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Predatory Business Practices: Automobile Financing

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1. A picture of poverty and the targeting of low-income consumers.

Poverty is an ever-growing problem affecting much of the country. People fall into financial holes and certain industries make sure that they stay there. Low-income individuals are targets for businesses that make their money by providing needed benefits now with an exorbitant cost later. Jacob S. Hacker, a political scientist at Yale, has said that low-income people are forced to live beyond their means by businesses that target them.[i] According to a series in *The Buffalo News*, "The High Cost of Being Poor," there are a number of unethical practices being perpetrated against low-income producing people.

- One of the most notorious is the rent-to-own store, where a purchaser ends up paying usually three times what the product is worth. Rent-to-own stores target consumers who lack the cash to buy a product outright and also lack access to affordable credit.[ii]
- Another practice outlined by the series is illegal check-cashing. Many stores located in depressed areas around the City of Buffalo offer check cashing at extremely high and illegal rates, sometimes reaching 10%. If a business is licensed by the banking department, the most that can be charged to cash a check

is 1.64%. If there is no license, the price to cash a check should not exceed .99 cents.[iii]

- Payday lending is another dangerous practice for low-income individuals. In these operations, a business will give a loan to someone in need of money in return for a post-dated check that includes the amount of the loan, and the loan fee, which is usually excessive.[iv]

Unfortunately, many car dealers and finance companies also use misleading tactics and charge excessively high interest rates to people with low incomes.

2. What are the different tools dealers use to take advantage of low-income people?

There are a number of weapons that dealers and financers use to exploit the needs of low-income people. These practices include, but are not limited to:

- **"Spot delivery" or "Yo-Yo" car sales.** In these cases, customers drive their new cars home thinking they are finished with the deal after having signed all of the paperwork. Later, the dealer will call the purchaser and tell them that their financing was not approved and that they have to come back and re-work their deals, usually at a much higher rate.[v]
- **Forging customer signatures**.[vi]
- **Charging for security systems never installed** or over-charging for security systems actually installed.[vii]
- **The dealer-reserve scam**. In these cases, dealers will markup interest rates of the purchasers. Once a dealer gets a finance interest rate from the lender, they will tell the purchaser that the interest rate is actually higher and they will keep the excess money. Sometimes this money is split between the dealer and the lender.[viii] This practice has been called a kickback plan, where lenders are rewarding dealers for sending business their way.[ix]

- **Illegal document preparation fees.**[x]
- **"Churning"** consists of targeting low-income buyers for overpriced deals and quick repossessions. Loans are made to people with the expectation that they can't pay it back. The cars are then repossessed and the buyer is left with large bills, no vehicle and ruined credit. The dealers often auction the vehicles and

pocket the profits while sending purchaser a bill for the difference of the purchase price and the auction income.[xi]

- Selling used cars known to be **mechanically unsound** is a practice often targeted at low income purchasers. Often-times used cars will come with a warranty even if the dealer does not provide one. The dealer may get purchasers to sign away warranties under hidden clauses in the sales contract.[xii]
- **GAP insurance** seems to be a good program, but it does not cover a lot of things and can be grossly overpriced. This is another way for dealers to produce illegal revenue.[xiii]
- **Service contracts** are used as revenue creators because they cover almost nothing and consumers are mislead about their offer of help.[xiv]
- **Bloated prices** are common if you get financed through the dealer. The dealer may jack up the price to cover any lender discounts.[xv]

3. How are these dealers and lenders able to bring in so much business, given the stigma that follows many dealers?

Predatory businesses are able to maintain healthy purchase statistics because they manage to portray a certain image to potential buyers. Because people with low incomes need transportation, and because they want their own vehicles, they are at risk for dealer and lender scams that are targeted at them. The use of image to fool the consumer is a very successful business practice. This process operates as a kind of sleight of the hand. Consumers see commercials where certain used and new car dealers make fun of apparently outdated practices, and they fall for the scam.[xvi]

- **Credit Acceptance Corp.** flourished by teaching its employees how to sell to people in financial straits, and demanding down-payments before the test drive is even done. They also would pile on outrageous charges as soon as someone fell behind in their payments.[xvii]
- **AmeriCredit**, originally Urcarco, made applying for their loan financing extremely easy. People were able to come in and get immediate financing. There were allegations of fake down payments to meet certain financing requirements. The corporation claimed that people were not really hurt because they got a car and they had plenty of time to look into the contracts that they claim were unfair.[xviii]
- **Byrider** claimed that because they can tell who can pay and who cannot, they only set the final price of their vehicles after calculating the maximum a person can pay. After this, they set the down payment and interest rates. Byrider calls this fair and accurate while its critics call this “opportunity pricing.” While they claim that they based prices on ability to pay, they still decided to charge a destitute woman $300 a month on a car note, when she thought it was $150.[xix]

4. What are potential options available to victims of these predatory practices?

Americans For Fairness in Lending (AFFIL) is an organization that fights predatory business actions. They offer a list of steps that should be taken by a victim of these practices.

- Filing a compliant with the lender's regulator or the State Banking Office is the first option available to victims. The complaint will notify the state and federal agencies involved in business practices of current actions targeting low-income purchasers. Also, if an auto lender broke the law, a complaint allows investigation of any illegal actions.[xx]
- By contacting state and federal legislators to question them about current loan protection actions, victims can shine a light on predatory, illegal practices.[xxi]
- Victims can also contact a lawyer to evaluate their situations and identify their interests.[xxii] The National Association of Consumer Advocates (NACA) is a source for potential legal representation.[xxiii] The Empire Justice Center could also be a source of help, because they have a history of bringing suit against businesses with unfair practices targeting low-income producing individuals.[xxiv]

5. Is there a discrepancy in illegal financing based on Minority status?

Statistics show that African Americans and Latinos are at a much greater risk to be targeted by these illegal practices. In an article called "Driven to Misery," by Michael Hudson, it is shown that General Motors Acceptance Corp (GMAC) is one of many organizations that discriminate against certain minority groups. According to a review of 1.5 million loan transactions, 53.4% of African Americans paid markups, as opposed to 28% of Caucasian purchasers.[xxv] The same discrepancies were found in a lawsuit against the Nissan Motor Acceptance Corporation. African America borrowers where paying a markup of about $500 on average above Caucasians. Nissan settled the case for $7.5 million.[xxvi] These Statistics are particularly distressing when considering that in 2002 African Americans and Latinos had a net worth between $6,000 and $8,000, while Caucasians averaged around $88,651.[xxvii]

6. What are some of the legal remedies available to victims?

The **Lemon Law** is a significant New York State Law to protect consumers from unfair business practices. This law pertains to all new vehicles and some used vehicles.

- If a new vehicle does not conform to the warranty, and the manufacturer or an agent that is authorized by them cannot fix the vehicle after a reasonable number of attempts, the consumer is entitled to a refund or a replacement.[xxviii] If the problem with the vehicle does not significantly decrease the value, or if the damage was caused by the misuse or neglect of the owner, the manufacturer may not be held liable.
    - For a new vehicle to qualify under the **Lemon Law,** it has to have been purchased, leased, transferred or registered in New York State, used primarily for personal business, covered by warranty at time of original purchase, and purchased, leased or transferred within the earlier of 18,000 miles or two years from the date of original delivery.[xxix]
- For used vehicles, the dealer is required to provide a specific warranty that is based on the amount of miles on the vehicle. Through this warranty, the dealer is required to repair any defects in the parts covered by the warranty free of charge. If the damage to the vehicle does not significantly decrease its value, or the damage was caused by misuse or neglect, the dealer may not be held responsible.
    - To qualify for the **Lemon Law** for used cars, the vehicle must have been purchased, leased or transferred after the earlier of 18,000 miles or two years from original delivery, it must have less than 100,000 miles, it must have been purchased in New York State, the purchase price has to have been more than $1,500, and the vehicle primary use should be personal.[xxx]

All dealers are also held to advertising standards. A dealer must use clear and concise language in any and all ads, and must refrain from any deceptive language or inferences. As defined by the Attorney General, deceptive practices can include multiple, and confusing footnotes, font size that is very small, color uses that make advertisements difficult to read, inaccurate photos of vehicles for sale, and use of unexplained abbreviations or terminology. Also, a dealer cannot misrepresent sales prices, by advertising one price, but charging another.[xxxi] A customer may sue to recoup damages gained by these unfair and deceptive practices.

7. What are options for potential buyers to avoid dealer financing abuse?

It is important that potential purchasers protect themselves by researching financing through their bank or credit union. Dealer financing should always be a last resort option, if it is even considered. Purchasers should also have any car that they might purchase be inspected by a certified mechanic.[xxxii]

[i] http://www.southernstudies.org/reports/driventomisery.htm
[ii] http://www.buffalonews.com/281/story/352206.html
[iii] http://www.buffalonews.com/281/story/352211.html
[iv] http://www.atg.wa.gov/TeenConsumer/finances/payday_loans.htm
[v] http://www.affil.org/consumer_rsc
[vi] http://www.southernstudies.org/reports/driventomisery.htm
[vii] http://www.southernstudies.org/reports/driventomisery.htm
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[ix] http://www.affil.org/consumer_rsc
[x] http://www.southernstudies.org/reports/driventomisery.htm
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[xxxii] http://www.affil.org/consumer_rsc