



Owner-Operator Independent Drivers Association

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April 2, 2024

Sue Lawless
Acting Deputy Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20003

Re: Docket # FMCSA-2023-0143, “Request for Information: Drivers' Leasing Agreements for Commercial Motor Vehicles (CMVs)”

Dear Acting Deputy Administrator Lawless:

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has approximately 150,000 members located in all fifty states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA’s mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation’s highways.

Predatory truck leasing schemes are one of many longstanding problems within in the industry. While traditional lease agreements can allow truckers to operate as independent small-businesses, there is a subset of leasing arrangements that almost always exploits drivers. Under these “lease-purchase” or “lease-to-own” agreements, a motor carrier (or related entity) owns a truck and leases that truck to a driver. In turn, the driver enters in to an agreement to lease the truck and operate the truck for the motor carrier when the motor carrier and lessor are effectively the same entity. Companies peddling these “opportunities” typically offer the false promise of fair compensation, future ownership of the truck, and “independence” from employer-employee requirements. While the purported goal of these agreements is for the driver to own the truck and become a full-fledged owner-operator at the end of the lease, the agreements rarely work out that way. In the end, drivers are paid pennies on the dollar with little chance of owning the truck, and zero independence. This system pushes individuals who desire a career in trucking out of the industry and further contributes to driver churn. Additionally, the financial and personal pressures resulting from escalating debt can create highway safety risks.

We have a number of concerns with the lease-purchase model based on our experiences with OOIDA members and other drivers who have been victimized through these schemes. Primarily,

carriers are able to control the terms, load assignments, working conditions, and other costs associated with the leasing agreement such as maintenance. Although there are federal leasing regulations in place that should protect individuals from these scenarios, the rules are hardly ever enforced. The Truth-in-Leasing rules are designed to prevent the abuse of owner-operators, but in what other industry can you start a business with no money, no credit, no nothing, and end up in a lease agreement that will put you in debt. In our view, there is insufficient federal oversight on these types of agreements.

For these reasons, OOIDA has supported the establishment of the Truck Leasing Task Force (TLTF) and its mission to examine the terms, conditions, and equitability of common truck leasing arrangements, particularly as they impact owner-operators and trucking businesses subject to such agreements. OOIDA urges TLTF to consider the following recommendations as the advisory group continues their deliberations and begins compiling their report that will be submitted to the Department of Transportation (DOT), Department of Labor (DOL), and appropriate Congressional Committees.

- **All leasing agreements must include language explicitly defining exclusivity with the lessor.**

Current lease-purchase practices permit carriers/lessors to exert excessive control over independent-contractors. The lessor sets the terms, working conditions, payment structure, and load assignments for the driver. From day one, independent contractors have no realistic opportunity of completing the leasing agreement and taking ownership of a clean title for the truck. This model serves as an additional source of cash-flow for carriers, rather than a fair and equitable arrangement between the lessor/lessee.

Optimal leasing arrangements must allow independent contractors to seek their own loads, their own maintenance, and preserve true independence. Contracts must also outline the leasing of equipment vs. leasing of services. If the lessor is seeking exclusivity from the lessee and will be controlling all load assignments, then the lessee should generally be classified as an employee and be eligible for employee benefits. In these cases, the lessor would be responsible for covering standard employer costs associated with the vehicle.

Additionally, the lease should be required to contain a provision stating that the lessor will make its best good faith efforts to assign loads to the lessee the same as all of the lessor's other employees who are assigned loads to haul which form the basis of their income from the lessor as their employer. This provision should state that the lessor will not discriminate against the lessee when assigning loads.

Finally, the provision should state that the lessor is required to specifically document any reduction in work hours, loads, or the lessee's work schedule and provide a copy to the lessee each time any such action takes place.

- **Leasing agreements must include a documented financial structure that fairly demonstrates the progress of lease payments.**

Before entering into a leasing agreement, a potential lessee must satisfy certain financial standards and pass basic background/credit checks. All amounts collected from a lessee should be held in an escrow account which the lessor is not entitled to withdraw from until either the completion of the terms of the lease or a default on the lease by either party. Once the lease begins, lessor should provide monthly or quarterly financial updates giving itemized details to the lessee on the status of the lease, payment amounts, amounts withheld for agreed upon expenses/repairs which cannot exceed 10% of the escrow account balance, pending balances, and any other financial information relating to the lease. Any amounts held in escrow to be used by the lessor for agreed upon expenses/repairs should only be allowed for “early release” from the escrow account if they do not exceed 10% of the escrow account balance. Further, any “early release” amounts must be specifically covered by a separate authorization form executed by the lessee which contains an itemization of the amounts allowed for “early release.” These concepts are required by law or regulation and are regularly used in other industries such as securities and lending. They are easily applicable to these types of leases to better protect lessees.

- **Leasing arrangements must contain protections to prevent individuals from being coerced into signing contracts they do not understand.**

Upon execution of the leasing agreement by the lessee, the parties must wait 30-days for the lessee to substantively review the terms, seek outside assistance, or revoke consent before taking any action covered by the lease. This cooling off period would be similar to requirements under anti-discrimination laws that stipulate a 21-day period for workers to consider severance agreements and an additional 7-days to revoke their signature.¹

These protections would prevent lessors from coercing prospective drivers into agreements and give lessees sufficient time to fully understand the leasing agreement.

- **Federal agencies must establish a centralized office to ensure compliance with leasing regulations and provide oversight of lessors.**

There must be a designated federal office to serve as a resource for drivers interested in or involved in truck leasing agreements. The office would assist the Department of Transportation and Department of Labor in accomplishing various highway safety and worker protection objectives including, but not limited to:

- Certifying that leasing arrangements adhere to truth-in-leasing regulations
- Reporting outlet for deceptive practices
- Implementing TLTF best practices and guidelines
- Potential database for leasing contracts and other documents
- Registry of Lessors

¹ Age Discrimination in Employment Act and Older Workers Benefit Protection Act of 1990; 29 U.S.C §623 and 29 C.F.R. §1625.22(e), respectively

We believe a joint office could be staffed by representatives from DOT, DOL, the Federal Motor Carrier Safety Administration (FMCSA), and the Consumer Financial Protection Bureau.

Additionally, FMCSA should consider designating an internal representative to serve as a liaison between the agency and industry on specific leasing matters. This designee should respond to both commercial and safety questions as they arise.

The following responses are compiled from OOIDA reviews of various leasing contracts, feedback from OOIDA Members and other drivers who have participated in leasing agreements, and general analysis of the lease-purchase market that we've monitored throughout our history.

Lessees of CMVs

1. If you signed a lease-purchase agreement for a CMV, could you provide copies of leasing documents and copies of documents for all other financial products associated with your work as a CMV lessee (*i.e.*, training debt, maintenance debt, earned wage access, contact from debt collectors, etc.)?

OOIDA Members have submitted copies of contracts and other documents to this docket via Confidential Business Information.

2. What were the actual terms of the lease (*e.g.*, minimum weekly or monthly payments and their structure, start and completion dates, make/model/year of the truck, depreciation and amortization, mileage at the start and conclusion of the lease, maintenance responsibilities, etc.)? Was the lease-purchase agreement held by a carrier or a third-party entity?

The terms we have seen include \$800 to \$1,200 in weekly payments for 3-5 years. The terms of these contracts do not address how the value of the CMV was determined, nor do they address depreciation and amortization. Escrow accounts for maintenance can run from \$5,000 to an unlimited cap. Maintenance shops must be approved by the lessor which limits the options a contractor has to save money on repairs.

The lease purchase agreement can be owned by either carrier or a third party. However, the third party who owns the equipment is also usually the owner of the carrier authority. There can be additional per mile charges for going over a maximum per month miles set in the contract. This will limit the contractor's ability to make minimum payments on the lease and earn a living.

3. How was the lease-purchase agreement marketed to you? What were you told about the value of the truck and what earnings and work conditions you could expect? Were you evaluated for likelihood of repayment, through a credit or background check or some other method? What options existed for you to obtain the truck besides leasing it? Did other drivers have a different set of options? If so, why?

These agreements are predatory in nature. Individuals are sold a pipe dream and are rushed through the signing process with little time to read or fully understand the contract. There are no background screenings or credit checks, just verification that the lessee has a valid CDL and bank account to pay the lessor. The magnitude of what they are signing up for is minimized and never clearly explained to them. In the end, they feel like their dream of owning a truck has been crushed. Not surprisingly, many drivers end up leaving the industry while scrambling to escape mountains of debt.

4. What did you understand, or not understand, about the terms and conditions to which you agreed? These terms may include the history, condition, and maintenance needs of the truck you leased. Prior to signing your lease-purchase agreement, did you have time to read and understand the leasing contract? Did you know the cost of credit (e.g., interest rate or rent charge) before signing the lease purchase agreement? Did you have a clear picture of your responsibility in the case of a major mechanical breakdown of the CMV?

Typically, drivers have little or no understanding about the terms or conditions of lease-purchase agreements. They are not given an opportunity to have an attorney or outside source review the contract for them. For the most part, drivers are advised to contact the lessor in the event of mechanical breakdowns.

5. Were you able to negotiate the terms? Were you provided any information about other financing alternatives? Did other drivers have a different set of options and if so, why?

There is no opportunity for negotiating terms, it's a "take it or leave it" deal. We believe a minimum waiting period or "cooling off" period would provide necessary time for individuals to review the terms, seek assistance with review of the terms, and/or propose their own terms.

6. Were you informed of how the motor carrier works with independent contractors vs. company drivers and lease-purchase drivers when business is slow? Are you treated similarly or is there a difference between the assignment of loads, etc.?

In some cases, individuals are informed of how the motor carrier works with independent contractors vs. company drivers and lease-purchase drivers when business is slow. However, whatever information is presented before the agreement is signed is typically not what takes place in practice. After the first 6-12 months of the agreement, load assignments will begin drying up and lessees will not get the loads necessary to fully make their payments. This is when expenses start adding up, leading to perpetual debt similar to a payday loan scam.

7. Please elaborate on any additional restrictions placed on your use of the CMV or additional financial agreements imposed outside of the written lease agreement. Did they encompass take-home pay, driver access to loads, etc.?

Most, if not all, "take-home pay" will be dedicated to making lease payments.

Repair/maintenance costs are one of the more common restrictions that are imposed both within and outside of the written lease agreement. Lessors will present limited equipment/maintenance

sources that force lessees to use certain facilities and/or providers, typically financially associated with the lessor. Individuals are not informed or made aware of alternative outlets that might offer more competitive pricing options.

8. Please elaborate on any additional financial products associated with your work as a CMV lessee (e.g., training debt, maintenance debt, earned wage access, contact from debt collectors, etc.). For instance, if you took out maintenance debt, were you required to use the title of your CMV as security?

Additional financial products and other expenses are not necessarily outlined in the contracts, but will often be absorbed by the individual lessee. Drivers will never typically have access to the clean CMV title to use as debt security.

9. Were you able to successfully complete the terms of your lease-purchase agreement? If you did not complete your lease, why? How much did you owe at the completion of your lease? Were any charges assessed related solely to your lease payment or were there other charges, such as repayment of a maintenance bill or loan? If there were other charges, please explain.

Drivers rarely successfully complete the terms of the lease-purchase agreement because lessors set the terms, working conditions, payment structure, and load assignments for the individuals. Through this control, carriers restrict how much lessees can pay back on the lease. In most cases, lessors will inflate pending equipment charges that are owed. We believe there should be a standard independent valuation of equipment at the onset of the lease-purchase agreement to correspond with a valuation if/when the lease is defaulted.

10. If you owe a balance on your lease-purchase agreement, are you being contacted by the motor carrier, third-party debt collectors, or finance companies? Are there processes, policies, and procedures for taking and handling disputes about the debt? Has information about your debt been furnished to credit reporting companies or employment screening companies? Have you been threatened with a lawsuit to collect these debts? Do collection efforts cease when a driver files for bankruptcy or obtains bankruptcy discharge?

Resolving debt issues and disputes is usually a mixed bag for motor carriers, third-party debt collectors, and/or finance companies.

Lessors rely upon the fact that individual lessees will not have financial capital to file private right of action lawsuits or diligently pursue any financial disputes resulting from the lease-purchase agreement. The dissolving of the lease-purchase agreement is often just treated as a “walkaway” lease with the lessor moving on to take advantage of other potential victims.

11. How did your expectations about the benefits of the lease compare to the reality of working under that lease? What have the effects of your lease-purchase agreement been on your finances, employment experience, professional mobility, workplace health and safety, and family's well-being?

In reality, lease-purchase agreements rarely have happy endings. Carriers exploit the economic structure of the leasing arrangement so that drivers can never make the required payments which results in lost earnings, burdensome out-of-pocket maintenances, debt, and no clean title to the truck. All of these factors have detrimental outcomes for finances, employment, and personal well-being which can have harmful impacts on workplace health and highway safety.

OOIDA supports TLTF's mission and we applaud FMCSA for seeking out drivers to assist TLTF in accomplishing their objectives. There are a number of concerns with the lease-purchase model based on our experiences with OOIDA members and other drivers who have been victimized through these schemes. Lease-Purchase agreements are nothing more than inequitable financial scams that push individuals who desire a career in trucking out of the industry and further contribute to driver churn. We urge TLTF to consider the recommendations outlined in these comments as the advisory group continues their deliberations and submits their final report.

Thank you,

A handwritten signature in black ink, appearing to read "Todd Spencer". The signature is fluid and cursive, with a prominent loop at the end.

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.