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Time to Stop Racing Cars:

The Role of Race and Ethnicity in Buying and Using a Car

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By

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EXECUTIVE SUMMARY

For many in America, a car provides not only physical mobility but also economic mobility. Yet for years, studies have shown that the costs of buying, financing, and using a car can vary based on race or ethnicity. A consumer's race or ethnicity can impact:

- How much it costs to finance a car;
- How much a consumer is charged for the car itself;
- How much a consumer is charged for add-on products sold with the car;
- The ability of consumers to successfully negotiate for better terms;
- The rates paid to insure a car; and
- The likelihood that civil fines or penalties will lead to suspensions of a driver's license.

These disparities make cars more expensive for some races and ethnic groups and keep some families from getting a car at all. They contribute to the differences we see in the ability of families to get a car. For those at or below the poverty line, 13% of White households lack access to a car, compared to 31% of African American households and 20% of Hispanic households.

Many disparities arise because the market for cars is troublingly opaque and inconsistent. A more consistent and transparent marketplace would not only benefit consumers of color but all marketplace participants, including car dealers, finance entities, and insurers that want to compete fairly and openly on price and quality on a level playing field.

Recommendations

To move toward this goal, federal and state policymakers should:

- **Ban dealer interest rate markups.** Any compensation paid to the dealer as part of the financing process should not be based on the interest rate or other financing terms, and should be consistently applied to all transactions.
- **Amend the Equal Credit Opportunity Act (ECOA) regulations (Regulation B)** to enable and require the collection and analysis of race and ethnicity data for auto financing transactions.
- **Prohibit discrimination in the pricing of goods and services.**
- **Increase enforcement of the ECOA and state fair lending laws.**
- **Increase enforcement against general abuses in the sale and financing of cars**. Given the evidence of discrimination in the sale and finance of cars, it is likely that many other abuses, from yo-yo sales to failure to pay off existing liens, are more likely to affect people of color. Stepped-up enforcement against all abuses in the sale and finance of cars could help address disparities and level the playing field for everyone.
- **Take action on insurance rate setting to address disparities based upon race and ethnicity. End suspension of driver's licenses for reasons beyond dangerous driving**.

INTRODUCTION

For most households in the United States a car is vital not only for physical mobility but also for economic mobility. Car access improves families' economic outcomes in a variety of ways. In the short term, having a car provides access to more and better job opportunities and expanded affordable housing options. In the long term, research has shown shorter commute times, which are often possible only with a car, to be one of the strongest factors in helping families escape poverty.[1] Transportation has a stronger role in social mobility than other community characteristics, including elementary school test scores, percentage of two-parent families, or crime.[2] In addition to shorter commute times, access to a car often means access to childhood extracurricular opportunities, better food options, and medical care in most areas of the country.

While cars can be a means of economic improvement, they are also very expensive to buy. In 2018, the average used car price exceeded $20,000.[3] For a consumer with sub-prime credit buying a used car the average interest rate was over 16% and the average payment was over $400 a month.[4]

Given the importance of cars and how expensive they are, it is deeply concerning that a number of analyses have shown that the costs of buying, financing, and using a car vary based on the consumer's race or ethnicity. These studies have shown that a consumer's race or ethnicity can:

- Increase the cost of credit to finance a car;
- Increase the price of the car itself;
- Increase the price of add-on products sold with the car;
- Reduce the ability of consumers to successfully negotiate for better terms;
- Increase car insurance rates; and
- Increase the likelihood that civil fines or penalties will result in driver's license suspensions.

Studies show that African Americans and Hispanics and Latinos face higher car financing costs even when their credit scores, income, and other indicators of credit worthiness are just as good as Whites',[5] and that they face higher liability insurance costs even if their driving history is just as good as Whites'.[6]

This report describes these studies. It then highlights how federal and state policy can be improved to encourage a transparent and consistent marketplace for cars that reduces or eliminates these disparities and makes the marketplace for cars fairer for all consumers and businesses dealing in good faith.

CONSUMERS FINANCING A CAR FACE HIGHER INTEREST RATES BASED ON RACE AND ETHNICITY

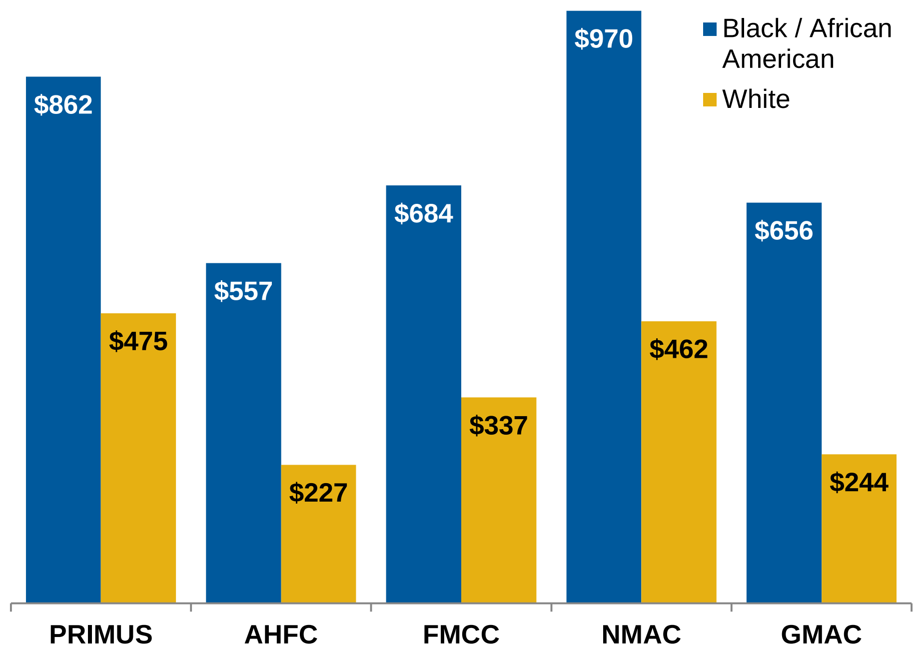
About 80% of car buyers obtain financing for the car at the dealership.[7] Dealers are the initial creditors but in most cases they have already arranged to sell the financing contract to a bank, finance company, or credit union before the car is even sold. These finance entities compete against each other to get dealers to send them these deals. One way they compete is to allow dealers to mark up the interest rate and keep some of the extra interest consumers pay. Each finance entity will tell the dealer the interest rate it is willing to take in a particular transaction based on the consumer's credit record (the buy rate). But the finance entity, in an effort to convince the dealer to send it the deal, will allow the dealer to mark that interest rate up and keep much of the markup.

Dealers make much of their profit from marking up interest rates. An analysis by the Center for Responsible Lending found that car buyers who financed at the dealership in 2009 paid $25.8 billion in interest rate markups.[8]

These markups are not applied consistently to every consumer. As a result, consumers with the same credit risk can pay very different interest rates, depending on how much the dealer marks up the interest rate for that particular customer. Consumers have no way of knowing that their interest rate is being marked up or by how much. Even those charged with supervising auto finance for fair lending purposes find it difficult to see if there is racial bias in these markups because the Equal Credit Opportunity Act (ECOA) prohibits the collection of race and ethnicity data for consumers financing a car.[9]

Analyses by Professor Ian Ayers[10] of the Yale Schools of Law and Management and Professor Mark A. Cohen[11] of Vanderbilt University's School of Management in connection with class action litigation from the late 1990s to early 2000s against major automobile creditors[12] exposed the fact that minority car buyers were marked up more often and by a greater amount than other car buyers.[13] The analysis used in this litigation matched finance markup information with the driver's licenses of car buyers in states that included race and ethnicity data on their licenses. Professor Cohen's analysis looked at over three million transactions in which the dealer assigned the financing to a captive creditor (typically a wholly-owned subsidiary of a car manufacturer that provides financing for the sale of that manufacturer's new cars). It showed that African Americans were marked up more often than Whites and that their average markup was higher (see Chart 1).[14] Since the buyer's credit score and other indicia of credit worthiness are already included in the buy rate, the differences in markup were not a reflection of any differences in credit worthiness.

Chart 1: Interest Rate Mark-ups Charged to African American vs. White Consumers at Five Captive Auto Creditors



Source: Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation, Mark A. Cohen (Dec. 14, 2006). ***Note***: Primus Automotive Financial Services is a wholly-owned subsidiary of Ford Motor Corporation and services many non-Ford brands such as Mazda, Volvo and Jaguar. Accordingly, Primus was considered a captive lender for purposes of Cohen's analysis. The full names of the other auto finance companies are: American Honda Finance Corporation, Ford Motor Credit Corporation, Nissan Motors Acceptance Corporation and General Motors Acceptance Corporation.

This troubling pattern has persisted. The Consumer Financial Protection Bureau (CFPB) and the U. S. Department of Justice (DOJ) determined that over 235,000 car buyers of color were charged higher interest rates for their car loans between April 2011 and December 2013.[15] This analysis focused on just one major car financing company, Ally Financial, Inc. Subsequent enforcement actions based on similar analyses followed against American Honda Finance Corporation, Fifth Third Bank, and Toyota Motor Credit Corporation.[16] In these analyses, the CFPB used surname and geography as a proxy for race and ethnicity.[17]

Subsequent research has continued to show differences in financing terms between White and minority car buyers. In 2018, the National Fair Housing Alliance released findings from testing it conducted in 2016 and 2017.[18] The testing involved teams consisting of a White tester and a better qualified non-White tester, each of whom went to the same dealership to ask about purchasing the same new car. The better qualified non-White testers were quoted more expensive financing options than the White testers, with their average total payment $2,662.56 higher than the White testers.

CONSUMERS FACE HIGHER PRICES FOR A CAR BASED ON RACE AND ETHNICITY

Several studies have also found that some races and ethnicities are charged higher prices not only for car financing but also for the car itself. Two studies by Ian Ayres in 1995 found that African Americans were quoted higher prices than Whites.[19] These studies used testers, so there was no need to use surname or geography as a proxy for race and ethnicity.

A 2003 analysis of more than half a million car purchase transactions at over 3,500 dealerships made similar findings.[20] The authors made inferences regarding car buyers' race or ethnicity by using census blocks. They found that among in-person car buyers, African Americans and Hispanics paid approximately 2% more than other consumers. While about 65% of the price difference could be explained by income, education, and other traits, the remainder could not.

Several studies have also found that some races and ethnicities are charged higher prices not only for car financing but also for the cars.

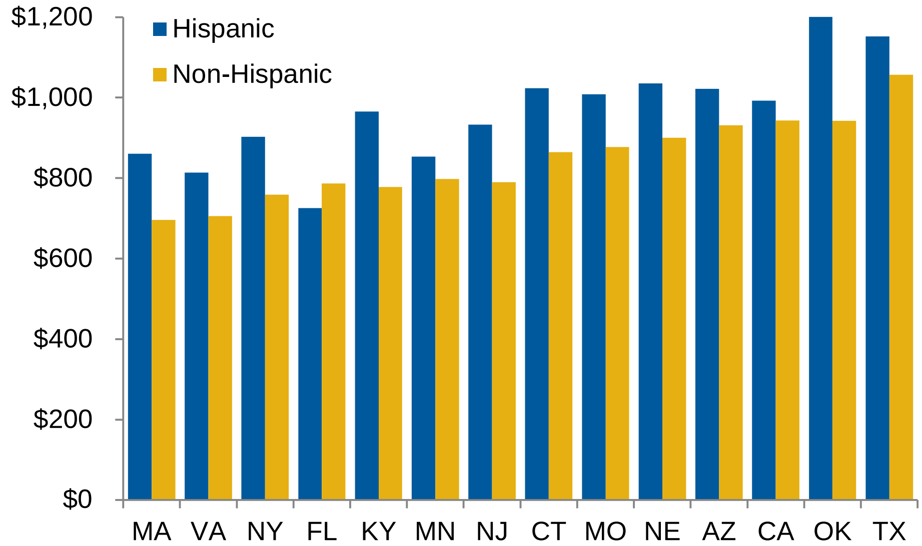
CONSUMERS FACE HIGHER PRICES FOR ADD-ON PRODUCTS BASED ON ETHNICITY

Final numbers for cars and the cost of financing them (including interest rate markups), are typically determined in the finance and insurance (F&I) office at the dealership. In these offices, many car add-on products, such as service contracts, GAP policies (meant to cover any gap between the amount the consumer's insurance pays when a car is stolen or totaled and the amount the consumer owes), and window etching (etching the Vehicle Identification Number on windows as a way to discourage theft, often including some insurance-like coverage), are also sold.[21] Perhaps not surprisingly, the prices for these products are often higher for some people than others.

In 2017, National Consumer Law Center (NCLC) examined millions of these add-ons that are sold to consumers as part of the car sale transaction.[22] We found that variation between what consumers were charged for the same product was often dramatic. Many dealers charged one consumer hundreds or even thousands of dollars more than another consumer for the same product. Some examples of these different charges for different consumers were astounding. One dealer, who paid $50 for a window etching product, marked the price up to as low as $349 for some consumers and as high as $5,000 for others.[23]

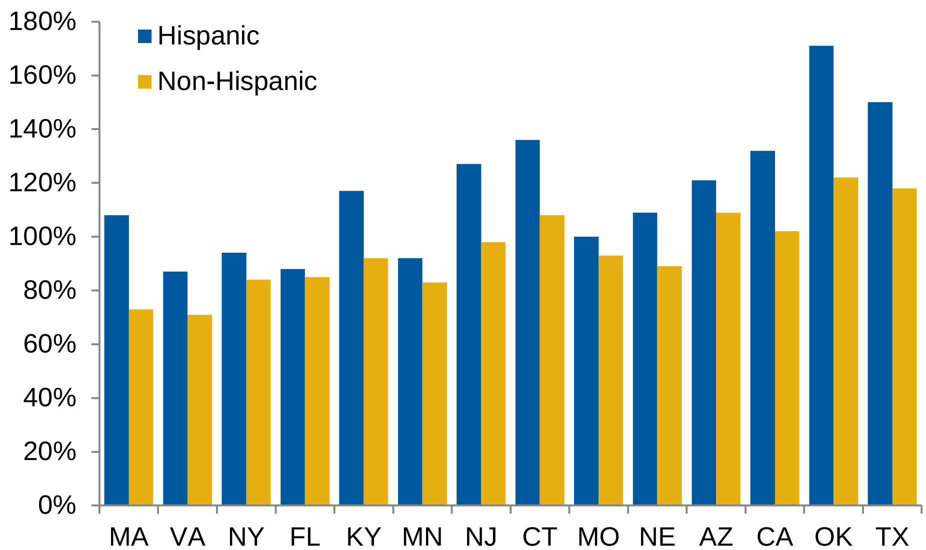
As with other discretionary charges in auto sales and finance, NCLC found that where there was discretion and inconsistency, there was disparate impact by ethnicity. Examining service contract data from 48 states and the District of Columbia, NCLC found that average percentage markups for service contracts were higher for Hispanics than for non-Hispanics in 44 states.[24] To make sure that we were not drawing unwarranted conclusions, we focused our analysis on states in which the number of transactions and other factors led to results with a high degree of statistical certainty and for which the difference in markups on both an absolute and percentage basis was statistically significant.[25] We still found that Hispanics were charged more (see Chart 2).

Chart 2: Average Dealer Markup by State for Hispanics and Non-Hispanics for Service Contracts in Dollars



Source: National data set of dealer add-on products sold in the U.S., Sept. 2009 – Dec. 2013

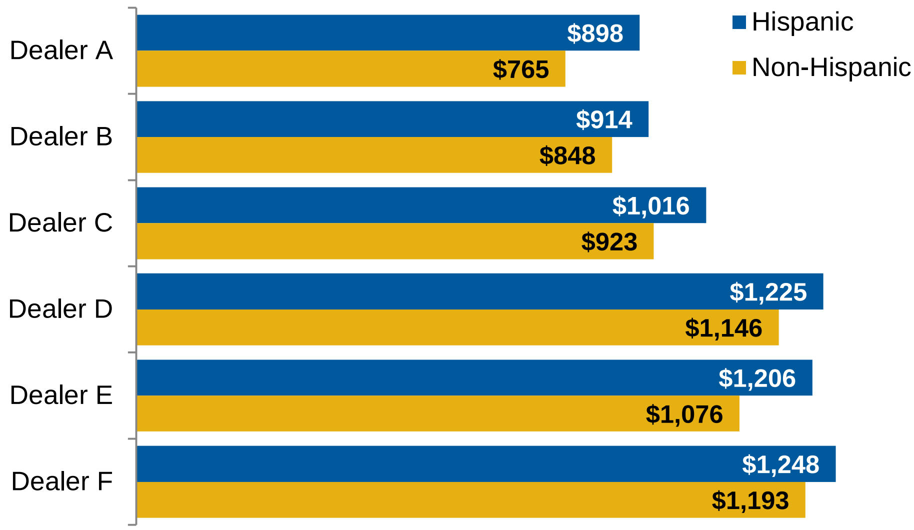
Chart 3: Average Dealer Markup by State for Hispanics and Non-Hispanics for Service Contracts in Percent



Source: National data set of dealer add-on products sold in the U.S., Sept. 2009 – Dec. 2013

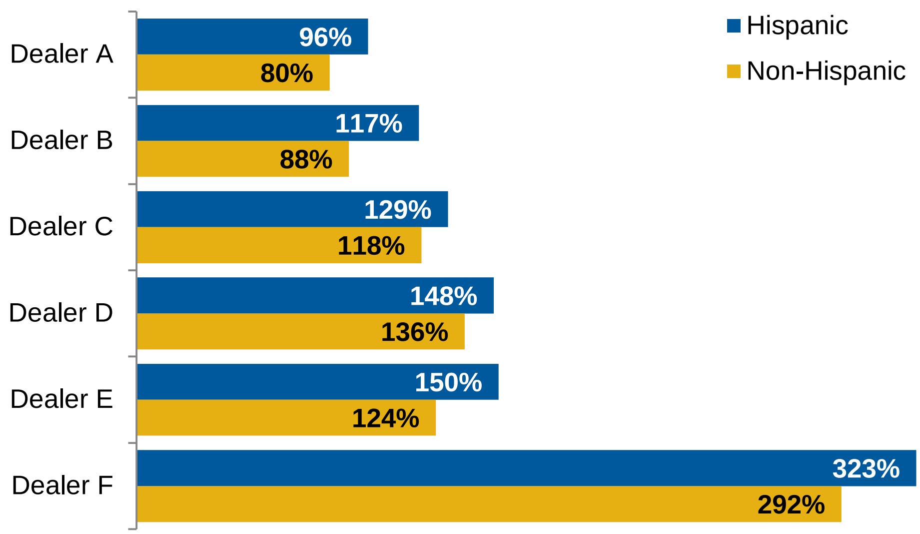
We also saw disparities when we looked at the price of service contracts within individual dealers. We identified six California dealers for which the difference between Hispanics and non-Hispanics for both markup amount and markup percentage was statistically significant. In all cases where both were statistically significant, absolute and percentage markups were higher for Hispanics.

Chart 4: Service Contract Markup by Six California Dealers for Hispanics and Non-Hispanics in Dollars



Source: National data set of dealer add-on products sold in the U.S., Sept. 2009 – Dec. 2013

Chart 5: Service Contract Markup by Six California Dealers for Hispanics and Non-Hispanics in Percent



Source: National data set of dealer add-on products sold in the U.S., Sept. 2009 – Dec. 2013

These differences in markups are particularly troubling since they involve the retail prices of service contracts, which are not determined or affected by credit scores. Thus, they cannot be explained by differences in buyers' credit scores.

In addition to higher prices, minorities may be targeted for more add-ons by dealers than other car buyers. A 2014 study conducted by the Center for Responsible Lending found that African

Americans and Latinos were sold multiple add-on products almost twice as often as White consumers. 30% of African Americans and 27% of Latinos were sold multiple add-ons compared to 16% of Whites. The study also found that car purchases that included multiple add-ons were associated with higher delinquency rates and greater risk of repossession.[26]

TRYING TO NEGOTIATE FOR BETTER TERMS DOES NOT NECESSARILY HELP AVOID DISCRIMINATION

One hypothesis that is sometimes suggested to explain why people of color are charged more for cars, financing, and add-on products is that perhaps they just don't negotiate enough to obtain a lower price. Research by the Center for Responsible Lending looking at attempts to negotiate financing terms for car sales at dealers found that African-American and Latino consumers attempt to negotiate financing terms slightly more often than White car buyers yet were still left with worse terms.[27]

These results are in line with what we might expect from a process that places a great deal of discretion with a dealership employee in an F&I office. The need to quickly size up a potential car buyer and quickly reach the most profitable deal possibly leads many to rely, consciously or subconsciously, on race and ethnicity.

Rick Hackett, former assistant director at the CFPB who represented auto finance companies both before and after his service with the CFPB, quoted one dealer who told him, *"Look, you've got to understand, we've got a very short period of time to figure out the best way to put together all the moving parts of a complex transaction for the consumer, and how we're going to be able to negotiate to have a deal the consumer can accept and is adequate for the dealership. And so we have to make quick judgments when we sort out the process. So when you pick that initial rate for negotiating a finance rate, we all know Asians are better negotiators."*[28]

CONSUMERS EXPERIENCE INCREASED CAR INSURANCE RATES BASED ON RACE AND ETHNICITY

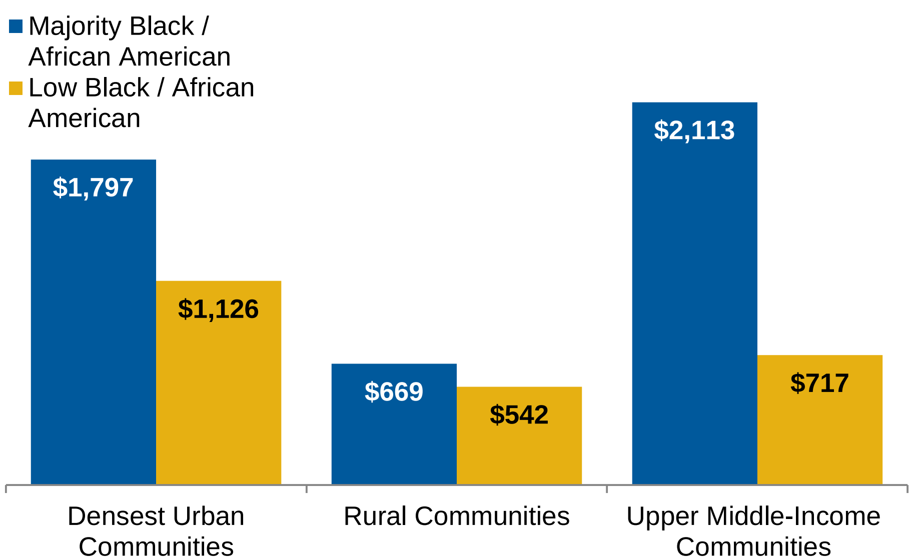
Even after buying and financing a car, the increased costs faced by some races and ethnic groups continue. Almost every driver must carry insurance. Every state but New Hampshire requires some level of liability insurance and almost every auto finance entity will require a consumer who is financing a car to carry some broader coverage that includes damage to the financed vehicle. This required insurance is a large part of the cost of owning a car.[29] A consumer's race or ethnicity can have a large impact on the rates they must pay for insurance.

The factors upon which insurance rates can be based vary from state to state. A consumer's age, marital status, gender, credit score, address, type of car, occupation, education, and other factors will often be included in determining what rate a consumer must pay in addition to the consumer's driving record.

In a 2015 analysis, Consumer Federation of America (CFA) found that drivers living in zip codes that were predominantly African American paid higher rates for state-mandated car liability insurance than drivers in predominantly White communities who had similar backgrounds, including driving record, education, employment, and credit rating.[30] This was true for all the five largest insurers in the country, in both urban and rural locations, and true across income levels. The findings were especially telling as the study compared rates for the same driver profile (an unmarried woman with a good driving history, who graduated from high school, held a clerical job, and rented her home) and the coverage was the minimum coverage required by the state. The minimum required coverage varies from state to state and may include bodily injury liability, property damage liability, personal injury protection or no-fault coverage, and uninsured/underinsured motorist coverage. Most states require only liability coverage, not any coverage for damage to the consumer's car. This limited coverage focused on liability means that some circumstances that might arguably increase rates in some zip codes, such as frequency of damage to parked cars or stolen cars, would not come into play for setting the rates for statutorily required minimum coverage.

Subsequent analysis by CFA has continued to find racial disparities in insurance pricing. For a 2018 analysis, CFA obtained quotes from six large insurance companies in ten cities. Its analysis showed that residents of zip codes where the quotes were lower were overwhelmingly White (72% on average), while adjacent zip codes where rates were higher had more people of color and were only 29% White, on average.[31]

Chart 6: Insurance Rates for Majority African Americans vs. Low Percentage of African Americans by Zip Code



Source: High Price of Mandatory Auto Insurance in Predominantly African American Communities, Tom Feltner and Douglas Heller, (Nov. 2015)

A 2017 analysis of insurance premiums and payouts in California, Illinois, Texas, and Missouri by *ProPublica* and *Consumer Reports* also found disparate pricing for people of color. It found that insurers were charging premiums that were up to 30% higher in zip codes where most residents were people of color than in Whiter neighborhoods, even though the neighborhoods had similar accident costs for the insurers.[32]

DRIVERS OF COLOR FACE INCREASED LIKELIHOOD THAT FINES OR FEES WILL RESULT IN DRIVER'S LICENSE SUSPENSIONS

There is a host of other costs associated with driving. Given how important the ability to drive is in most of the country, the right to drive is often used as a stick to compel behavior or payments—even on obligations that are unrelated to driving. Across the country a wide array of issues unrelated to driving can result in driver's license suspension, including falling behind on child support, failure to appear in court, writing a bad check, even unpaid student loans. Even among car-related issues many suspensions have no relation to public safety but are instead financial—most states suspend licenses simply for falling behind on, or being unable to afford, fines and fees owed to the government.[33]

This aspect of cars and driving is not immune to differences based upon race and ethnicity. While few would be surprised to learn that rates of driver's license suspensions due to a failure to appear or pay a ticket are correlated with poverty, they may be troubled to learn that they are also correlated with race and ethnicity. There is growing evidence that communities of color, and especially African-American communities, are disproportionately targeted for enforcement of minor crimes and traffic infractions that generate fines and fees.[34] Further, because African American families have less wealth to draw upon than White families when hit with unexpected fines or fees, African American motorists are more likely to be unable to pay the amounts assessed.[35]

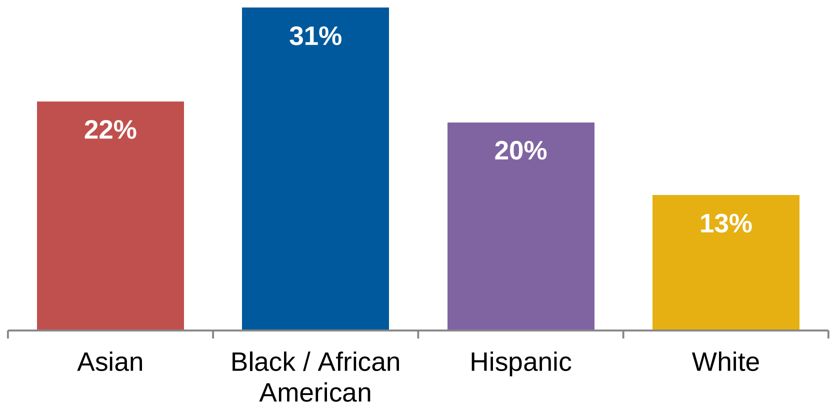
As a result, African American and Latino motorists face higher rates of driver's license suspension than White motorists. A study by the coalition Back on the Road California from 2017 looked in California at the rate of license suspensions due to failure to appear or failure to pay by zip code. It found that of the 75 zip codes studied that had an African American population above 20%, 95% of them had a license suspension rate above the average and almost all the areas with the highest suspension rates had a high proportion of African American residents.[36] Additional research in North Carolina has found that the relationship between rates of suspension and poverty varies by race.[37]

For many people, driving is necessary to maintain employment and health, and thus approximately 75% of people with suspended licenses continue to drive.[38] The disparate harm to communities of color thus deepens as African Americans and Latinos are disproportionately arrested for driving with a suspended license, and a debt may begin a cycle of arrests, further fines and fees, and deepening indebtedness and loss of liberty.[39] When Back on the Road California looked at data from Los Angeles between 2013 and 2015, it found that although African Americans make up only 9.2% of the population, they represent over 33% of the arrests for driving on a suspended license.[40] Similarly Latinos, while making up 48.4% of the population, make up 52.2% of the arrests. Meanwhile, the population is 26.8% White, but Whites make up only 14.8% of arrests.

THE IMPACT OF THESE PRACTICES ON THE COST OF CARS AND ACCESS TO A CAR

Given the extent of increased prices for cars, financing, add-ons, and insurance faced by people of color, it is not surprising that they not only pay more for cars than similarly situated White households, but that they are less likely to have access to a car. Of households that are at or below the poverty line, 13% of White households lack access to a car, compared to 31% of African American households and 20% of Hispanic households (see Chart 7).

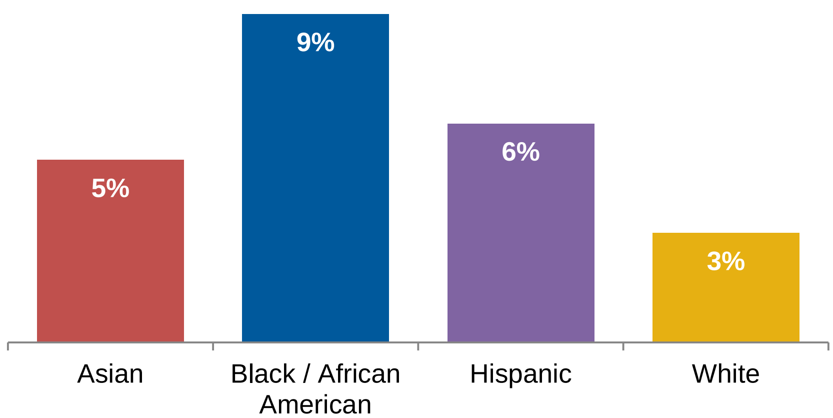
Chart 7: Households at or Below Poverty Without Access to a Vehicle, by Race or Ethnicity



Source: Integrated Public Use Microdata Series: Version 7.0., Steven Ruggles et al., (2016)
Note: Poverty thresholds are updated each year by the Census Bureau. The federal poverty level for a family of four in 2016: $24,300.

This disparity holds true for households above the poverty level. Only 3% of White households above the poverty level lack access to a car, compared to double as many Hispanic households and three times as many African American households (see Chart 8).

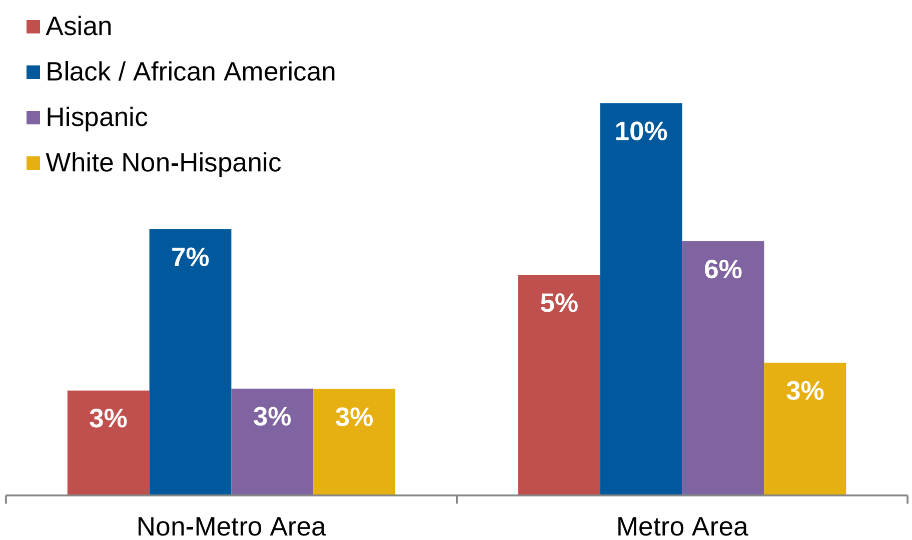
Chart 8: Households Above Poverty Without Access to a Vehicle, by Race or Ethnicity



Source: Integrated Public Use Microdata Series: Version 7.0., Steven Ruggles et al., (2016)
Note: Poverty thresholds are updated each year by the Census Bureau. The federal poverty level for a family of four in 2016: $24,300.

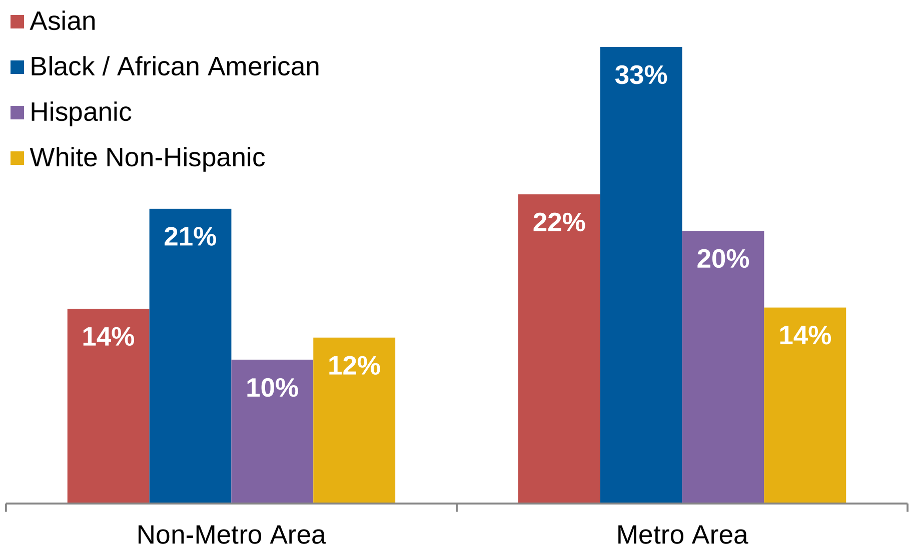
It might be argued this disparity could be explained by a higher concentration of African American households living in metro areas with greater access to public transportation. However, even when we break out metro and non-metro areas, the disparity persists both above and below the poverty guidelines.

Chart 9: Metro Area vs. Non-Metro Area Households Above Poverty Without Access to a Vehicle, by Race or Ethnicity



Source: Integrated Public Use Microdata Series: Version 7.0., Steven Ruggles et al., (2016)
Note: Poverty thresholds are updated each year by the Census Bureau. The federal poverty level for a family of four in 2016: $24,300.

Chart 10: Metro Area vs. Non-Metro Area Households At or Below Poverty Without Access to a Vehicle, by Race or Ethnicity



Source: Integrated Public Use Microdata Series: Version 7.0., Steven Ruggles et al., (2016)
Note: Poverty thresholds are updated each year by the Census Bureau. The federal poverty level for a family of four in 2016: $24,300.

THE NEED FOR PUBLIC AND PRIVATE ENFORCEMENT OF FAIR LENDING LAWS

Public and private enforcement of anti-discrimination statutes is critical if the pricing disparities described in this report are to be eradicated. In the past, strong enforcement actions by governmental and private parties appeared to make some progress. Class actions brought in the late 1990s and early 2000s resulted in settlements with the major auto financing entities. The settlements varied but included caps on interest rate markups, monetary relief to some class members, programs to provide more affordable credit to diverse consumers, interest rate reductions through refinancing, and other terms. The terms agreed to in the settlement of these cases, including the caps, have all now expired.

Starting in 2013, the CFPB and DOJ filed a series of enforcement actions against major car financing entities, based on data analysis by the CFPB that showed that minority car buyers were charged higher interest rate markups than White buyers without regard to credit scores. As a result of the first enforcement action, Ally Financial, Inc. and Ally Bank were ordered to pay $80 million in damages to harmed consumers and $18 million in penalties.[41] Other enforcement actions followed. American Honda Finance Corporation was ordered to pay $24 million in damages to harmed African American, Hispanic, and Asian and Pacific Islander car buyers and to change its pricing and compensation system to reduce the risk of discrimination.[42] Fifth Third Bank was required to pay $18 million to harmed African American and Hispanic borrowers and change its pricing and compensation system.[43] Toyota Motor Credit Corporation agreed, as part of its settlement, to pay up to $21.9 million in restitution to African American and Asian and Pacific Islander car buyers who were charged higher interest rates than White borrowers for their auto loans, without regard to their creditworthiness, and to change its pricing and compensation system to substantially reduce dealer discretion and financial incentives to mark up interest rates.[44]

Enforcement actions like these bring redress to consumers and give companies a strong incentive to examine and reform their financing practices to eliminate pricing disparities. They also make it easier for other finance entities to adopt pricing and compensation systems that reduce dealer discretion and the opportunity for discrimination and still be able to compete.

At the same time as it was bringing these enforcement actions, the CFPB issued a bulletin designed to assist the finance entities over which it had enforcement authority to limit their risk of violating the Equal Credit Opportunity Act (ECOA).[45] This was a proactive step to help financing companies move forward and avoid the practices that led to disparate pricing.

In recent times, however, the ability to guard against discrimination in financing cars has become more uncertain. All of the settlements reached in the class actions expired as of 2012, and similar private actions are unlikely given the widespread use of arbitration clauses and certain Supreme Court decisions that impede class actions. In addition, those class actions relied on state driver’s license information to determine the race or ethnicity of borrowers, but the number of states that record race or ethnicity data on driver's licenses has declined, and the ECOA does not require or allow data about race or ethnicity of car buyers to be collected.

These restraints on the ability of consumers to address discrimination through private litigation have made vigilant enforcement of fair lending laws by public entities all the more important.

However, in 2018, Congress passed a joint resolution disapproving the bulletin that the CFPB issued in 2013 to help financing entities avoid ECOA violations. There were also indications that the attitude of the CFPB towards enforcing fair lending laws was changing. CFPB Acting Director Mick Mulvaney was widely quoted as saying at a speaking engagement that the Bureau would be "reexamining the requirements" of the ECOA and that if the rate of violations were not frequent "maybe — it's evidence of a lack of criminal intent, and maybe there's a good place … for me to execute some prosecutorial discretion."[46]

As the changes at the CFPB in regard to the enforcement of fair lending laws became apparent, the market was quick to react. Large auto finance entities, such as BB&T and BMO Harris Bank, had implemented compensation systems that paid dealers a flat fee, rather than one that varied based on the terms of the credit, for assigning car financing contracts to them. Both reverted to policies that allowed for large variable markups. BB&T, which had implemented a flat fee system in 2015, announced in early 2018 that it was moving to allow maximum dealer interest rate markups of 2% on loans up to 75 months and allow the dealer to keep a maximum of $5,000 for marking up the consumer's interest rate.[47]

Meanwhile, despite Congress's disapproval of the CFPB's 2013 bulletin, the CFPB's authority and duty to enforce fair lending laws remains the same.[48] The FTC also has authority to enforce the ECOA against businesses that fall within its jurisdiction.[49]

CONCLUSION AND RECOMMENDATIONS

The lack of vehicle access has a strong impact on the economic mobility of a family. Addressing the disparities identified can help mitigate disparities in economic success going forward.

A major factor in fostering the disparities that these reports have documented is that the current market for cars is troublingly opaque and inconsistent. Even when they do not result in discrimination, these problems harm consumers in general. Car prices, financing costs, and prices for add-ons are all decided behind closed doors. This process favors dealerships, as they are repeat players with superior knowledge and are very good at extracting as much profit as possible from these deals. In particular, dealers that are upfront and consistent about the cost of cars, add-ons, and financing are at a competitive disadvantage compared with dealers that are not.

A more consistent and transparent marketplace would not only benefit consumers of color but all marketplace participants, including car dealers, finance entities, and insurers that want to compete fairly on price and quality on a level playing field.

A more consistent and transparent marketplace would not only benefit consumers of color but all marketplace participants, including car dealers, finance entities, and insurers that want to compete fairly on price and quality on a level playing field. To move toward this goal, federal and state policymakers should:

- **Ban dealer interest rate markups by statute or rulemaking.** Any compensation paid to the dealer as part of the financing process should not be based on the interest rate or other financing terms, and should be consistently applied to all transactions.
- **Amend the ECOA regulations (Regulation B)** to enable and require the collection and analysis of race and ethnicity data for auto financing transactions.

- **Prohibit discrimination in the pricing of goods and services.** The ECOA prohibits discrimination in the terms of credit but there is no similar protection for the pricing of goods and services.
- **Increase enforcement of the ECOA and state fair lending laws.**
- **Increase enforcement against general abuses in the sale and financing of cars**. Given the evidence of discrimination in the sale and finance of cars, it is likely that many other abuses, from yo-yo sales to failure to pay off existing liens, are more likely to affect people of color. Stepped-up enforcement against all abuses in the sale and finance of cars could help address disparities and level the playing field for everyone.
- **Take action on insurance rate setting.** After reports of the impact of race in insurance costs, the California Department of Insurance began requiring more justification from insurers for their measurement of risk in rate setting and announced that it would "more closely police the clustering algorithms, and their impact on poor and neighborhoods of color, as they review future rate filing applications."[50]
- **End suspension of driver's licenses for reasons beyond dangerous driving**.

ENDNOTES

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21. Service contracts, often called extended warranties or breakdown insurance, are written contracts to perform maintenance or repair of a car or other consumer product for a specified length of time or mileage traveled. Guaranteed Asset Protection (GAP) products ostensibly protect consumers who owe more on their car than the car is worth. GAP products are advertised as holding the consumer harmless for the difference between the balance on the debt and the amount paid under an automobile physical damage insurance policy in the event that the vehicle is totaled or stolen. Window Etching (Etch) is one of a number of "vehicle protection products" marketed by dealers as deterring theft or making it easier to identify and recover a stolen vehicle. The dealer etches an identification number, often the Vehicle Identification Number (VIN), on one or more of the car's windows. The etching supposedly deters theft and typically comes with the supposed benefit that, if the vehicle is stolen, the consumer will receive a discount—typically several thousand dollars—on a replacement vehicle.

22. *See* John W. Van Alst, Carolyn Carter, Marina Levy, and Yael Shavit, National Consumer Law Center, *Auto Add-Ons Add Up, How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing* (October 2017).

23. *Id.* at 21-22.

24. In two states, the markup was lower for Hispanics and one state and the District of Columbia had no Hispanic coded service contract buyers at all. In one state, the percentage markups for both Hispanics and non-Hispanics were almost identical.

25. In some states where the difference between Hispanics and non-Hispanics was not statistically significant the number of Hispanic car buyers was likely too small. The limitations of surname coding forced NCLC to compare Hispanic car buyers with all other car buyers, not just non-Hispanic Whites. The fact that just Hispanic consumers could be coded meant that the comparison group included people of color with a documented history of being charged higher prices. As a result, NCLC was comparing markups charged to Hispanics against those charged to all other consumers, including other consumers who have been historically discriminated against because of race, so the extent of discrimination shown by our analysis was probably understated. In the 34 states in which the difference in markup was not statistically significant on both an absolute basis and a percentage basis, the African American population exceeded the Hispanic population by an average of 13%. In the 14 states for which the differences in both percentage and absolute markup were statistically significant, the Hispanic population exceeded the African American population by an average of 80%.

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32. Julia Angwin, Jeff Larson, Lauren Kirchner, and Surya Mattu, "Car Insurance Companies Charge Higher Rates in Some Minority Neighborhoods," *Consumer Reports* and *ProPublic*a, Last updated: April 21, 2017.

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