

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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November 16, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Chair Khan,

The Committee on Oversight and Accountability is investigating the Federal Trade Commission's (FTC) proposed Motor Vehicle Trade Regulation Rule (proposed rule).¹ The proposed rule would prohibit or burden automobile dealer practices in the sale, leasing and financing of new vehicles and add-on products. Promulgated under the guise of protecting consumers, the proposed rule threatens harm to consumers and small businesses by making car purchases more difficult and inhibiting innovation in the industry. The proposed rule appears to rest on thin analysis and unreliable data and suffers from several procedural flaws, including violations of FTC regulations requiring advanced notice of proposed rulemaking. We seek documents and information to enable oversight of the FTC's actions related to the proposed rule.

The Small Business Administration's Office of Advocacy—the federal government's top watchdog against threats to small businesses—urged the FTC to pursue targeted actions against the small percentage of bad actors in the industry instead of punishing all automobile dealers through this proposed rule.² The Office of Advocacy noted that the FTC lacks evidence to suggest deception is a pervasive problem in the industry, especially when less than one percent of consumers have complained about the conduct the FTC proposes to address with the rule.³ The Office of Advocacy raised concerns that the FTC may have violated the Regulatory Flexibility Act by failing to adequately assess the proposed rule's costs and by failing to consider less harmful alternatives to small businesses.⁴ Finally, the Office of Advocacy noted that the proposed rule would make car purchases more cumbersome, stifle industry innovation, and sweep in non-automobile dealers.⁵

¹ *Federal Trade Commission: Motor Vehicle Dealers Trade Regulation Rule* (Notice of Proposed Rulemaking), 87 Fed Reg. 42012 (July 13, 2022).

² U.S. Small Business Administration: Office of Advocacy, *Comment on the Notice of Proposed Rulemaking on the Motor Vehicle Dealers Trade Regulation Rule—Rulemaking, No. P204800*, at 7 (Sept. 8, 2022) (SBA Advocacy Comments).

³ *Id.* at 6.

⁴ *Id.* at 2-4.

⁵ *Id.* at 5-6.

Industry commenters on the rule shared similar concerns.⁶ The National Automobile Dealers Association (NADA) stressed that the proposed rule “will inject massive costs into the auto retailing process, greatly extend transaction times, greatly confuse consumers, and impede efficiencies aided by technological innovations that have significantly improved—and continue to improve—the customer experience.”⁷ NADA’s comments noted that the FTC’s asserted factual basis for the proposed rule rests heavily on stale evidence from 2011, a severely limited study of thirty-eight consumers in just one market, Washington, D.C, and a cost-benefit analysis that lacked any supporting data and “massively understates the costs of the Proposed [Rule] while wildly overstating its supposed benefits.”⁸ This is confirmed by a study published by the Center for Automotive Research in May 2023. This study suggests the proposed rule could cost consumers \$38.1 billion or more over ten years, as opposed to benefitting consumers by \$29.7 billion as the FTC estimated.⁹

The FTC may also have violated its own procedures by failing to issue an advanced notice of proposed rulemaking.¹⁰ Further, the FTC failed to list its proposed rule in the Biden Administration’s Unified Agenda of Regulatory and Deregulatory Actions, in violation of the Regulatory Flexibility Act and Executive Order 12866.¹¹ As a result, stakeholders and consumers were blind-sided when the proposed rule was published and harmfully constrained when the FTC allowed only sixty days for comment on the NPRM’s forty-nine separate, detailed questions.¹²

In light of these issues, and as your agency gathers documents responsive to our requests, we encourage the Commission to take additional consideration of the proposed rule, including whether any action is needed at this time. To assist the Committee in conducting oversight of the FTC’s actions related to the proposed rule, please provide the following documents and information no later than November 30, 2023:

1. All documents and communications related to any consideration by the FTC to undertake enforcement action or consumer education as an alternative to the proposed rule;

⁶ See, e.g., National Automobile Dealers Association, Public Comments on *Motor Vehicle Dealers NPRM*, File NoP204800 at 31-34, 41-56 (Sept. 12, 2022) (RFA violation; no widespread problem requiring a new rule); National RV Dealers Association (RVDA) Comments on Notice of Proposed Rulemaking *Motor Vehicle Dealers Trade Regulation Rule No. P204800* at 2-6 (Sept. 12, 2022) (RFA violation; inadequate assessment of costs; improper inclusion of non-auto dealers); Consumer Credit Industry Association, *Comment to FTC Motor Vehicle Dealers Trade Regulation Proposed Rule – No. P204800* at 2-4 (Sept. 9, 2022) (insufficient demonstration of widespread problem; harm to smaller businesses) (CCIA Comments).

⁷ NADA Comments at 1.

⁸ *Id.* at 41-44, 45-49, 110; see also, e.g., Competitive Enterprise Institute, *Comments to the Federal Trade Commission Regarding the Motor Vehicle Dealers Trade Regulation Rule*, at 2 (Sept. 12, 2002) (asserting the Proposed Rule’s benefits are overstated and even the FTC’s estimate of \$1.4 billion in costs is understated).

⁹ Center for Automotive Research, *Assessment of Costs Associated with the Implementation of the Federal Trade Commission Notice of Proposed Rulemaking (RIN 2022-14214)*, CFR Part 463, at 6 (May 2023).

¹⁰ See 16 C.F.R. § 1.10.

¹¹ See *Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions, Agency Rule List – Spring 2022*, Federal Trade Commission.

¹² 87 Fed. Reg. at 42028-31.

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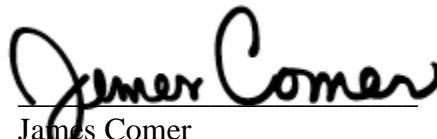
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2. All documents and communications related to how the FTC's survey of 38 Washington, D.C. consumers in 2017 and outdated data from 2011 support the proposal of nationwide regulation presently;
3. All documents and communications pertaining to the FTC's analysis of the costs and benefits of the proposed rule, including costs for small businesses;
4. All documents and communications related to the FTC's compliance with its own procedural rules, including advanced notice requirements of 16 C.F.R. § 1.10, related to the proposed rule;
5. All documents and communications containing any analysis of whether the proposed rule would conflict with or be redundant of statutes or regulations already administered by any other federal agency; and
6. All documents and communications related to the failure to timely include the proposed rule in any Unified Agenda of Regulatory and Deregulatory Actions.

Attached are instructions for producing the documents and information to the Committee. If you have any questions, contact the Committee on Oversight and Accountability Majority staff at 202-225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, "any matter" at "any time" under House Rule X. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive, flowing style.

James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability