Task 23-2: Common Truck Leasing Agreements Available to Drivers of Commercial Motor Vehicles and the Existence of Inequitable Leasing Agreements and Terms in the Motor Carrier Industry

FMCSA asks the Truck Leasing Task Force (TLTF) to discuss common truck leasing agreements and ways some providers of such agreements create inequity through inappropriate terms or conditions. TLTF should identify any organizations or experts they believe could provide presentations or briefings to help the task force complete its work.

I. Inequitable language and conditions in common truck leasing agreements.

A. Vulnerabilities for drivers
   1. Risks from being a non-native English speaker entering into lease agreements.
      a. The proportion of non-native English speakers has grown tremendously, requiring consideration when addressing predatory agreement vulnerabilities.
      b. Ability of non-native English speakers to access legal language in truck leasing agreements.
   2. Drivers often lack the time, technical and the financial expertise to adequately review leasing agreements.
      a. Predatory agreements often constrain lessees financially, limiting access to legal assistance.
      b. Young drivers are often pressured to accept leases offered immediately upon completion of their training.
      c. False promises and scare tactics during negotiations pressure drivers to sign a lease.
   3. The co-mingling of carriers and leasing companies creates an exploitative environment for drivers.
      a. Carriers can restrict drivers from using the leased vehicle, preventing them from ownership.
      b. Limited financial opportunities exist for truck drivers who do not want to be company drivers and do not qualify for small business loans. Carriers have filled that void.

B. The absence of leasing agreement terms and procedures for facilitation of the lease often lead to predatory practices.
   1. Lessors frequently deny access to accounting statements, blocking lessees from tracking their process in meeting the financial obligations of the agreement.
   2. Lack of separation between income from transporting freight and income from leasing the truck creates barriers to understanding the driver's proportional income.
   3. Lessees frequently incur responsibilities as an employee that should be performed by the carrier.

C. Lease-to-purchase agreements are especially problematic.
   1. Leased trucks are often overpriced and leased to numerous drivers with no accounting for depreciation.
   2. Many drivers find that making payments on their leases is too great a financial burden, forcing them to seek extensions on leases or ultimately not purchasing the truck as planned.

3. Agreements cater to individuals who may not meet typical industry underwriting standards.
4. Predatory practices lead to driver burnout from working long hours to try to earn enough money to meet the obligations of the lease. The industry suffers from driver churn more than a driver shortage.

D. Provisions in leases allow carriers to deduct the cost of the lease and defer them to the lessee.
   1. This violates the leasing rules (49 CFR 376.12), prohibiting drivers from having to purchase anything from the carrier as a provision of the lease.
   2. Carriers deduct from drivers' weekly paycheck and control their escrow accounts.
      a. Carriers can deduct items not specified in the agreement such as penalties for a late delivery or vehicle maintenance.
      b. Drivers deciding to leave their escrow accounts are at risk of depletion by the carrier.
   3. Defaults result often from obligations to the carrier rather than non-payment, such as an escrow balance at the carrier's requested minimum.

E. If a lessee is terminated, a lessor can seize the vehicle despite a history of payments.

F. Carriers with successful and compliant lease-to-purchase programs can help develop industry standards.

G. Considerations for adjusting current lease-to-purchase programs:
   1. Restrict actions of the lessor to deter behaviors that make lease to ownership opportunities difficult for drivers.
   2. Encourage carriers to find additional ways to defer costs to drivers.
   3. Research successful lease-to-purchase agreement models to determine common terms and traits that result in lessees ultimately owning their vehicle.

H. Many lease-purchase agreements contain an irrevocable unconditional net-lease that requires a weekly payment no matter the circumstances.

I. Underwriting standards are necessary to determine if a lessee will earn enough capital to cover the payments and lease requirements.

II. Creating a buyer beware format in lease agreements

A. There is a need for standardization of disclosures of each motor carrier lease program.
   1. Disclosures would address how many drivers have completed the program, acquired a truck, and how much money the average driver took home.
   2. Include average earnings for specific positions described in the lease agreement to give the driver context for financial resources and obligations.

B. Use underwriting models employed by the household/commercial real estate industry to determine whether an agreement is financially viable.

III. Determine how to structure a lease purchaser's contract to include equity in each payment.

A. Clarify what is required in an equipment lease and what the required disclosure is.

B. Consider disclosing the average length of time each lessee was engaged in the lease program. This could assist with determining what percentage of drivers acquired the vehicle.

C. Drivers want to end leases with ownership. Many agreements do not set aside equity so at the end lessees must pay for the vehicle in full.

1. Drivers do not understand this and may stay in the position thinking incorrectly that they are putting equity into the vehicle.
2. Inform drivers clearly whether they are putting equity into the vehicle or they are expected to purchase the vehicle in full at the end of the agreement.

IV. The types of owner-operators

A. Owner-operators under lease-purchase program. The drivers are employees and should not be responsible for duties/requirements of the employer.
B. Owner-operators who have their own equipment that they service while operating under motor carrier authority.
C. Owner-operators who operate under their own authority.

V. Organizations and experts that could provide presentations or briefings to assist the task force complete its work.

A. Ask compliant carriers operating with lease-purchase programs to critique program deficiencies. Request insight from carriers of predatory practices they observe.
B. Ask Consumer Financial Protection Bureau (CFPB) to support data collection efforts.
   1. Household and commercial real estate underwriting standards that safeguard parties from unfit or unprofitable investments do not exist in trucking.
   2. Bad actors do not supply predatory data. Accounting level data is needed Explore measures beyond litigation and discovery to compel carriers to supply this information.
   3. Utilize a lease-to-own framework for consumers and businesses to assess lease agreements in the trucking industry. TLTF requests basic legal requirements of a lease to compare with trucking industry standards.
   4. Request drivers to volunteer agreements they have entered.
      a. CFPB seeks to review as many of these as possible, as they have been elusive to obtain.
      b. CFPB will redact personal identifiable information (PII).
   5. Penalties for failure to follow Truth in Leasing (376.12) laws? Regulations are cumbersome to enforce.
      a. If a lessee can demonstrate damages for the carrier’s failure to comply, they can receive amicus or injunctive relief.
      b. It is difficult to demonstrate damages in court due to lax disclosure rules; the carrier can easily overpower a driver’s argument in court.
   6. Search dockets of cases brought against carriers for information on lease-purchase agreements.

VI. Recommendations to deter the inclusion of inequitable terms and conditions in lease agreements.

A. Carriers starting a lease program should have to qualify for the ability to lend. Additionally, determine licensure, authority, and qualifications.
B. No carrier or their subsidiary or related entity should hold the debt of a driver, nor should it be held by a sister or affiliated company.
C. Implement a two-check system: a payment and cost for lease and a payment/cost for time could create a firewall between debt holders and work providers.

D. Categorize and define predatory practices in an existing sample of lease agreements. Provide this list for consideration to rulemaking or enforcement bodies.
E. Provide legal protection for young individuals from predatory leases.
F. External providers should insure leased equipment.
G. Require lessees to drive a predetermined number of miles before qualifying them for lease-to-purchase agreements.
H. Train drivers and prospective lessees on what a lease-purchase agreement entails and create a corresponding certification.
I. Create a flow chart containing different scenarios for entering leases to allow potential lessees to better protect themselves and understand their commitments.
J. Incorporate regulated underwriting standards into truck leasing agreements.
K. Regulate companies in a system like the Safety and Fitness Electronic Records System to understand the treatment of drivers though the leases. Withdraw operating authority if standards are not met.
L. Investigate non-regulatory means to inform drivers of risks before entering lease agreements.
M. Allow more operational freedom for drivers so they have control over where and when they drive.
N. Request information related to predatory lease complaints submitted to the FMCSA Hotline.
O. Investigate the turnover rate of drivers at carriers using lease-to-purchase programs.
P. Require carriers to provide accounting disclosures in an accessible and accurate format to lessees.
    1. Drivers need to understand what they need to do to be financially stable.
    2. Existing Truth in Leasing regulations give drivers the right to see the freight bill. Rarely, if ever, are drivers able to obtain these records without retaliation.
    3. Establish models of accounting. Basic standards are not being met nor do they exist.
Q. Require disclosure of exactly how much is deducted from a lessee's (?) pay based on the average first week of compensation. Every time a driver is dispatched or gets a load, they should be able to see how that will impact their finances and business.
R. Consult lessees who have successfully entered into ownership from a lease-purchase agreement and review ways to replicate their successes on a larger scale.
S. Prohibit the deduction of costs from the lease-purchaser if they are not defined in the lease agreement.
T. Leverage examples of successful representation of owner-operators in contracts.
U. Review the use of two-check systems and replicate documented examples of these contracts.