

Consumers for Auto Reliability and Safety
Consumer Action
Center for Auto Safety

August 13, 2009

Honorable Ray LaHood
Secretary, U.S. Department of Transportation
Office of the Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Cash for Clunkers: Consumer Protection from Dealer Scams

Dear Secretary LaHood:

Consumers for Auto Reliability and Safety and Consumer Action, non-profit consumer advocacy watchdog groups who have worked for decades to improve protections for consumers, urge you to take steps to protect American car buyers from auto dealers who are engaged in scams involving the Car Allowance Rebate System (CARS), or "Cash for Clunkers" program. These misleading and potentially fraudulent actions threaten to undermine the program and its effectiveness, and squander money that taxpayers and consumers can ill afford to waste. The National Highway Traffic Safety Administration (NHTSA) has an obligation to investigate dealers engaging in these practices and expel any who are intimidating or misleading consumers and violating the law.

It has come to our attention that auto dealers are pressuring or luring car buyers into signing contingency contracts that shift the risks from dealers to car buyers, if the deal is not approved by the federal government -- even if the reasons for rejection are due to dealer error, negligence, or deliberate misrepresentations. Even when car buyers have not signed such contracts, some are being threatened with serious repercussions unless they pay additional sums to the dealers, denying them the benefits intended by the legislation.

These practices are a form of "bait and switch," where dealers advertise "Cash for Clunkers" to lure car buyers into showrooms, lead them to believe that they are getting a deal that qualifies under the program, and then -- after the contract is signed -- pressure the buyers to pay more, sometimes claiming that the deal was rejected by the government. Car buyers are particularly vulnerable to the dealers' pressure because they have surrendered their traded-in vehicle and lack access to reliable information about whether or not the deal was approved by the government.

In some cases, car buyers are being threatened with financial devastation and/or criminal prosecution unless they pay an additional \$3,500 - \$4,500 to the dealership. Among the threats issued

by auto dealers to car buyers:

- Having their newly purchased vehicles reported as stolen
- Being subjected to criminal charges and / or arrest
- Having their newly purchased vehicle repossessed, trashing their credit
- Losing their only means of transportation to work, school, and medical care

The reports we have received appear to be far from isolated instances. Indeed, some auto dealer trade associations are providing contingency forms to their dealer members to download. For example, the Minnesota Auto Dealers Association has posted a form on its website as a "model" for dealers to use. The form states:

"...the risk of the federal government not paying the incentive is yours -- not the dealerships. If for any reason the dealership is unable to obtain reimbursement for the CARs [sic] incentive from the federal government, the dealership will notify you. If the dealership notifies you that it cannot obtain reimbursement, you agree to immediately:

a. Pay the dealership the CARs incentive amount in cash; or
b. Return the new vehicle to the dealership. If you return the new vehicle, the dealership will refund any payments you have paid less a reasonable charge for your use of the new vehicle. You understand that your trade-in vehicle may have been destroyed and cannot be returned.

If you default under this CARs Reimbursement Agreement, the dealership may immediately repossess your new vehicle without notice to you and may sell it as provided by law. You agree to pay any costs or legal expenses that the dealership may incur in regaining possession of the new vehicle. The dealership may exercise all other remedies provided by law or by contract."¹

Among the hazards for consumers posed by such a contingency contract:

- The contract is one-sided, benefiting dealers at the expense of car buyers.
- The contract shifts risks from the dealers to the car buyers, although the dealers are licensed professionals who are in a better position to be knowledgeable about the program than car buyers.
- The contract fails to specify the terms of the refund for the new car. As a result, dealers have discretion to decide what constitutes a "reasonable" charge for the use of the new car. If this charge includes depreciation, it could amount to thousands of dollars.
- The contract allows auto dealers to demand immediate payment of \$4,500 -- an amount most consumers cannot readily produce, particularly without advance notice.
- The contract allows auto dealers to repossess the newly purchased car, even if the car buyer has paid cash, or made all the loan payments in full and on time.

¹ Minnesota Auto Dealers Association, at:
<http://www.mada.org/Portals/70/Documents/Legal/ChargeBackFormRevised.pdf>

- The contract does not require the dealer to provide any proof to the car buyer that the dealer did not receive the voucher payment from the federal government, inviting dealers to "double dip" by receiving duplicate payments from the government and from car buyers.

In these ways, the contract puts many car buyers at greater risk than if they had entered into a normal transaction without the supposed benefits of the "Cash for Clunkers" program.

We appreciate that, after we alerted NHTSA's Office of Chief Counsel about the consumer complaints we have received, the Department of Transportation changed its website to advise car buyers not to enter into the contingency contracts. However, many car buyers will not see that advice, and will still be subject to pressure and threats, even if they did not sign a contingency contract. Accordingly, we urge the DOT to take the following steps:

- Expressly prohibit dealers from pressuring or luring car buyers into signing any contingency contract conditioned on the dealers receiving funds from the government.
- Prohibit auto dealers from pressuring or luring car buyers into paying additional sums, regardless whether the dealers receive funds from the government.
- Survey car buyers who participated in the Cash for Clunkers program to find out whether they were pressured into making additional payments, and assist those buyers in obtaining refunds from the dealers.
- Establish a task force within the DOT for assisting victims of Cash for Clunkers scams in having their credit restored, so that they do not have a repossession on their credit report for 7 years, through no fault of their own. Such derogatory information can impair their ability to obtain housing and employment, a grave injustice that also restrains them from being able to re-enter the market for a new car.
- Provide a visible, effective enforcement effort to investigate and penalize dealers participating in these practices, including expelling dealers who are scamming car buyers from the Cash for Clunkers program.

Should you or your staff have any questions regarding these recommendations, please do not hesitate to contact us directly. We look forward to working with you to improve protections for car buyers under the Cash for Clunkers program, so it can achieve its fullest potential for benefiting car buyers, the environment, and the economy.

Sincerely,

Rosemary Shahan
President
Consumers for Auto Reliability and Safety (CARS)
1303 J Street, Suite 270
Sacramento, CA 95814
Tel. 530-759-9440

Linda Sherry
Director, National Priorities
Consumer Action
221 Main Street, Suite 480
San Francisco, CA 94105
Tel. 415-777-9648

Clarence Ditlow
Executive Director
Center for Auto Safety
1825 Connecticut Avenue, NW, #330
Washington, DC 20009-5708
Tel. 202-328-7700

CC:

Ronald L. Medford, Acting Deputy Administrator, National Highway Traffic Safety Administration

Ron Bloom, U.S. Treasury Auto Task Force

Honorable Nancy Pelosi, Speaker, U.S. House of Representatives

Honorable Harry Reid, Majority Leader, U.S. Senate

Honorable Jon Leibowitz, Chairman, Federal Trade Commission