

LEE V. WFS
THOMPSON V. WFS

FREQUENTLY ASKED QUESTIONS

1. What is Markup?

When a consumer goes on an automobile lot to purchase a vehicle and requests the dealer to arrange financing, the loan is not made by the dealer. The dealer acts as an originator/arranger between the consumer and a lender. There are numerous lenders in the American automobile business, including banks and finance companies owned by automobile manufacturers (captives).

When a consumer requests the dealer for financing, typically the dealer faxes the consumer's credit application to a lender who determines an approved interest rate based on an examination of the consumer's credit history. The lender then communicates the approved interest rate to the dealer and authorizes the dealer to markup the interest rate, without informing the consumer. The dealer and the lender then split the markup as additional profit.

Thus, markup is the additional charges added to the consumer's approved interest rate, and split between the dealer and the lender.

2. What is the Effect of Markup?

Markup increases the cost of credit to the consumer. Remember, markup is only added **after** the lender determines an approved rate based on the consumer's credit history. [This approved rate is often called the "buy rate"]. Markup is then added to the buy rate, and the result is a more expensive rate which the consumer pays.

3. Are Consumers Told About Markup?

Generally, the answer is no.

The lender authorizes the dealer to add markup to the approved rate (buy rate), but prohibits the dealer from telling the consumer either: (1) the approved rate; or (2) that the approved rate has been marked up. Generally, the consumer does not know about markup, never knows their approved rate, and does not realize that their interest rate has been secretly increased.

4. How Can a Consumer Learn Whether their Interest Rate Was Marked Up?

Markup is not disclosed on any document given to the consumer by the dealer or by the lender. Usually, the dealer is prohibited by the lender from telling the consumer about markup., However, both the dealer and the lender know exactly how much the consumer has been marked up and have records containing information about the markup.

Thus, in order to learn whether or not a loan has been marked up, the consumer should contact their lender and their dealer, and specifically request information about whether or not their loan was marked up.

When contacting the lender and the dealer, the consumer should have their loan or account number available and specifically request: (1) whether or not the lender allows interest rates to be marked up by dealers; (2) whether or not the consumer's loan contains markup; (3) what buy rate was approved after review of the consumer's credit application; (4) how much markup was added to the approved buy rate; and (5) how much of the markup was retained by the lender. The consumer should specifically request that this information be provided to them in writing by a corporate representative.

5. What is a Captive Finance Company?

Generally, there are two types of lenders in the American automobile financing business, banks and captive finance companies. A captive finance company is essentially a lender owned by an automobile manufacturer. Examples are GMAC (General Motors Acceptance Corporation), NMAC (Nissan Motor Acceptance Corporation), Ford Credit (Ford Motor Credit Company), Chrysler Credit (Daimler-Chrysler). Typically, these companies are wholly-owned subsidiaries of automobile manufacturers. The business of captives is to provide financing for customers through dealerships. WFS is a bank that is neither owned by or affiliated with an automobile manufacturer

6. Do Both Banks and Captive Finance Companies Allow Dealers to Markup Interest Rates?

Generally, yes. Although there are some exceptions, the large captive finance companies and the large banks all authorize dealers to markup customer interest rate, and split the profits.

7. What is the Danger of Markup?

Markup results in the cost of credit being determined by factors other than the consumer's credit history, or creditworthiness. By authorizing dealers to increase a consumer's cost of credit, without regard to the consumer's credit history, the lenders are causing some consumers to pay more for the same extension of credit. For example, the markup system may allow your credit to be increased because you are African-American, or because you are Hispanic, or because you are old. These factors have nothing to do with a consumer's credit history, and should not determine the price of credit. Also, because the markup system is hidden from the consumer, many people, black and white, believe they are getting their approved credit rate when actually that rate has been increased without their knowledge.

8. What is the Equal Credit Opportunity Act?

The Equal Credit Opportunity Act (ECOA) is a federal law which prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, or age in any aspect of a credit transaction. Thus, pursuant to the ECOA it is unlawful to discriminate in the cost of credit between persons of different races. The ECOA attempts to guarantee a consumer's history or creditworthiness will determine the cost of credit, not a consumer's race or age.

9. Why Has the ECOA Been Used in the Federal Cases Involving Markup?

In the case of *Lee v. WFS*, a Federal District Court in Nashville, Tennessee, ordered data production that allowed an analysis of deal files which shows that as a result of markup African-Americans and Hispanics are paying more for the same credit. Plaintiffs contend that African-Americans and Hispanics are more often victimized by the markup system, causing African-American and Hispanic customers to pay more for the same credit. Plaintiffs contend that this effect of the markup system violates ECOA.

10. What Is *Lee v. WFS and Thompson v. WFS* about?

The plaintiffs in these cases contended that African-Americans and Hispanics who financed automobiles through WFS paid higher prices for credit because they received higher markups. The plaintiffs contended that as a result of markup pricing, WFS discriminated against African-Americans and Hispanics as a class. In *Lee v. WFS*, the plaintiffs filed their claims under the ECOA in the Federal District Court in Nashville, Tennessee. The case of *Thompson v. WFS* was brought in California Superior Court under comparable state law. The proposed settlement resolves both lawsuits.

11. Have the Cases of *Lee v. WFS* and *Thompson v. WFS* Been Settled?

Yes. The cases were settled June, 2004 and a settlement agreement was filed August, 2004. On August 27, 2004, the U.S. District Court in Nashville, Tennessee, gave preliminary approval to the proposed settlement. Any objections to the settlement must be served, pursuant to instructions appearing on the Notice of Proposed Class Action Settlement so that they are received on or before November 1, 2004. On November 15, 2004, at 1 p.m. the Court will consider the final approval of the proposed settlement agreement. Copies of all of the relevant settlement documents and disclosures, including the Notice of Proposed Class Action Settlement can be found at www.ecoa-settlement.com or can be obtained by mail by contacting the National Consumer Law Center.

12. What are the Major Terms of the Settlement Agreement?

WFS has agreed to do the following:

- a. Limit the amount of markup on future automobile loans [a cap of 2.50% on loans for terms of sixty (60) months or less; and 2.00% on loans for terms of more than sixty (60) months];
- b. Disclose to consumers that loan rates are negotiable and can be negotiated with the dealer;
- c. Fund consumer education and assistance programs directed to African-Americans and Hispanic communities which will help consumers with respect to credit financing; and
- d. Offer refinancing of certain Qualified Loans at one-percentage point lower than the existing APR interest rate loan, up to a limit of One Billion Dollars of WFS's current outstanding loan portfolio.

13. What are Qualified Loans that may be offered the opportunity to be refinanced?

Qualified Loans mean current WFS accounts which (i) according to WFS's records have been marked up; (ii) where the borrower currently has the same or better credit rating as at the time the original loan was made; and (iii) are identified by WFS based upon census tract data as likely African American and Hispanic American borrowers.

14. What is the cost of refinancing Qualified Loans?

WFS will not charge any cost to borrowers in connection with the offers to refinance. Refinancing shall be without prepayment penalty regardless of the original contract terms. Offers to refinance shall not extend the loan term, unless requested by the borrower and then at the discretion of WFS. Borrowers should independently determine if the refinancing is in their own best interests.

15. How Can I Receive a Refinancing Offer from WFS

If you are a current African-American or Hispanic WFS customer, you may receive a Refinancing Offer without doing anything. WFS will be examining its customer records for African-Americans and Hispanics who are eligible for refinancing and mailing Refinancing Offers directly to them.

16. What if I Have Individual Claims for Damages Against WFS?

In two previous cases brought in the U.S. District Court in Nashville, Tennessee against NMAC and GMAC alleging the same causes of action, the plaintiffs sought to obtain monetary recoveries for past injuries suffered by African American and Hispanic members of the Class. The Court ruled, however, that such recoveries were too individualized and would have to be pursued in separate cases brought by individual consumers. As a result, the plaintiffs in the Lee v. WFS case sought only future relief and individual claims for damages against WFS were excluded from the case and the settlement. Therefore, you may accept the benefits of the Refinancing Offers and markup caps on future credit transactions without waiving any of your personal claims or releasing WFS from

any potential liability for damages. In order to recover such damages, however, you will have to bring your own case against WFS.