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# **Dealer Kickbacks- How car dealers are paid to put us in more expensive loans and how we can stop it.**

**Christopher Kukla, Senior Counsel for Government Affairs at the Center for Responsible Lending  
John W. Van Alst, The National Consumer Law Center  
Stuart Rossman, The National Consumer Law Center**

**Jessica Hiemenz  
National Consumer Law Center**

**This webinar is sponsored with a grant from the Annie E. Casey Foundation and is one of a series of webinars about working cars for working families.**

**August 19, 2010**

## Presenter – John Van Alst

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- Joined NCLC in 2006 as a Staff Attorney at the Center's Washington, DC Office.
- At NCLC John specializes in issues related to car sales and finance.
- Prior to joining NCLC John work for seven years as an Attorney with Legal Aid of North Carolina.
- While at Legal Aid he focused primarily on consumer issues. He was also the Chair of the North Carolina Consumer Law Task Force.

## Presenter - Stuart Rossman

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- Stuart Rossman is an NCLC staff attorney directing the Center's litigation efforts.
- He is an experienced trial attorney who, after 13 years of private practice, served as chief of the Trial Division and chief of the Business and Labor Protection Bureau at the Massachusetts Attorney General's Office.
- He also founded and chaired the Attorney General's Abandoned Housing Task Force, a project created to assist municipalities and community groups in seeking solutions to abandoned properties.

## Presenter - Christopher Kukla

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- Senior Counsel for Government Affairs at the Center for Responsible Lending in Durham, North Carolina.
- Chris has been with CRL since 2002, and is primarily responsible for representing CRL in the North Carolina General Assembly.
- Chris also works with lawmakers and advocates in other states on consumer lending legislation.

# Agenda: Dealer Markups

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- **Stuart Rossman-** how dealer markups work and litigation efforts to combat the practice
- **Questions**
  
- **Chris Kukla-** More current data and efforts to improve state policy in North Carolina
- **Questions**
  
- **John Van Alst-** Regulation in other states, expiration of settlements, and potential for federal regulation
- **Questions**

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# **Dealer Kickbacks- How car dealers are paid to put us in more expensive loans and how we can stop it.**

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# Dealer Markups

Table 1  
Average Markup and Dealer Income per Contract  
(Five captive auto lenders, 1993-2004)

Company	# of Customers analyzed	Time Period	Percent Marked Up*	Average Markup if Marked Up*	Weighted Average Dealer Income per Contract**
NMAC (Nissan)	1.1 million	March 1993-Sept. 2000	51.5%	\$1,058	\$469
FMCC (Ford)	3.1 million	January 1994-April 2003	32.9%	\$1,028	\$337
GMAC (General Motors)	6.2 million	Jan. 1999 – April 2003	30.3%	\$897	\$291
AHFC (Honda)	1.4 million	June 1999-March 2003	24.6%	\$1,052	\$288
PRIMUS	800,000	Jan. 2001 – Feb 2004	44.4%	\$1,194	\$467

\* Based on the race-coded samples. See text.

\*\* Estimate based on 75% of markup being retained by dealer and average dealer compensation of \$125 for contracts that are not marked up. See text.

Mark A. Cohen, “Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation.” (2006). Vanderbilt Law and Economics Research Paper No. 07-01. Available at <http://ssrn.com/abstract=951827>.

# Dealer Markups

<b>Table 3</b>					
<b>Comparison of Subjective Markup Charged to African-American versus White Borrowers Five Captive Auto Lenders</b>					
	<b>PRIMUS</b>	<b>AHFC (Honda)</b>	<b>FMCC (Ford)</b>	<b>NMAC (Nissan)</b>	<b>GMAC (General Motors)</b>
	<b>January 2001 - February 2004</b>	<b>June 1999 - March 2003</b>	<b>January 1994 - April 2003</b>	<b>March 1993 - September 2000</b>	<b>January 1999 - April 2003</b>
Total Sample Size Analyzed	219,278	383,652	855,989	310,718	1,511,913
African-Americans in Sample	35,797	44,321	99,347	59,044	127,983
Whites in Sample	183,481	339,331	756,642	251,674	1,383,930
Percent of Customers Who Are African-American	16.3%	11.6%	11.6%	19.0%	8.5%
% with Markup - African-Americans	61.8%	43.3%	48.5%	71.8%	53.4%
% with Markup - Whites	41.1%	22.2%	30.9%	46.7%	28.2%
Additional Percentage of African-Americans with Markup	20.7%	21.2%	17.6%	25.1%	25.2%
Average Markup - African-Americans	\$862	\$557	\$684	\$970	\$656
Average Markup - Whites	\$475	\$227	\$337	\$462	\$244
Additional Markup Paid By African-Americans	\$387	\$330	\$347	\$508	\$412
Ratio of African-Americans to White Markup	1.81	2.45	2.03	2.10	2.69
Ave Markup - African-American (excluding zero markups)	\$1,395	\$1,286	\$1,412	\$1,351	\$1,229
Ave Markup - White (excluding zero markups)	\$1,156	\$1,023	\$1,090	\$ 989	\$ 867
Difference between Black and White Markup (excluding zero markups)	\$ 239	\$ 264	\$322	\$362	\$ 362

Mark A. Cohen, "Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation." (2006). Vanderbilt Law and Economics Research Paper No. 07-01. Available at <http://ssrn.com/abstract=951827>.



# Dealer Markups

Table 4 (Table 18 GMAC Report)  
Average Markup by Race and Year by Credit Tier

Year	Credit Tier = S			Credit Tier = A			Credit Tier = B		
	Black	White	Diff.	Black	White	Diff.	Black	White	Diff.
1999	\$384	\$127	<b>\$257</b>	\$682	\$244	<b>\$438</b>	\$867	\$446	<b>\$421</b>
2000	\$367	\$111	<b>\$256</b>	\$597	\$210	<b>\$387</b>	\$883	\$407	<b>\$476</b>
2001	\$321	\$92	<b>\$229</b>	\$498	\$158	<b>\$340</b>	\$790	\$354	<b>\$436</b>
2002	\$308	\$106	<b>\$202</b>	\$503	\$195	<b>\$308</b>	\$765	\$387	<b>\$378</b>
2003	\$283	\$100	<b>\$183</b>	\$459	\$194	<b>\$265</b>	\$645	\$373	<b>\$272</b>
Overall	\$323	\$102	<b>\$221</b>	\$523	\$191	<b>\$332</b>	\$786	\$384	<b>\$402</b>

Year	Credit Tier = C			Credit Tier = D			Credit Tier = E		
	Black	White	Diff.	Black	White	Diff.	Black	White	Diff.
1999	\$949	\$519	<b>\$430</b>	\$504	\$243	<b>\$261</b>	\$175	\$98	<b>\$77</b>
2000	\$950	\$463	<b>\$487</b>	\$375	\$148	<b>\$227</b>	\$209	\$76	<b>\$133</b>
2001	\$853	\$416	<b>\$437</b>	\$570	\$270	<b>\$300</b>	\$353	\$162	<b>\$191</b>
2002	\$763	\$424	<b>\$339</b>	\$568	\$306	<b>\$262</b>	\$347	\$152	<b>\$195</b>
2003	\$686	\$410	<b>\$276</b>	\$431	\$269	<b>\$162</b>	\$257	\$83	<b>\$174</b>
Overall	\$827	\$436	<b>\$391</b>	\$494	\$231	<b>\$263</b>	\$269	\$114	<b>\$155</b>

Mark A. Cohen, "Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation." (2006). Vanderbilt Law and Economics Research Paper No. 07-01. Available at <http://ssrn.com/abstract=951827>.

# Dealer Markups

Table 6 (Table 26 - GMAC Report)  
Comparison of Average Markups by Race and Estimated Turn Around Time:  
Including and Excluding Special APR Programs

Estimated Turn Around Time	Special APRs – Included				Special APRs – Excluded			
	Overall Markup	Black Markup	White Markup	Diff.	Overall Markup	Black Markup	White Markup	Diff.
0 Minutes	\$122	\$393	\$108	<b>\$285</b>	\$470	\$865	\$432	<b>\$433</b>
1-30 Minutes	\$327	\$701	\$287	<b>\$414</b>	\$655	\$988	\$601	<b>\$387</b>
31-60 Minutes	\$393	\$744	\$349	<b>\$395</b>	\$692	\$1,001	\$639	<b>\$362</b>
61-90 Minutes	\$401	\$740	\$358	<b>\$382</b>	\$708	\$982	\$658	<b>\$324</b>
91-120 Minutes	\$400	\$781	\$352	<b>\$429</b>	\$719	\$1,049	\$660	<b>\$389</b>
121-150 Minutes	\$388	\$722	\$346	<b>\$376</b>	\$705	\$997	\$653	<b>\$344</b>
151-180 Minutes	\$404	\$809	\$353	<b>\$456</b>	\$745	\$1,114	\$679	<b>\$435</b>
Over 180 Minutes	\$387	\$737	\$343	<b>\$394</b>	\$724	\$1,037	\$669	<b>\$368</b>
Next Day	\$367	\$714	\$329	<b>\$385</b>	\$771	\$1,075	\$720	<b>\$355</b>

Mark A. Cohen, “Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation.” (2006). Vanderbilt Law and Economics Research Paper No. 07-01. Available at <http://ssrn.com/abstract=951827>.

# Dealer Markups

Table 11  
Black versus White Average Markups by Markup Cap and Company

Markup Cap/Company	Dates	Black	White	Difference
3% to 5% (NMAC)	3/93-9/00	\$ 970	\$ 462	\$ 508
None (GMAC)	1/99-8/01	\$ 744	\$ 292	\$ 452
None (FMCC)	1/94-11/02	\$ 749	\$ 331	\$ 418
2% to 5% (PRIMUS)	1/01-2/02	\$ 910	\$ 502	\$ 408
4% (GMAC)	8/01-8/02	\$ 604	\$ 198	\$ 406
3% (GMAC)	8/02-4/03	\$ 564	\$ 232	\$ 332
2% to 3.5% (AHFC)	6/99-3/03	\$ 557	\$ 227	\$ 330
2% to 3% (PRIMUS)	3/03-2/04	\$ 652	\$ 383	\$ 269
3% (FMCC)	11/02-4/03	\$ 540	\$ 348	\$ 192

Mark A. Cohen, "Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation." (2006). Vanderbilt Law and Economics Research Paper No. 07-01. Available at <http://ssrn.com/abstract=951827>.



## Dealer Markups:

Chris Kukla

August 19, 2010

# Dealer Kickbacks in US and NC



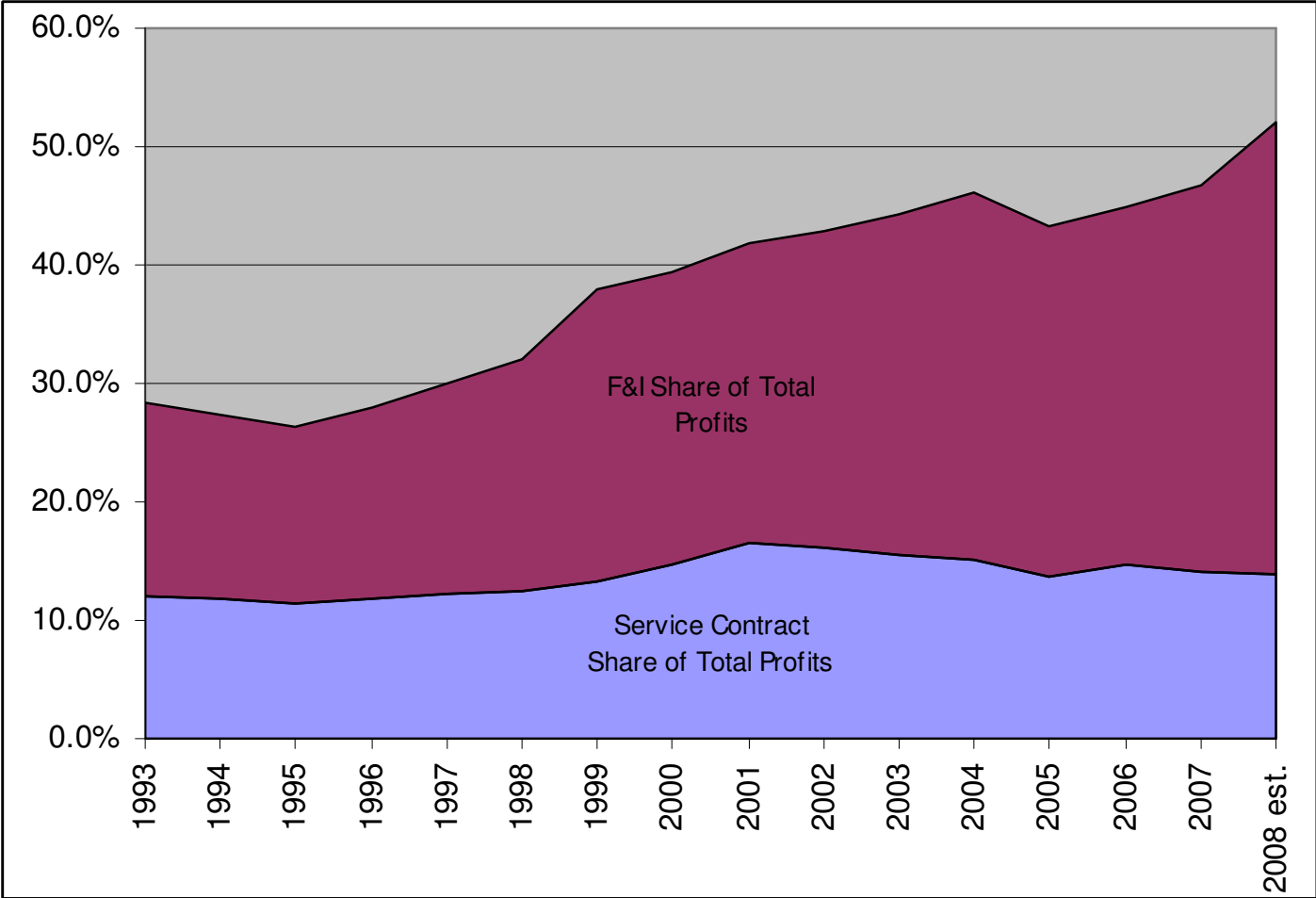
**Table 1: 2007 Dealer Reserve Kickback Volume in the U.S and North Carolina**

	New Vehicles	Used Vehicles	All Vehicles
US Dealer-Financed Sales	11,450,000	20,814,714	<b>32,264,714</b>
US Kickback Volume (\$ mm)	\$8,739	\$12,125	<b>\$20,864</b>
NC Share of National Dealer-Financed Sales	2.97%	3.34%	<b>3.21%</b>
NC Dealer-Financed Sales	340,065	695,211	<b>1,035,276</b>
NC Kickback Volume (\$ mm)	\$260	\$405	<b>\$665</b>
Average NC Kickback per Sale	\$764	\$583	<b>\$642</b>

Sources:

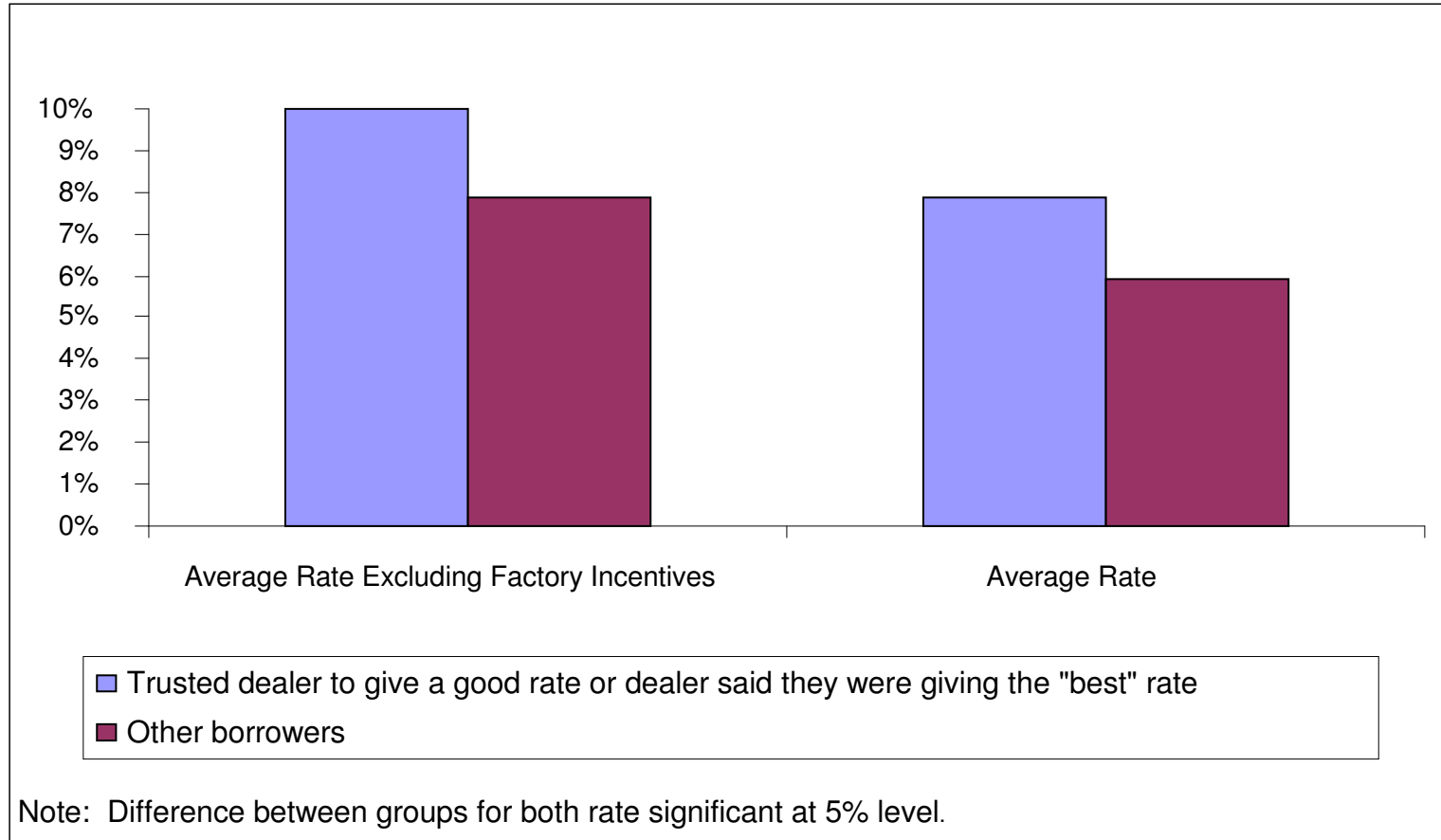
Consumer Bankers Assoc, *2008 Automotive Finance Study* (dealer reserve data);  
and CNW Market Research (new & used car sales by state)

# Share of Dealership Profits



Source: F&I Magazine ([www.fi-magazine.com/Statistics](http://www.fi-magazine.com/Statistics))

# The “Trust Tax”



Source: CRL-sponsored survey through Macro International's CARAVAN phone interviews

# Disclosures Don't Work

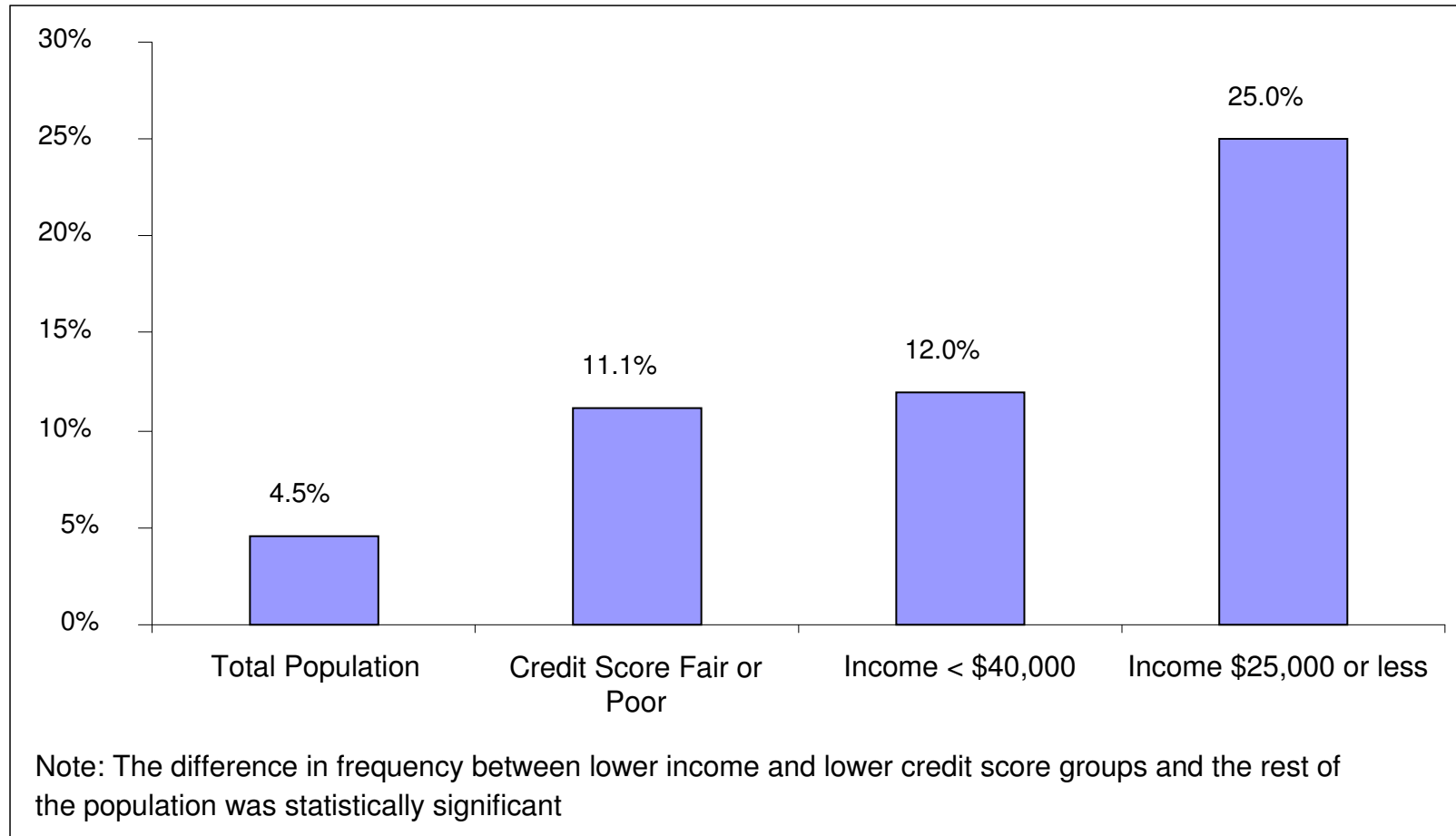
- Poll asked whether respondents were aware of the ability of dealers to increase interest rates.
- 79% were unaware, despite disclosure on NC RISCs
- Cut evenly across age, race or gender.

Source: Public Policy Polling (CRL commissioned poll), January 2010



# Prevalence of Yo-Yo Scams

(on average rates 5 percentage points higher)



Source: CRL-sponsored CARAVAN phone survey

# Prior Research Shows Race Influences Dealer Kickbacks



	Primus	American Honda Finance Corporation	Ford Motor Credit	Nissan Motor Acceptance Corp	General Motors Acceptance Corp
Time Period	Jan 2001 - Feb 2004	Jun 1999 - Mar 2003	Jan 1994 - Apr 2003	Mar 1993 - Sep 2000	Jan 1999 - Apr 2003
Total Sample Size	219,278	383,652	855,989	310,718	1,511,913
% African American in Sample	16.3%	11.6%	11.6%	19.0%	8.5%
Average Amount Financed (African-Americans)	\$17,655	\$19,333	\$19,383	\$16,749	\$20,443
Average Amount Financed (Whites)	\$18,408	\$17,656	\$20,563	\$15,922	\$21,530
% With Markup (African-Americans)	61.8%	43.3%	48.5%	71.8%	53.4%
% With Markup (Whites)	41.1%	22.2%	30.9%	46.7%	28.2%
Relative Odds Ratio % (African-Americans)	232%	268%	210%	289%	292%
Relative Odds Ratio % (Whites)	43%	37%	48%	34%	34%
Average Markup (African-Americans)	\$862	\$557	\$684	\$970	\$656
Average Markup (Whites)	\$475	\$227	\$337	\$462	\$244

Source: Dr. Mark A. Cohen, *Imperfect Competition in Auto Lending* (Dec 2006)

# Industry Data on Add-on Penetration



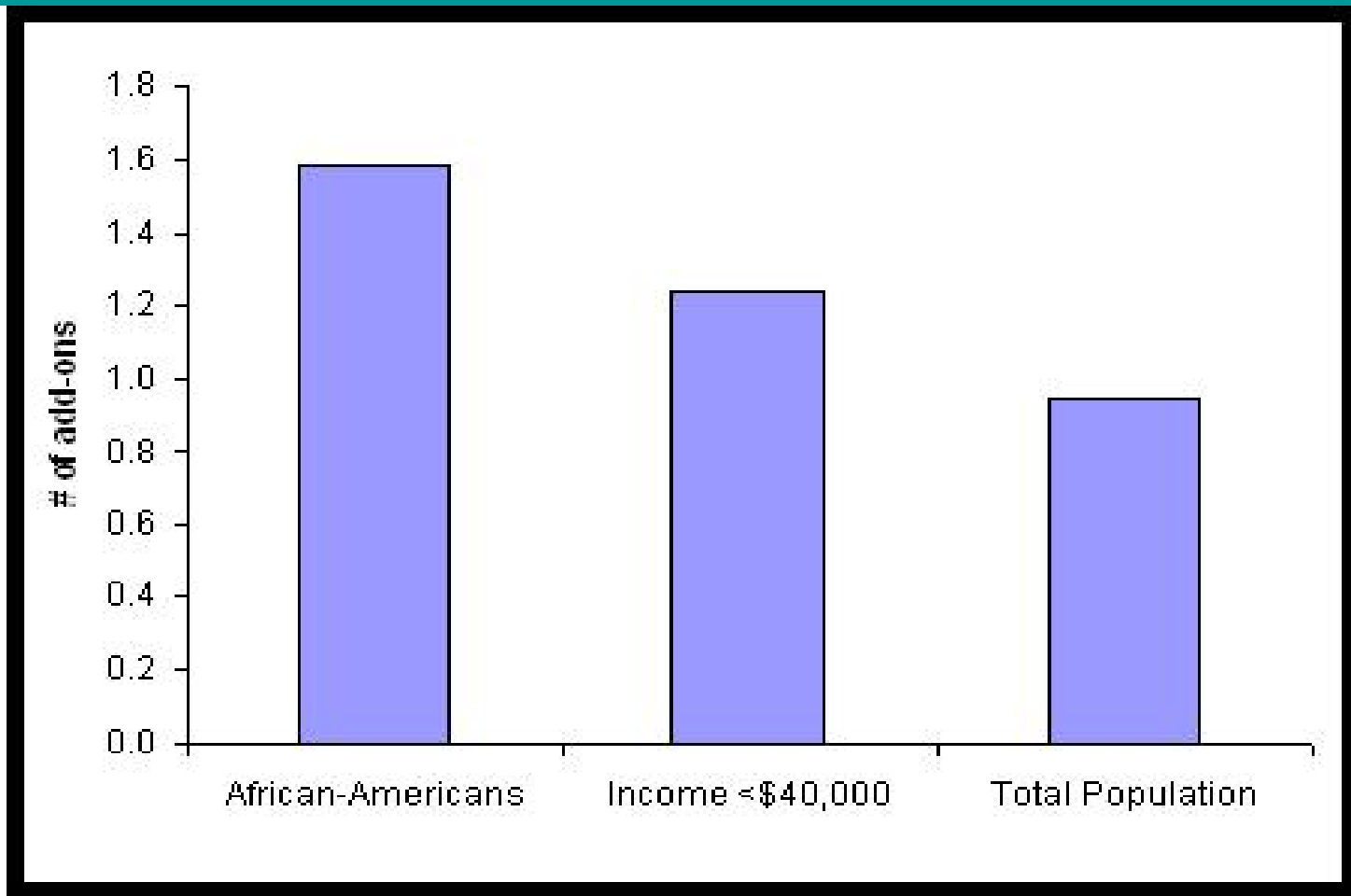
NEW VEHICLES				
F&I Add-On Product	Market Penetration	Cost Per Vehicle Per Month	Average Loan Term (months)	Cost Per Vehicle
GAP Protection	16%	\$5	62.0	\$315
Vehicle Service Contracts	26%	\$13	62.0	\$795
Theft Deterrent/Window Etching	15%	\$4	62.0	\$225
Credit Life and Disability Insurance	3%	\$8	62.0	\$496

USED VEHICLES				
F&I Add-On Product	Market Penetration	Cost Per Vehicle Per Month	Average Loan Term (months)	Cost Per Vehicle
GAP Protection	23%	\$7	60.7	\$438
Vehicle Service Contracts	30%	\$13	60.7	\$795
Theft Deterrent/Window Etching	18%	\$4	60.7	\$269
Credit Life and Disability Insurance	5%	\$8	60.7	\$486

Source: F&I Magazine ([www.fi-magazine.com/Statistics](http://www.fi-magazine.com/Statistics))

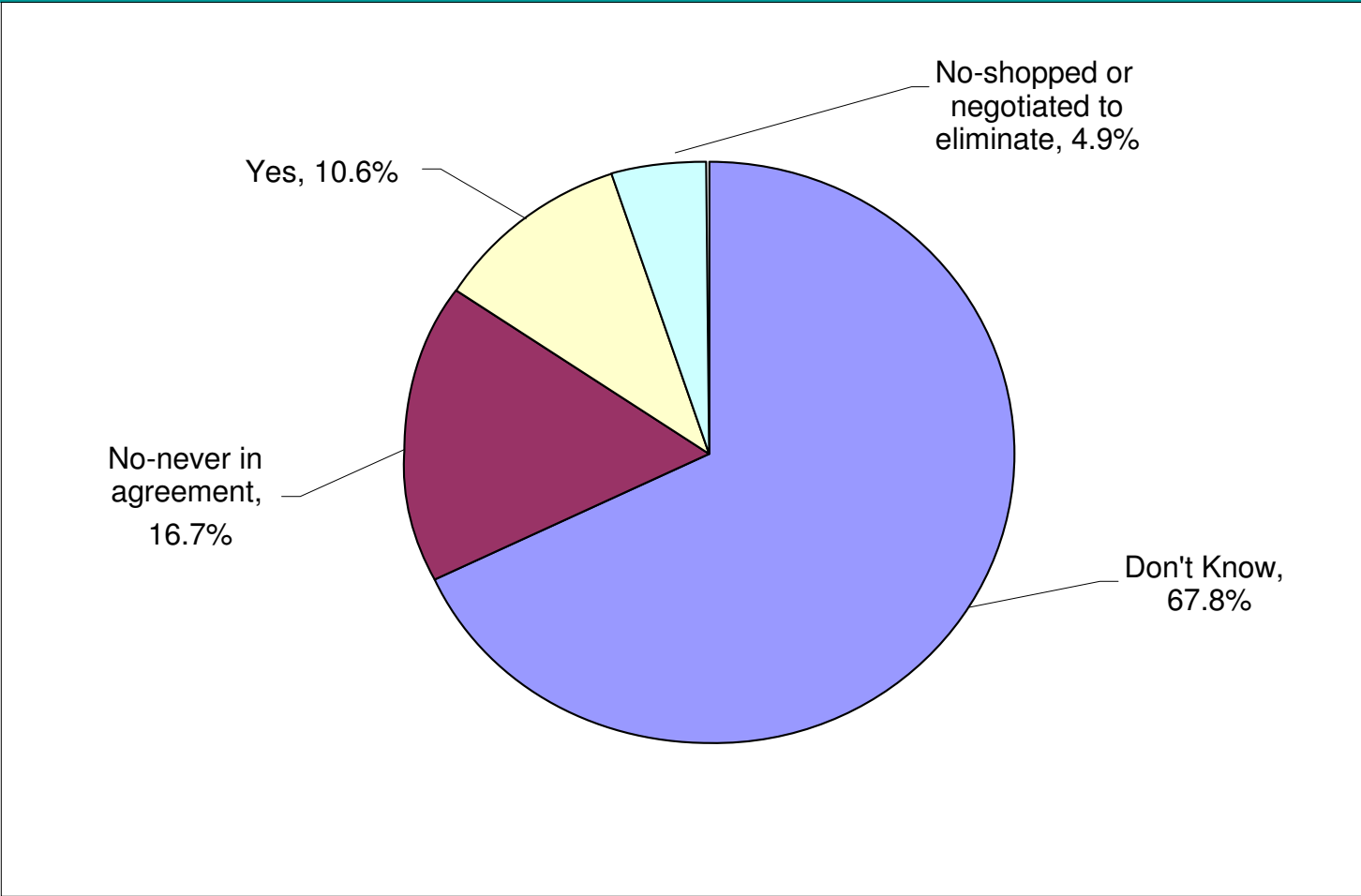
# Who Gets Add-ons

(sometimes sold as mandatory or without customer knowledge)



Source: CRL-sponsored CARAVAN phone survey

# Most Consumers Unaware of Mandatory Arbitration



Source: CRL-sponsored CARAVAN phone survey

# North Carolina Legislative Efforts



- 2005
  - Two attempts to change RISA
    - “Loan commitment fee” carve-out
    - Prepayment penalties on car loans
  - Attempt to change other car laws
    - Would have allowed dealers to sell cars with 1000 miles or less as new, even if car sold to someone else!
  - All three initiatives did not pass legislature

# North Carolina Legislative Efforts



- 2009
  - Legislation introduced that would:
    - Ban dealer interest rate markups (dealer reserve)
    - Eliminate yo-yo sales
      - Require the dealer to return trade-in and down payment
      - Allow the buyer to cancel the deal at any time before the financing is signed
    - Require more transparency for add-on F&I products
      - Require dealer to show individual price for all add-ons expressed as total cost, not impact on monthly payment
      - Require dealer to show buyer the total cost of the car with add-ons and without.

# North Carolina Legislative Efforts



- Bill met with stiff resistance from dealers' lobby along with legislators' pause.
- But, the issue got traction
- Effort still ongoing – sponsor committed to continue fight next year.
- Next steps:
  - Media
  - Community outreach
  - Continued education for lawmakers and regulators



# Contact Information



Chris Kukla

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# Working Cars for Working Families

*Dealer Kickbacks- How car dealers are paid to put us in more expensive loans and how we can stop it*

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John W. Van Alst- National Consumer Law Center

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# Dealer Markups

- Regulation in California and Louisiana
- Expiration of settlements agreements in the disparate impact cases
- Potential for federal regulation of dealer markups
- Questions and Discussion

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# Dealer Markups *State Regulation*

- Louisiana (2004)
  - Limits markups to 3%
  - Requires disclosure that the dealer may be participating in finance charges associated with the sale.
  
- La. Rev. Stat. Ann. §32:1261(2)(k)

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# Dealer Markups *State Regulation*

- California “Car Buyer’s Bill of Rights” 2006
  - Limits markups to 2.5% for loans 60 months or less and 2% for longer loans
  - Originally capped dealer markups at \$150.
  
- Cal. Civ Code § 2982.10

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# Dealer Markups ECOA Settlements

- Class actions against the largest lenders were settled.
- In addition to other types of relief, the settlements capped markups between 1.75% and 3%.
- Most of the settlements were reached between 2003 and 2006.
- Terms of the settlements were between 3 and 5 years.
- Most of the settlements have now expired.

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# Dealer markups- FRB and TILA

- “Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such charges into consideration in determining the interest rate to be charged or the cash price of the property or services sold.” *Official Staff Commentary to 12 C.F.R. § 226.4(a) (2)*

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# Dealer Markups- Federal Enforcement ECOA

- FTC and DOJ have enforcement authority
- Essentially unused until...
- NARA Bank
  - ❑ Fed examination at NARA- referred to Attorney General
  - ❑ NARA settled
  - ❑ Action against dealers dismissed



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# Dealer Markups

## FRB- Reg B

- Regulation B implements ECOA
- Prohibits non-mortgage lenders from asking about or documenting borrower's race
- Makes finding and substantiating disparate impact very difficult

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## Dealer markups under the new Consumer Financial Protection Bureau

- Dealers who are primarily engaged in car sales and servicing and “routinely assign” loans to unaffiliated third parties are excluded from CFPB rule-making, supervision and enforcement.
- Lenders, both direct lenders and assignees are subject to CFPB rule making and enforcement. Supervision depends upon size of entity.

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## Dealer markups New Rulemaking procedures at FTC

- Prior to Dodd-Frank, FTC must use cumbersome Mag-Moss rulemaking procedure
- Upon designated transfer date FTC will use Administrative Procedure Act rulemaking procedure.

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# Dealer Markups

## ■ Questions