consumer action
Education and advocacy since 1971

www.consumer-action.org

PO Box 70037
Washington, DC 20024
202-544-3088

221 Main St, Suite 480
San Francisco, CA 94105
415-777-9648

523 W. Sixth St., Suite 1105
Los Angeles, CA 90014
213-624-4631

Federal Trade Commission

Office of the Secretary, Room H–113

600 Pennsylvania Avenue, NW

Washington, DC 20580

March 12, 2013

Re: Used Car Rule Regulatory Review Project No. P087604

Consumer Action[1] thanks you for the opportunity to comment on the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking regarding the Used Car Rule. Unfortunately, we believe that some of the proposed modifications to the Used Car Buyers Guide may in fact be harmful to the consumer interest.

One of our primary concerns is that crucial information about availability of a manufacturer's warranty would be hidden on the back of the Buyer's Guide where consumers are likely to miss it. This is a step backward from the goals of transparency and disclosure. We would like to see a required disclosure about warranties on the front of the form, including this statement:

The dealer will pay 100% of the labor and costs for covered systems that fail for a (specified) period of time. Only the systems that are circled on the OTHER SIDE OF THIS FORM are covered systems. Prior to your purchase, the dealer must make available to you a copy of the warranty that explains the warranty coverage, exclusions, and the dealer's repair obligations. Implied warranties under your state's laws may provide you with additional rights.

[1] Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and utilities. www.consumer-action.org

The back of the form should identify (in large font) specifically what systems are covered. Dealers would be required to circle the systems that are covered.

Consumer Action also is concerned that the "As Is" sales section could be misleading. The FTC proposal says: "The dealer is not responsible for any repairs, regardless of what anyone else may tell you." This is not true in cases of fraud or violations of state law. In such cases, the dealer may be responsible for repairs plus a refund, actual and compensatory damages, attorneys' fees, even punitive damages.

Instead we suggest replacing the proposed language with:

"As Is – No Dealer Warranty. Dealer denies any responsibility for repairs after sale."

Otherwise, the proposed "As Is" language could be used by unscrupulous dealers and their attorneys to skirt consumer protections.

We support the FTC's additional language recommending that buyers review a vehicle's history before purchasing, however we feel the FTC should go further in requiring a dealer to inspect the used vehicle for any defects, learn the car's status in the National Motor Vehicle Title Information System (NMVTIS) and disclose that information to car buyers. (This is especially important in the case of salvage vehicles that may have serious defects from flood damage.)

In order to adequately protect used car purchasers, we suggest the FTC require dealers to:

1- Inspect vehicles prior to sale to determine their condition and alert buyers to any known defects in writing. Known defects should be posted on the front of the Used Car Guide.

2- Learn whether a manufacturer's warranty applies and disclose that essential information prior to purchase. The existence of a manufacturer's warranty significantly affects the value of a vehicle.

3- Check NMVTIS for all vehicles and clearly and conspicuously disclose if a vehicle is listed in that database. Dealers should supply car buyers with a copy of the NMVTIS report prior to sale.

4- Post a "total loss" notice, as they do in California, on the vehicle if it is so listed in the NMVTIS database.

5- Disclose any and all history of flood or accident damage and if it has been labeled a junk or salvage vehicle.

The stakes are high for consumer disclosures on used car sales. For many used-car purchasers, a vehicle is often the means to employment and is frequently one of the biggest investments people will make in their lives. It is essential that dealers be required

to “know the vehicle” through inspections and thorough background checks. Consumer Action urges the FTC to clearly disclose more information to car buyers—not less.

Thank you for considering our concerns on behalf of used car buyers.

Ruth Susswein

Consumer Action