undertaken any research and has no data that might support restricting dealers from selling Add-On Products or VPPs (other than those already installed on the vehicle by the manufacturer) within the same transaction or on the same day the vehicle is sold or leased. Experience shows that consumers overwhelmingly purchase VPPs during the vehicle purchasing/financing transaction. Consumers will not purchase these products later; the purchase decision will not be top of mind, and the products will not be as easy to finance. Additionally, Question 36 suggests the idea of requiring Add-On Products to be cancelable shortly after the purchase/lease transaction. This requirement is not necessary. State law already governs most VPPs and requires a "trial period" during which a consumer can cancel for a full refund. Further, Add-On Product providers generally include a "trial period" (typically referred to as a 'free look period' even where not required by state law for consistency and as a best practice.

- **Question 35: The proposed Rule would also prohibit dealers from charging for GAP Agreements if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio would result in the consumer not benefitting financially from the agreement. Should any final Rule set forth how to calculate the loan-to-value ratio? If so, what should such a provision require?**

The FTC asks whether they should create rules around the calculation of LTV for purposes of GAP. The lender can best determine the LTV that would be most beneficial to the consumer without a set calculation which could be quite unworkable. The LTV calculation represents nothing more than a means for the lender to evaluate risk associated with offering the loan at a specific snapshot in time. While accurate information can provide a meaningful assessment of the loan risk at loan origination, as is required by regulators ensuring the liquidity, safety, and soundness of the lender, that assessment can change dramatically in 2 months or 2 years based on a multitude of factors. There have been significant changes in these factors that have played out over the years that have left consumers exposed to significant financial stress, because of total loss where

their primary settlement was not sufficient to pay off the underlying loan. These factors include supply and demand of used vehicles, changing consumer preferences for specific vehicle types, changes in gas prices, off-lease, and rental fleet inventories, as well as overall economic cycles. Unless states are going to require personal auto insurers to provide total loss settlements to support full payoff of loans, which would come at tremendous cost to industry and burden to those not financing a vehicle, then making GAP coverage available to borrowers with limited restriction and assumption as to the future of vehicle values is critical in providing financial security and protection to millions of borrowers.

- **Question 48: Does any portion of the proposed Rule duplicate, overlap, or conflict with any federal, state, or local laws or regulations?**

There are already Federal and state laws that require the clear disclosure of VPPs during a sale process.

- Applicable/overlapping Federal laws:
 - Used Motor Vehicle Trade Regulation Rule²⁸ outlines deceptive acts and practices for used vehicle dealers
 - Truth in Lending Reg Z²⁹ proscribes the disclosures required for credit insurance and voluntary products to be excluded from the calculation of the interest rate and already requires the disclosures to be made to consumers clearly and conspicuously in writing regarding finance charges, i.e., annual percentage rate, amount financed, how calculated. Reg Z also has a definition of Cash Price that conflicts with the proposed Rule³⁰.
- Applicable overlapping or conflicting State laws. The proposed FTC disclosures would duplicate states' existing specific voluntary product disclosure requirements and add two more conflicting disclosures.
 - Alaska outlines a dealer advertising practices and prohibitions and includes a requirement specific to service contracts that they must be clearly and conspicuously marked as an application and describe the service contract v warranty, the obligor, relationship between the seller and obligor, does not disclaim implied warranties, signed by both.³¹

²⁸ 16 CFR Part 455

²⁹ 12 CFR 226.4 (d)

³⁰ 12 CFR 226.2 (a)(9) "...At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration."

³¹ Alaska Statutes Sec. 45.25.400

- California has a Car Buyers Bill or Rights³²: disclosure requirement specific to voluntary products.
 - i. Purchase Price Disclosure for Items Included in the Monthly Payment
 - ii. The dealer must provide a written document with the price of specified items purchased and their effect on installment payments (California Civil Code §2982).
 - iii. Items requiring disclosure include a service contract, insurance product, debt cancellation agreement (“GAP” insurance), theft deterrent device, surface protection product, and contract cancellation option agreement.
 - iv. No charges may be added to the contract without full disclosure and your consent.
 - v. The document must include the cost of the monthly installment payments with and without items listed.

Additional states have advertising and other consumer protection statements. A sampling of the states:

- Arizona [link to Attorney General “Auto Purchases”](#)
- Georgia - [link to Attorney General Consumer Protection Division “Buying a New or Used Car”](#)
- Illinois – [link to Attorney General “Buying a New Vehicle”](#); [Link to Attorney General Publications for Auto Buying, Financing and Repair](#)
- Indiana - [link to Attorney General “Indiana Auto-Buyer’s Bill of Rights”](#)
- Maine - [link to Bureau of Consumer Protection “Automobile Buying and Financing”](#)
- Massachusetts - [link to Attorney General “What to know about buying or leasing a car”](#)
- Michigan - [link to Attorney General “Auto Extended Warranties”](#)
- New York - [link to Department of Consumer Affairs “Buying a Used Car”](#)
- Oklahoma - [link to Motor Vehicle Commission “Consumer Information for Buying a New Vehicle”](#)
- Oregon - [link to Department of Justice “Buying a Vehicle”](#)
- Texas - [link to Office of Consumer Credit Commissioner “Motor Vehicle & Registered Creditor Advisory Bulletin: Review of Debt Cancellation Agreements Requiring Insurance”](#); [link to Attorney General “Buying a New or Used Car”](#)
- Vermont - [link to Attorney General “Vehicle Sales and Service”](#)
- Washington- [link to Attorney General “Buying Precautions & Used Car Considerations”](#)

Most states also regulate VSCs³³ which may include filing with the state regulator of service contracts, consumer confirmation of sale, consumer disclosures for

³² [Department of Motor Vehicles](#)

³³ Alabama: 8-32-1 et seq.; Arizona: 20-1095 et seq.; Alaska: Sec. 21.59.110 et. seq.; Arkansas: 4-114-101 et seq. and 4-90-501 et seq.; California: 12800 et seq. (motor vehicle); Colorado: 3 CCR 702-5 10-4-

covered and uncovered items for repair, record-keeping, procedures for repair, termination rights for consumers and service contract obligors. The National Association of Insurance Commissioners (“NAIC”) Service Contract Model Act has been passed by many states regulating VSCs and includes the provision: “A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.”³⁴

As of April 2022, all 50 states and the District of Columbia regulate GAP waiver. Each state imposes differing requirements as to coverage, disclosures, exceptions, and product terms. The GAP trade association has developed a model act authorizing GAP waivers which requires, in part, a disclosure to consumers at sale that a GAP waiver purchase is optional and cannot be a condition of purchasing of or financing for a motor vehicle. Examples of states adopting that language include Alabama, Maine, Texas, Vermont, and Washington State ³⁵.

It is unclear whether Section 463.9 will provide that the proposed Rule will supersede consistent and/or additional state law for VSCs and GAP waivers, creating an inconsistent and uncertain business environment. Further, it will

1501 and 42-11-101; Connecticut: 42-260; Florida: 634-15; Hawaii: 481X-1 et seq; Idaho: 41-114A and 49-2801 et seq. (motor vehicle); Illinois: 215 ILCS 152/1 et seq.; Indiana: IC 27-1-43.2; Iowa: 516E.1 et seq. (motor vehicle); Kentucky: KRS 304.5-070; Louisiana: 58-51:3151 et seq. (motor vehicle); Maine: 24-A/7101 et seq.; Maryland: 14-401 et seq.; Massachusetts: 175/sec149; Minnesota: 59B.01 et seq.; Mississippi: 83-65-101 et seq. (motor vehicle); Missouri: 385.200 et seq. (motor vehicle); Montana: 30-14-1301; Nebraska: 44-3520 et seq. (motor vehicle); Nevada: 690C.010 et seq.; New Hampshire: 415-C:1 et seq.; New Mexico: 59A-58-1 et seq.; New York: Regulation No. 155 concerning service contracts; North Carolina: 66-370 et seq.; Ohio: 3905.423; Oklahoma: 36/6601 et seq.; Oregon: 646A.150 et seq.; South Carolina: 38-78-10 et seq.; Texas: 1303.001 et seq.; Utah: 31A-6a-101 et seq.; Vermont: 8/4247 et seq.; Virginia: 59.1-435; Washington: 48.110.010 et seq.; Wyoming: 26-49-101 et seq.

³⁴ [NAIC Service Contract Model Act link](#)

³⁵ Alabama: Section 8-37-7, a creditor that offers a GAP waiver shall disclose, as applicable, in writing and in clear, understandable language that is easy to read, all of the following: ... Ala. Code § 8-37-5(6); That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the GAP waiver; Maine: Stat. tit. 10, § 1500-H(4)(H) A waiver must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following: ... That the extension of credit, the terms of credit and the terms of the related motor vehicle sale may not be conditioned upon purchase of the waiver; Texas: Tex. Fin. Code § 354.004(12) A debt cancellation agreement must state: ... that purchase of a debt cancellation agreement is not required for the retail buyer to obtain an extension of credit and will not be a factor in the credit approval process; Vermont: Ann. tit. 8, § 10405(5)(A) A creditor shall disclose in writing, such disclosures shall be conspicuous, readily understandable, and designed to call attention to the nature and significance of the information provided: ... that neither the extension of credit, the terms of the credit, nor the terms of the related sale in the case of a motor vehicle or other good or service are to be conditioned upon the purchase of a debt protection agreement; Washington: Wash. Code § 48.160.050(9).Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following: ... That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the waiver....

cause confusion among both dealers and consumers. The FTC must consider these state laws to ensure that there is no confusion.

V. Conclusion

We respectfully submit that the FTC should not adopt the proposed Rule which will limit or eliminate valuable voluntary protection products for consumers. The Rule was not based on any scientific or supportable data. There is no evidence of prevalent unfair and deceptive practices by motor vehicle dealers for Add-On Products or VPPs that warrant a trade regulation rule pursuant to Section 5 of the FTC Act that would affect tens of millions of motor vehicle transactions.

Further, the proposed Rule would be implemented with no regard to the consequences for consumers who want and need to purchase affordable and valuable VPPs. The FTC's own estimate of the cost to dealers exceeds the threshold for consideration of a major rule being in the hundreds of millions of dollars. This charge to dealers will undoubtedly increase the cost of already skyrocketing vehicle prices. The FTC has not shown where this Rule will provide value to consumers to support this excessive expense. The FTC has also not considered the consequences of the Rule to VPP providers, including the advantage that the Rule grants to motor vehicle manufacturers in selling Add-On Products or VPPs by excluding them from the Rule.

The FTC has not followed its own procedures for constructing this Rule. No testing or industry input was solicited or considered. Finally, the FTC must consider already existing state laws for VPPs to ensure that the proposed Rule does not cause confusion for dealers and consumers as to what governs or what is applicable.

The FTC should take a more considered and thoughtful process to addressing what it perceives to be unfair and deceptive practices in the motor vehicle dealer market. Consumers, dealers, lenders, VPP providers, and other parties with interest in a very large motor vehicle market deserve a much more thorough and collaborative analysis of this market than the current process for this proposed Rule.

Respectfully submitted,

