

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

January 25, 2024

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

Dear Chair Khan:

The House Committee on Small Business (Committee) writes to inquire about the Federal Trade Commission's (FTC) recent rule regarding sales practices in motor vehicle sales. This rule would create additional record keeping and disclosure requirements for automobile dealerships, increasing the regulatory costs and number of manhours needed to run a dealership.¹ It appears that the Federal Trade Commission (FTC) may not have properly considered small entities during this rulemaking process.

This rule "prohibits motor vehicle dealers from charging for add-on products or services from which the consumer would not benefit."² This new standard is vague and interpretation of such a standard will undoubtedly create additional burdens, particularly on small dealerships, to hire compliance officers to determine what is or is not a "benefit" to consumers. Further, fraudulent misrepresentation of products and services to consumers is illegal under current law.³ After the FTC published its proposed rule, the SBA Office of Advocacy—the independent voice for small business within the federal government—stated that the FTC did not sufficiently calculate the projected cost to small entities, and that it should remedy this before it finalized its rule.⁴ It appears the FTC either did not perform this analysis or did not include it in its final rule.

It is important for agencies to examine small business interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. America's small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than February 8, 2024:

¹ Combating Auto Retail Scams Trade Regulation Rule, 16 F.R. § 463.

² Combating Auto Retail Scams Trade Regulation Rule, 16 F.R. §§ 463, 645.

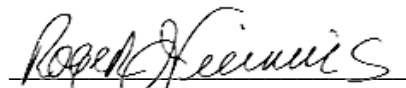
³ Restatement (Second) of Contracts § 163

⁴ Letter from Major L. Clark, et al., Deputy Chief Counsel, U.S. Small Bus. Admin. Office of Advocacy., to April Tabor, Acting Sec'y of the Comm'n., U.S. Fed. Trade Comm'n (Sept. 8, 2022).

1. In the rule, did the FTC anticipate and include in the analysis the fact that this action will reduce product offerings that many consumers like, such as service contracts on vehicle purchases?
2. Given the subjective nature of product valuation, how does the FTC determine whether something is beneficial?
3. In drafting this rule, the FTC received testimony from stakeholders regarding their negative experience with car dealers. Provide a detailed list of any and all data the FTC received to justify its position that these scams are common.
4. Explain the FTC's expected cost for a small entity to comply with this rule and how that differs from the compliance cost of larger entities.
5. A detailed explanation of how this rule, which addresses a practice that is already unlawful, creates enough of a benefit to consumers to justify the cost to small businesses.

To schedule the delivery of your response or ask any related follow-up questions, please contact the Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate "problems of all types of small business" under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,



Roger Williams
Chairman
Committee on Small Business



Maria Salazar
Member
Committee on Small Business



Mark Alford
Member
Committee on Small Business



Aaron Bean
Member
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business