

**Testimony of Amit S. Bagga
New York City Department of Consumer Affairs**

**Before the
New York City Council Committee on Consumer Affairs**

**Hearing on
Introductions 1539-A & 1540
in relation to financing by secondhand automobile dealers**

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Introduction

Good morning, Chairman Espinal and members of the committee. My name is Amit S. Bagga and I am the Deputy Commissioner of External Affairs for the New York City Department of Consumer Affairs (“DCA”). I am joined today by several colleagues from the agency and we are particularly pleased to be here on behalf of Commissioner Lorelei Salas. I would like to thank the committee for the opportunity to offer testimony about Introduction 1539-A (“1539”), which would increase protections for consumers that buy or finance used cars in New York City, and Introduction 1540 (“1540”), which would require secondhand auto dealers to post and distribute a consumer bill of rights. As you know, protecting New Yorkers from predatory lending and deceptive business practices are top priorities for DCA, and we strongly commend Chair Espinal and Council Member Garodnick for introducing bills that will help the City address our slice of this growing national problem.

The Department is proud to have partnered with the Council on this package of legislation and we look forward to working with you during the legislative process to enshrine the strongest possible protections for consumers into law. Today, I will detail for the committee how DCA identified and investigated used car financing as a consumer issue, surfaced stories of consumer harm, and has taken strong enforcement action against dealers engaged in predatory and deceptive business practices here in New York City. As DCA licenses approximately 780 used car dealers in New York City, the potential scope of consumer harm could be quite large.

Background

We know that risky and predatory lending can derail the lives of individuals and destabilize entire communities. Unclear or confusing terms and high pressure sales tactics can leave consumers saddled with loans they don’t understand, didn’t want, and can’t afford. These loans trap consumers in a cycle of debt that is difficult, and in many cases, impossible, to escape. Victims of predatory lending may be forced to forego educational opportunities and delay or abandon other necessary investments in their careers, families, and futures. Ruined credit scores can prevent victims from accessing mainstream financial products, purchasing a home, or, in many jurisdictions, securing new employment opportunities, robbing them of the chance to improve their lives and deepening the cycle of debt. Predatory lenders also often target minority

communities where use of alternative financial services is higher, English proficiency is lower, and more individuals are likely to lack access to a bank account or other basic mainstream financial services.

The Scope: A National and Local Problem

Since the Great Recession in 2008, lending by secondhand auto dealers has become big business with national implications. Like the risky mortgages that precipitated the credit market collapse in 2008, many loans issued by secondhand auto dealers are issued to subprime buyers and are loaded with complex terms and risk-spreading mechanisms. Auto loans have grown to over \$1.2 trillion¹ and a quarter of those loans are now classified as “subprime” or “deep subprime”² - a figure that has doubled since 2009.³

DCA’s investigations and research suggest that secondhand auto lending, and its attendant problems, are likely widespread and growing in New York City, at least within certain populations. Demographic and socioeconomic factors make our city a prime target for predatory lenders: 20.6% of New York City families live in poverty,⁴ more than 1.1 million households are unbanked or underbanked,⁵ and almost 40% of the city’s population is foreign born.⁶ DCA data bear out that this issue is affecting consumers in our city: since 2013, the agency has received more than 800 complaints from consumers related to purchase or payment issues in connection with secondhand automobiles. In light of these factors, it is crucial that our City government step up to protect New Yorkers and our local economy from deceptive practices and predatory lending.

Shining a Light on Predatory Lending

DCA’s mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. In pursuit of that mission, we have set out to identify areas where we can leverage our existing tools to have the most positive impact on the lives of consumers or communities. An analysis of DCA complaint data and investigative files, information gathered from other City agencies, and external reports confirmed that secondhand auto dealer lending is a

¹ Research and Statistics Group, FEDERAL RESERVE BANK OF NEW YORK, *Quarterly Report on Household Debt and Credit* 3 (Feb. 2017),

https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2016Q4.pdf.

² Melinda Zabritski, EXPERIAN AUTOMOTIVE, *State of the Automotive Finance Market* 19 (2015), <http://www.experian.com/assets/automotive/quarterly-webinars/experian-auto-2015-q4.pdf>.

³ 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>.

⁴ UNITED STATES CENSUS BUREAU, *American Community Survey 5-year estimates* (2015), <https://www.census.gov/quickfacts/table/RHI105210/3651000>.

⁵ The term “unbanked” means that an individual has no checking or savings account, and “underbanked” means that an individual may have a bank account but will also use 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://www.urban.org/sites/default/files/publication/71511/2000430-Where-Are-the-Unbanked-and-Underbanked-in-New-York-City.pdf>.

⁶ N.Y.C. DEP’T OF CITY PLANNING, *The Newest New Yorkers* 2 (2013), https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/nny2013/nny_2013.pdf.

major issue for New York City consumers. Complaints from consumers are concentrated in neighborhoods with large minority, immigrant, or low English proficiency populations and high poverty rates, mostly in the outer boroughs.

The pre-existing regulatory relationship we have with the used car industry presented us with a unique opportunity to study and understand the problem and leverage all of our existing tools to target predatory lending while working with the Council to develop new policy approaches.

In October of 2016, DCA invoked its Charter authority to hold public hearings on issues affecting consumers. In partnership with Chair Espinal, the agency invited consumers to share their stories by testifying about their experiences with secondhand auto dealers. DCA also invited legal experts and advocates who work with consumers to speak about common problems faced by consumers and discuss possible solutions. Over several hours, DCA heard stories from consumers who had been rushed, misled, duped, and deceived by secondhand auto dealers into taking on unaffordable loans for unreliable vehicles.

Rhoda Branche of Coney Island, who was at that time a caretaker for the mentally ill, needed a car to get to her job in Port Washington on Long Island. After her car was flooded during Superstorm Sandy, she visited a dealership in Bay Ridge looking for a replacement. The “young and charming” salesman rushed her through the purchasing process without walking her through the terms of the financing agreement, allowing her to take the vehicle for a test drive, or even asking her for proof of income. The salesman simply assured her that the vehicle was top quality and pushed her to sign a stack of paperwork. Ms. Branche ended up with a large loan at an annual percentage rate of 23.5% for a car that soon proved to be a lemon, leaving her on the hook for repayment and still without reliable transportation.

DCA is also using its legal authority to investigate dealers that may be violating the law and move aggressively to hold them accountable. In the course of our enforcement work, we have identified used car dealers engaging in what we believe to be many different types of predatory or deceptive conduct, such as the falsification of consumer income and expense information on credit applications, and falsely inflating the value of automobiles so consumers could secure loans from finance companies. We have also found that dealers often target advertising to consumers with limited proficiency in English.

Reports of harrowing consumer experiences, compounded by the findings of DCA’s legal investigations, make clear that the City needs to take action to protect consumers. Given that predatory lending is a complex issue, we have adopted a comprehensive strategy to address it, particularly in the used car context.

DCA’s Approach

DCA uses a three-prong plan to tackle predatory lending in New York City: education, enforcement, and legislation. The bills before you today are a critical part of this plan.

I. Education

The first step to tackling predatory lending is arming consumers with the knowledge they need to protect themselves from scams and make informed decisions. DCA has a strong history of direct outreach, consumer education, earned and paid media investments, and partnerships with community organizations. We plan to use this experience to engage with communities and stakeholders to raise the alarm about common predatory practices and educate consumers before they step onto the lot.

II. *Enforcement*

Secondhand auto dealers who prey on vulnerable consumers and use deceptive practices must be held accountable. DCA is using its legal authority and investigatory resources to root out consumer harm and punish dealers who break the law. Rigorous enforcement of the law, both through patrol inspections and legal actions, will put unscrupulous dealers on notice and promote a culture of compliance among other businesses.

III. *Legislation*

DCA will leverage its experience as a licensing authority and regulator for secondhand auto dealers, an educator of consumers and businesses, and a consumer watchdog to help forward-thinking lawmakers craft thoughtful legislation like 1539-A and 1540 to expand consumer protections and deter predatory practices.

Taken together, we believe that this comprehensive approach will help the City make real, measurable progress against predatory lending by secondhand auto dealers. I will now turn to the specifics of the two bills before us, a package which the Administration strongly supports.

Introduction 1539-A

1539 would make major improvements to the law in the areas of prohibitions, contract flexibility, disclosures, and enforcement and DCA is proud to support its passage. Specifically, the bill would prohibit secondhand auto dealers from requiring a consumer to accept financing through the dealer as a condition of purchase or making a contract voidable if the dealer isn't able to sell or assign the loan to a third party. The bill would also require clear disclosure of "price packing," a common practice that involves dealers informing buyers that they must purchase expensive add-on services or accessories to qualify for financing. In addition, dealers would be required to clearly itemize and disclose the cost of any such add-ons or accessories to the consumer and obtain written acknowledgement of the disclosure if the products are purchased. DCA believes that the price packing provision could be strengthened by prohibiting dealers from conditioning the financing of a vehicle on the purchase of add-ons or accessories, in addition to requiring disclosure. This approach would be consistent with our other laws as dealers are already barred from conditioning the *sale* of a vehicle on additional purchases pursuant to an earlier price posting law.

This bill would also prohibit dealers from submitting false information to lenders or finance companies. Predatory dealers often modify incomes, expenses, or employment histories on credit applications without the knowledge of consumers in order to qualify them for excessively large loans. During a recent investigation, DCA found that a company had turned an applicant from a

grocery store clerk into a grocery store owner, substantially inflated his income and slashed his monthly rent in half.

1539 would also dramatically increase contract flexibility for consumers by giving them the opportunity to purchase a contract cancellation option for a nominal fee. Dealers would be required to offer this option, which would allow the consumer to pay no more than \$50 for the ability to cancel their contract and receive their money back within 2 days of when the purchase is made, subject to a maximum \$200 restocking fee. This change would give consumers the ability to think over their purchase and uncover any problems with the car that they couldn't identify from just a test drive around the lot.

Dealers would also be required to disclose important information about transactions to consumers. A new statement required in every retail installment contract would clearly alert buyers of their right to receive a copy of the contract, the lowest APR loan that was solicited from financing companies by the dealer, the amount of any fee the dealer is charging for arranging financing, and that they are not required to obtain financing through the dealer. The dealer would also be required to offer the contract cancellation option in a separate document.

Finally, 1539 would give DCA the tools to hold predatory secondhand auto dealers accountable and assist the customers they harm. The bill would allow DCA to impose penalties of up to \$1,000 for violations and revoke the licenses of second-hand dealers if they commit three violations in a three-year span. The bill would also create robust recordkeeping requirements. These recordkeeping requirements are absolutely essential to DCA's enforcement -without clear, complete records, DCA cannot reconstruct transactions to determine how and whether a consumer was harmed. In cases where DCA cannot prove a sequence of events because the dealer, perhaps deliberately, failed to keep records, the penalties for recordkeeping deficiencies can stand in as a proxy punishment for the consumer harm that has been concealed.

Introduction 1540

1540, sponsored by Council Member Garodnick, would create a brand new consumer bill of rights to educate and inform consumers about their rights and protections under the law. DCA has found these documents to be helpful and informative in other regulated industries, like tax preparers, and we support the passage of this bill. The consumer bill of rights would be prepared by DCA and would contain, at a minimum, information about the following: the contract cancellation option, the prohibition on mandatory financing, the requirement that dealers sell a car at the price advertised, quoted, or posted on the vehicle, the ability to file a complaint or retrieve dealer complaint histories from 311, the right to receive the Federal Trade Commission's "Used Car Buyers Guide" and information about the New York State Lemon Law, the requirement that dealers clearly disclose certain information in the sales contract, and the requirement that dealers clearly disclose and itemize the cost of any add-ons or extras.

Dealers would be required to post the bill of rights conspicuously at their place of business. In addition, the dealer must provide a copy of the bill of rights to each customer individually and in the language used to negotiate the sale or financing of the car. This bill will arm consumers with information about the protections and information to which they're entitled, help to level the

playing field between buyers and sellers, and curb common predatory practices that rely on consumers being thrown off balance and unaware of their rights under the law.

Conclusion

I would like to thank the committee for the opportunity to offer testimony today. DCA is grateful for the thoughtful leadership of Chair Espinal and the members of this committee in taking on this important issue. Today, you've once again heard Rhoda Branche's story, which highlights the importance of cracking down on predatory lending and its associated practices. Rhoda is an example of thousands of New Yorkers we believe may already be victims of, or could easily fall prey to, unscrupulous dealers who exploit our city's residents, often in their greatest time of need.

We look forward to working closely with you on the passage of 1539 and 1540; my colleagues and I are happy to answer any questions you might have.