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# **Add-ons and Loan Packing: How and why car dealers “pack” loans and the products they use to do it**

**Mark H. Steinbach, O'Toole, Rothwell, Nassau & Steinbach  
John W. Van Alst, The National Consumer Law Center  
Mary C. Lobdell, Consumer Protection Division – WA AG's Office**

**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.  
September 16, 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 - Mark H. Steinbach

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- A partner in the Washington, D.C. law firm of O'Toole, Rothwell, Nassau & Steinbach.
- He currently serves as President of the Maryland Consumer Rights Coalition and previously served on the Board of Directors of the National Association of Consumer Advocates.
- Mark's law practice focuses on representing consumers who have experienced problems with car dealers and auto finance companies.

## Presenter - Mary C. Lobdell

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- Section Chief of Tacoma Consumer Protection Office where her practice is focused on regulating advertising and sales practices in the auto industry.
- Mary has over 20 years experience with the Office of the Washington State Attorney General in tax, bankruptcy, collection and consumer law issues.
- Mary has been recognized by the Attorney General with an Excellence Award and the Governor with a Governor's Quality Improvement Award.

# Agenda: Dealer Markups

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Mark H. Steinbach - Preloaded add-ons, back-end products, how auto lenders and sales managers rip people off

Mary C. Lobdell – Litigation, payment packing, NAAG resolution

John W. Van Alst – Potential policy solutions

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# CAR DEALER ADD-ONS

Mark Steinbach

O'Toole, Rothwell, Nassau & Steinbach

September 16, 2010

# Loan Packing

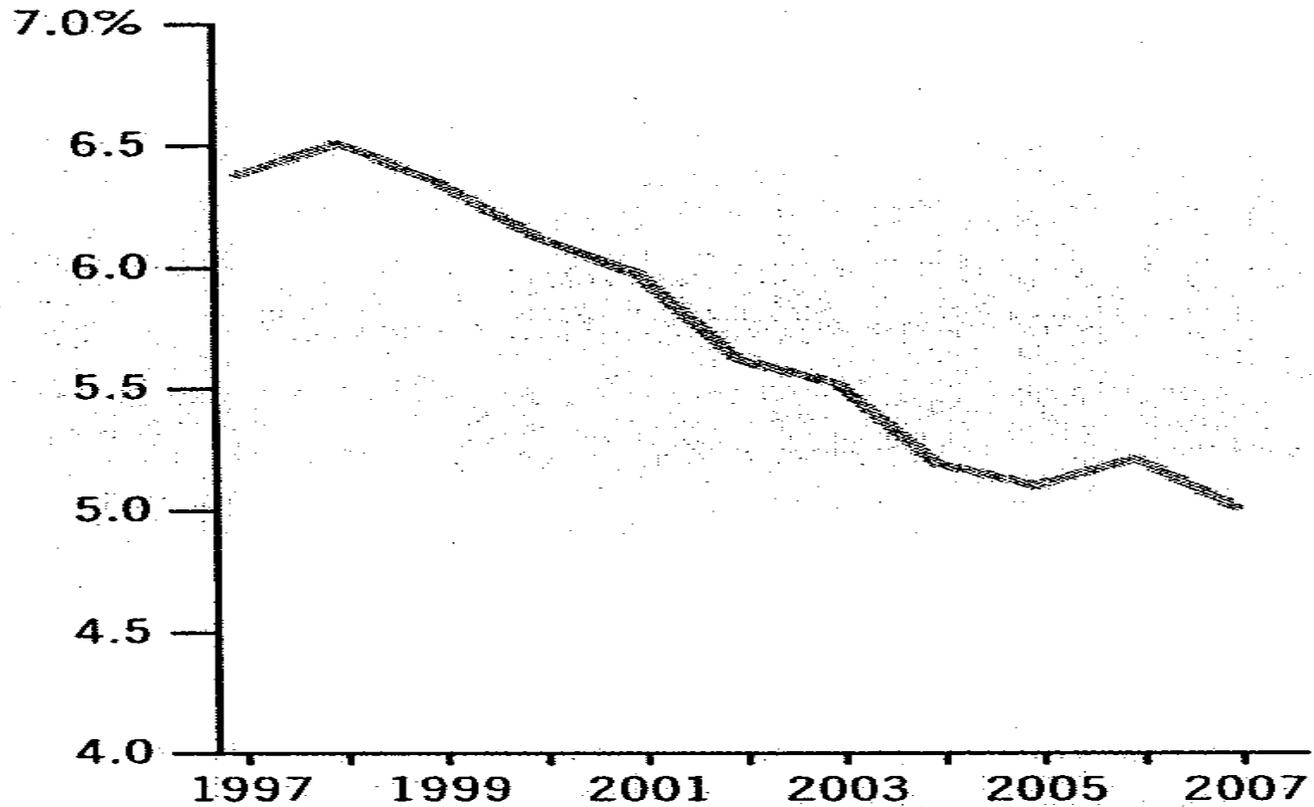
- Targets the “payment buyer,” someone primarily concerned with getting a monthly payment they can handle.
- The payment buyer doesn’t focus on a car’s cash price, or the cash price of other products that may be included in a deal. If a payment buyer thinks he or she can make the monthly loan payment, the deal papers will be signed.
- Many payment buyers never know they’ve purchased various car dealer add-ons like GAP insurance or paid \$895 for an Appearance Package consisting of pinstripes and cheap plastic door edge guards.

# CAR DEALER ADD-ONS

- Financing
- Extended Service Contracts
- GAP (Guaranteed Asset Protection)
- Credit life, accident or disability insurance
- Undercoating
- Rustproofing
- Paint sealant/clear coat protection
- Fabric protection
- Pinstripes
- Plastic door-edge guards
- Mud flaps
- Appearance Packages/Environment Packages/Tinted Windows
- Tire and wheel protection packages
- Prepaid maintenance packages
- Road Service/club membership
- Theft protection/car alarms/auto immobilizers
- Lojack
- “Etch”
- Various prep fees (extra profit)
- “Dealer Price Add-On” or “Adjusted Market Value” (extra profit)

# Gross as percentage of selling price

New vehicles retailed

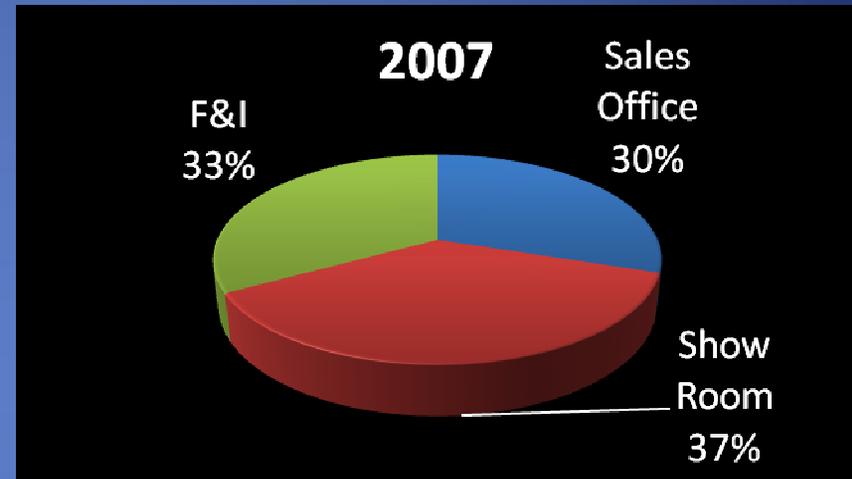
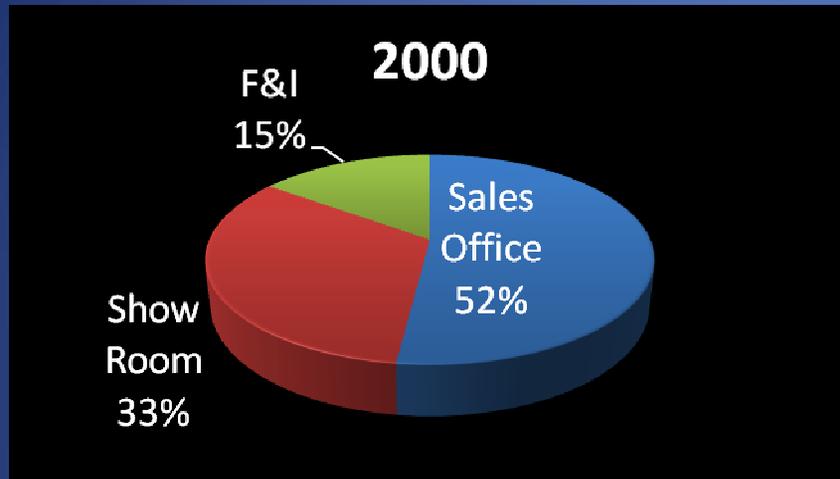


Source: NADA Industry Analysis Division

# “F&I Office”

- The “F&I Office” is where a manager “closes” the deal and has the customer sign the paperwork. “F&I” is an abbreviation for “Finance and Insurance.”
- It’s where the “magic” happens: where dealer add-ons are sold and where loans are packed.

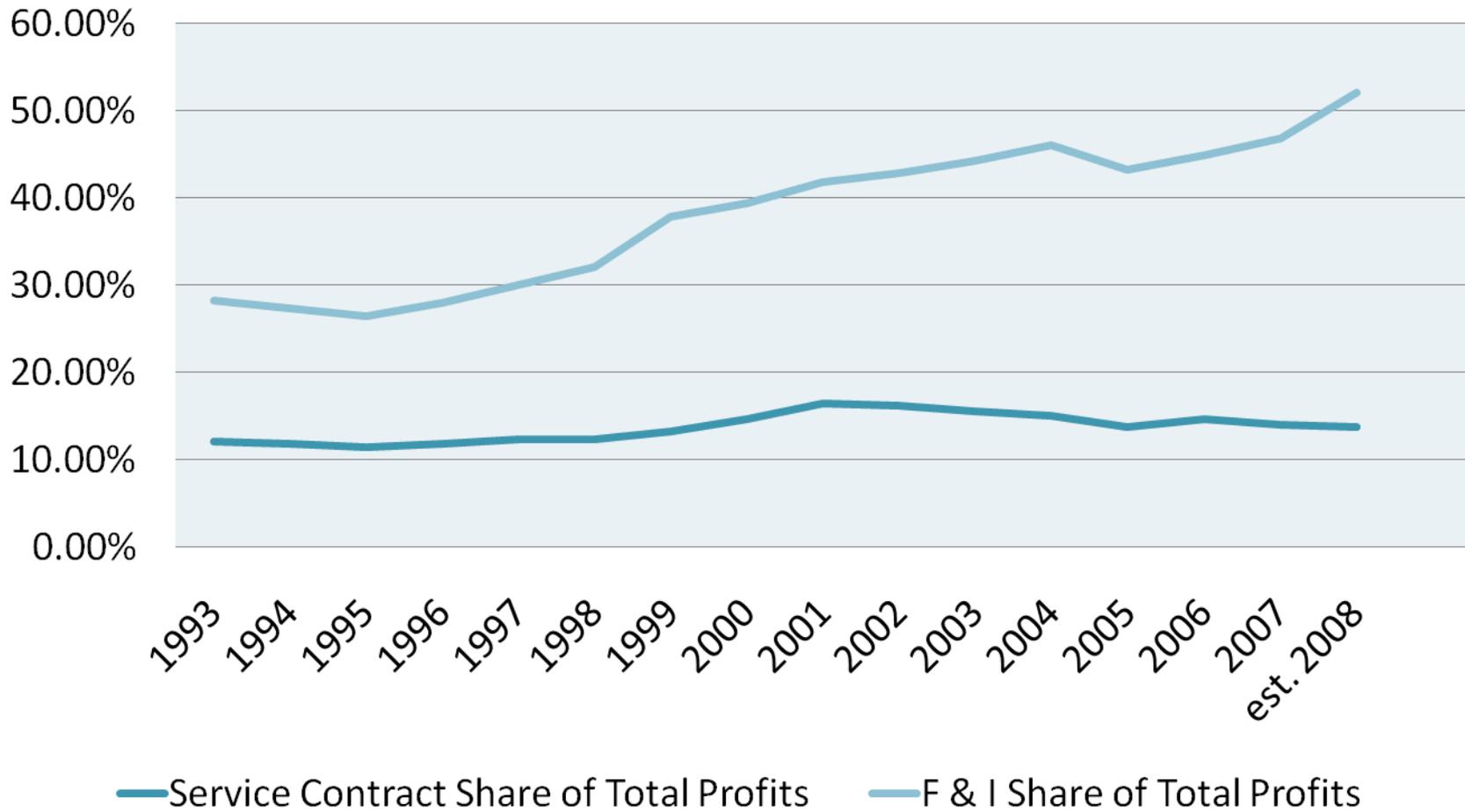
# Time Spent in Dealership



Sales Office	73.6 Minutes
F&I	21.4 Minutes
Show Room	47.2 Minutes
Total	142.2 Minutes

Sales Office	41.5 Minutes
F&I	45.4 Minutes
Show Room	52.0 Minutes
Total	138.9 Minutes

## SHARE OF DEALERSHIP PROFITS



# CAR DEALER ADD-ONS

- Financing
- Extended Service Contracts
- GAP (Guaranteed Asset Protection)
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# Dealers Profit from Arranging Financing

- Dealers who arrange financing for their customers often receive kickbacks from auto finance companies. Rather than pass along to customers the lowest interest rate for which they qualify, dealers mark-up the financing before they offer it to the customer. Dealers then split the added interest with the auto finance company.
- For more on this, go to [www.nclc.org](http://www.nclc.org) and check out NCLC's August 19, 2010 webinar entitled "Dealer Kickbacks: How Car Dealers are Paid to Put Us in More Expensive Loans and How We Can Stop It."

# Why car dealers like add-ons

They often carry huge profit margins:

- “Appearance Package” consisting of pinstripes and plastic door edge guards costs less than \$45 but lists for \$895, a mark-up of some 2,000%
- “Pre-paid Maintenance Packages” earn dealer up-front payment of \$895 for discounted oil changes and other services that customer may never use.
- “GAP” costs dealer \$295, dealer sells it for \$595
- Extended service contracts cost dealer \$595, dealer sells it for \$1,995
- “Dealer price add-on” or “Adjusted Market Value” charges – pure profit

# How do dealers get away with such huge mark-ups?

- The Automobile Information Disclosure Act passed in 1958 (15 U.S.C. § 1231) requires dealers to disclose the Manufacturer's Suggested Retail Price ("MSRP") of new vehicles, plus the MSRP of each accessory or item of optional equipment applied to the car by the manufacturer, plus freight charges. This gives buyers a reference point.
- There are no laws requiring dealers to disclose the MSRP for their add-ons. So they can list whatever price they wish, knowing buyers have no similar reference point.
- Dealers target the "payment buyer," the customer who cares only whether they can afford the monthly payment and who pays little attention to what goes into the price they pay. These customers are the most frequent victims of "payment packing."

# CAR DEALER ADD-ONS

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# The Two Kinds of Dealer Add-ons:

- Add-ons which are “pre-loaded”
- Add-ons which are sold at the “back-end” of the deal.

# Pre-Loaded Add-ons

- Installed on car before customer sets foot on the lot
- If customer buys the car, these products are included
- Customer cannot refuse to purchase pre-loaded add-ons – if customer wants the car, it comes with the add-ons
- Examples: Undercoating, Appearance Package, Dealer Price Add-on (i.e., extra profit)
- Pre-loaded add-ons typically carry the highest margin because dealers can make something sound valuable (“Appearance Package”) but not disclose what is included unless specifically asked.

# The fundamental abuse with pre-loaded add-ons

- Products which “sell themselves” or have actual value can be offered to buyers as options at the back-end, but products which have little or no value have to be forced on buyers by pre-loading them on cars before they are placed on the lot for sale.
- Pre-loaded add-ons deny buyers the right to turn down products which carry a high price and provide little or no value.

# Pre-loaded add-ons do not increase value of collateral

- Lenders are not willing to lend more money on a vehicle with pre-loads b/c pre-loads like rustproofing, mud flaps or paint sealant don't increase value of collateral
- Nothing in the Black Book or Blue Book gives an increased value if a car has pre-loaded add-ons
- When dealers ask customers for info on their trade-ins, they never ask if the trade has undercoating, rustproofing or any other common add-on b/c they don't affect the car's value

# How pre-loaded add-ons are sold

- The Manufacturers Suggested Retail Price sticker must be placed on every new car offered for sale. 15 U.S.C. § 1231
- Many dealers add their own sticker, which is made to look as “official” as possible by using an image of a gas tank similar to the one on the MSRP sticker.



# 2002 SENTRA SE-R

AUTOMATIC TRANSMISSION  
Color: AG: ATEC RED

## CONCENTRATED NISSAN PERFORMANCE FROM JAPAN

Standard Equipment Included at No Extra Charge

### MECHANICAL AND PERFORMANCE

2.5L DOHC 16S HP, 4-Cylinder Engine  
4-Speed Automatic Transmission with Overdrive  
Sport Tuned Suspension  
Multi-Link Rear Suspension  
Independent Strut Front Suspension  
Power-Assisted Vented Front & Rear Disc Brakes  
 rack and Pinion Power Steering  
Front & Rear Stabilizer Bars  
Front Strut Tower Brace  
13.2 Gallon Fuel Tank

### EXTERIOR STYLING

16 Inch Alloy Wheels and Tires  
Rear Spoiler  
Body-Colored Side Moldings & Sill Extensions  
Body-Colored Door Handles & Bumpers  
Flush-Mounted Multi-Parabola Halogen Headlights  
Body-Colored Dual Power Outside Mirrors  
Chrome Exhaust Tips  
Front Lights

### INTERIOR FEATURES

5-Passenger Seating Capacity  
Radial Sport Gauges with Red Meter Illumination  
Leather Wrapped Steering Wheel  
Spongy Seat Cloth  
6-Way Adjustable Driver's Seat  
Front Door Panels with Cloth Inserts & Pockets

### COMFORT AND CONVENIENCE

Remote Keyless Entry System  
Power Windows with One-Touch Auto Down  
Power Door Locks  
AM/FM/CD Audio System  
CFC-Free Air Conditioning  
Cruise Control  
Trunk Lamp  
Dual Visor Vanity Mirrors with Covers  
Dual 12-Volt DC Power Outlets  
Battery Saver Function  
Full Side and Rear Trunk Trim  
Tilt Steering Column

Variable Intermittent Windshield Wipers  
Front Ashtray and Coin Box  
Tachometer and Dual Trip Odometer  
Front and Rear Cup Holders  
In-Dash Storage Compartment  
Overhead Sunglass Storage w/ Map Lamps  
Rear Heat Ducts  
Blue-Green Tinted Glass

### SAFETY AND SECURITY

Dual Front Air Bags  
Front Seat Belts with Pretensioners & Load Limiters  
3-Point Seat Belts in all Seating Positions  
ALR/ELR Seat Belt System for all Passenger Seats  
Child Safety Rear Door Locks  
Child Seat Anchors (LATCH System)  
Energy Absorbing Steering Column and Bumpers  
Seat Belt Warning Chimes  
Front and Rear Crumple Zones  
Emergency Inside Trunk Release

Manufacturer's Suggested Retail Base Price 16,799.00  
Options Included by Manufacturer

IN-CABIN MICROFILTER 49.00

Destination Charges 540.00

Total\* 17,388.00

Compare this vehicle to others in the FREE FUEL ECONOMY GUIDE available at the dealer.

CITY MPG

23



HIGHWAY MPG

28

Actual mileage will vary with driving conditions, driving habits and vehicle condition. Fuel economy is EPA estimate. For more information on vehicle, visit [www.nissausa.com](http://www.nissausa.com) or call 1-800-NISSAN-6.

19 and 27 mpg in the city and highway.

23 and 33 mpg in the highway.

2002 NISSAN SENTRA SE-R  
151 CUBIC INCH ENGINE,  
4 CYLINDERS,  
FUEL INJECTION,  
FEEDBACK FUEL SYSTEM,  
4-SPEED AUTOMATIC TRANSMISSION,  
CATALYTIC CONVERTER,  
STATE EMISSION CONTROL SYSTEM.

Estimated Annual Fuel Cost:  
\$900

For Comparison Shopping,  
it is recommended to  
COMPARE

MPG based on 2002 model group  
ranging from 11 to 52 mpg city  
and 16 to 49 mpg hwy.

SEE [www.fueleconomy.gov](http://www.fueleconomy.gov)

Dealer: NATIONWIDE MOTOR SLS CORP  
2085 YORK ROAD  
TIMONIUM MD 21093

Transport Method: TRUCK  
Final Assembly Point: SMYRNA

This vehicle qualifies for Nissan's  
Security+Plus Vehicle Protection Plan  
The only service agreement backed by Nissan!  
Ask your dealer for details, or call  
1-800-NISSAN-6 for information.

\*Does not include dealer-installed options & accessories, local taxes or license fees, does not include manufacturer's recommended warranty service. This total has been applied pursuant to NADA's list. Do not return prior to delivery to the ultimate purchaser.

2002 SENTRA SE-R  
VIN: 3N1AB51D32L707938



42412-707938 AG2 R288

IP:

11027 36 R288 A DAS R028

150217 1102 H OP 021902

**NATIONWIDE MOTOR SALES CORP.**

Stock No: \_\_\_\_\_

Make: \_\_\_\_\_

Model: 2002 SENTRA SE-R

Vehicle ID #: \_\_\_\_\_

**ATTENTION PROSPECTIVE BUYERS**

This vehicle may have negotiable additional dealer installed items and/or negotiable additional Dealer Mark up. The selling price will differ from the MRSP. Please see a salesperson or manager on duty for details.

DEALER PROCESSING CHARGE  
(Not Required By Law): \$25.00

TOTAL DEALER INSTALLED ITEMS,  
CHARGES, AND ADDITIONAL DEALER  
MARKUP: \_\_\_\_\_ **NEGOTIABLE**

**TAX AND GOVERNMENTAL  
FEES NOT INCLUDED**

STOCK NO. 2002

**NATIONWIDE**

\* V.I.N.:

\* MODEL: 2002 SENTRA SE-R

AMOUNT FORWARDED  
MANUFACTURER'S LABEL \$ 17,388.00

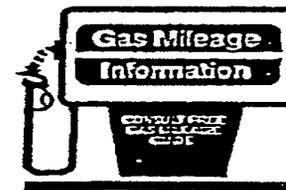
**DEALER INSTALLED OPTIONS**

DEALER PRICE AD ON	\$1000.00
APPEARANCE PKG. <input checked="" type="checkbox"/>	\$695.00
AUTO IMMOBILIZER <input checked="" type="checkbox"/>	\$999.00
DEALER PROCESSING PKG. (NOT REQUIRED BY LAW)	\$ 25.00

OPTIONS SUBTOTAL \$ 2,919.00

**TOTAL\* > \$ 20,307.00**

**Consult FREE GAS MILEAGE GUIDE.**



Actual Mileage will vary with options, driving conditions, driving habits and vehicle's condition. For complete MPG ratings, please consult FREE GAS MILEAGE GUIDE available at the dealer.

\* Our Price for this vehicle as equipped. Does not include state and local taxes, license and title fees, doc fee, or finance charges, if any. This label has been affixed to this vehicle by this dealer. It has been

# Example of pre-load abuse

- A car dealer added the following charges on a dealer sticker for every new vehicle placed on its lot for sale:

- Dealer Price Ad On \$1,000

- Appearance Pkg. 895

- Auto Immobilizer 995

- This enabled dealer to start negotiations from a point nearly \$3,000 above the MSRP, while its costs were less than \$200.

STOCK NO. 30180  
MAKE HYUNDAI  
MODEL SONTAZ GLE  
VEHICLE ID# \_\_\_\_\_

Total Vehicle Price \$ 16,189  
(Includes Dealer Preparation and Destination Charge)

**ADDITIONAL DEALER INSTALLED ITEMS AND CHARGES**

DEALER PRICE ADD ON	\$ <u>1995</u>
APPEARANCE PACKAGE	\$ <u>125</u>
<u>uphol</u>	<u>650</u>
<u>spoiler</u>	<u>850</u>
<u>cross bar</u>	<u>350</u>
<u>Wind Deflector</u>	<u>250</u>
_____	_____
_____	_____
_____	_____

DEALER PROCESSING CHARGE \$ 25  
(NOT REQUIRED BY LAW)

TOTAL DEALER INSTALLED ITEMS AND CHARGES \$ 3745

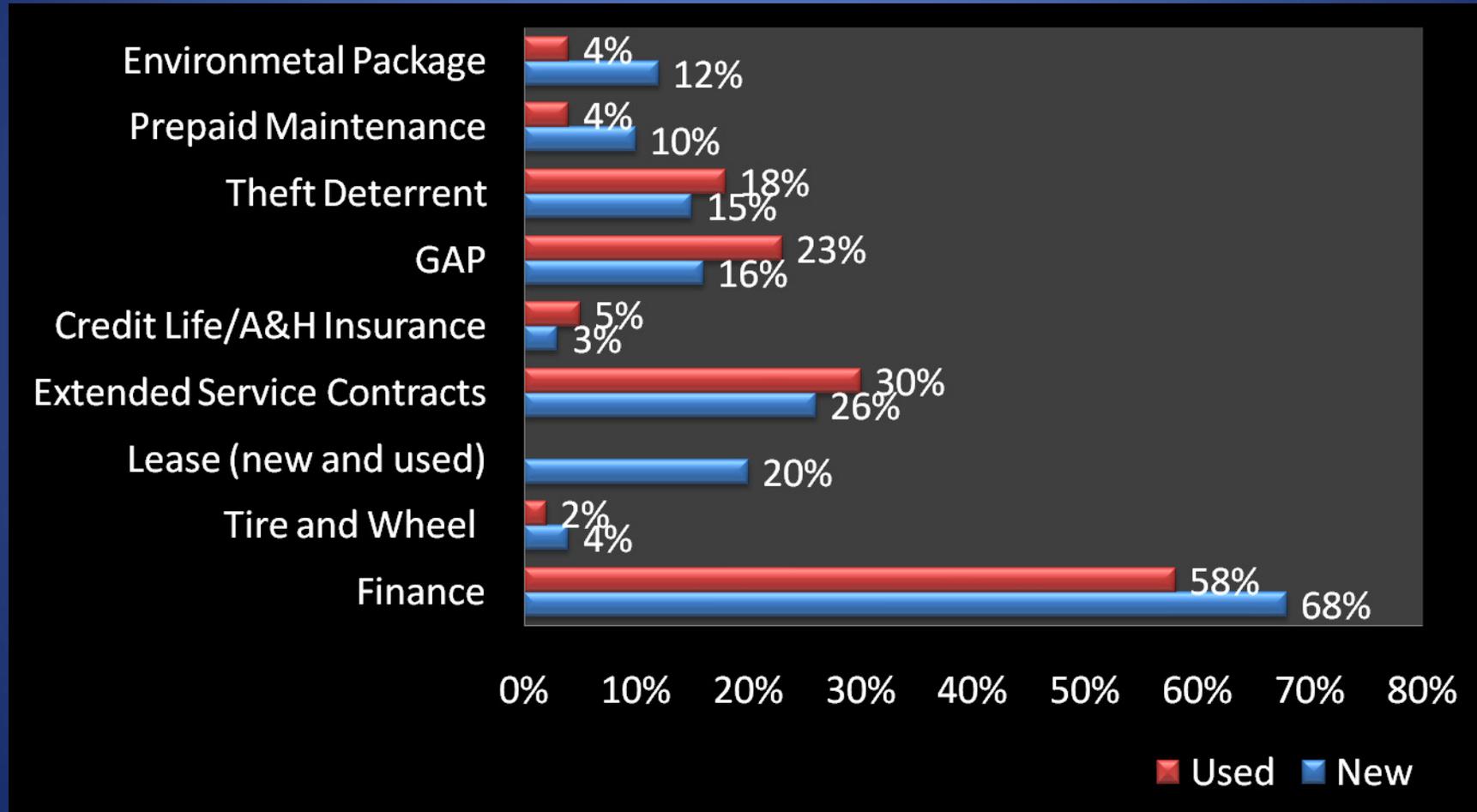
TOTAL DEALER SELLING PRICE \$ 19,934

TAX AND GOVERNMENTAL FEES NOT INCLUDED

# Back-end Products

- Almost any product (including items sometimes pre-loaded on cars) can be offered at the back-end, in the F&I Department
- Usually, customer has already agreed on cash price of car
- Purchase of these products ostensibly is optional
- If the customer declines the product, it is not part of the deal
- Examples: Extended service contracts, GAP, car alarm, paint protection
- Back-end products can be facilitated by payment packing

# F&I Customer Acceptance Rates 2007



Survey by Superior Integrated Solutions

[www.fi-magazine.com/statistics](http://www.fi-magazine.com/statistics)

# The “Big Three” Back-end Products

- Extended Service Contract
- GAP
- Insurance (credit life, accident and disability)

# How the “Big Three” are different than most other add-ons

- Most lenders agree in advance to finance the cost of the Big Three, within limits, and require dealers to itemize those costs on Retail Installment Contracts
- Many states specifically regulate their sale
- Many states require that charges for these items be itemized on Retail Installment Contracts
- Some states require that the Retail Installment Contract disclose their purchase is voluntary
- By regulating their sale, lenders and states confer a certain legitimacy on the Big Three that pre-loaded add-ons do not have

# The key to understanding dealer add-ons: financing

- Lender rate sheets containing program terms outline how much lenders will pre-approve for selected or preferred back-end products.

# Highlights of Hypothetical Rate Sheet

## 1st TIER

750+ credit score

665 or greater credit  
score for co-buyer

140% max advance

Max amt financed  
\$60,000

Buy rate 5.5%

## 2ND TIER

725-749 score

665 or greater  
for co-buyer

130% max advance

Max amt financed  
\$60,000

Buy rate 6.25%

## 3RD TIER

696-724 score

665 or greater  
for co-buyer

120% max advance

Max amt financed  
\$58,000

Buy rate 7.0%

## 4TH TIER

677-695 score

665 or greater  
for co-buyer

110% max advance

Max amt financed  
\$58,000

Buy rate 8%

### Advance

Advance is plus, plus, plus (title, license, doc fee, ext. warranty, GAP, insurance not included).  
Measured by invoice on new vehicles, NADA trade-in on used vehicles.

Back-end Guidelines: Max allowable back-end for all products is 25% of cash sale price (excludes warranty); back-end additions include sales tax, license, registration and doc fees + soft adds

### Mechanical Breakdown Warranty Guidelines

2WD cars, trucks: \$2,000 or 10% of cash sales price, whichever is greater

4WD cars, trucks: \$2,500 or 10% of cash sales price, whichever is greater

GAP: Max advance is \$800.

### Flat fees for contract:

1% of amount financed (\$450 max), charged back if customer doesn't make 1st payment

### Ineligible collateral, exclusions:

Kias, Suzukis, Isuzus more than 3 years old, all Daewoo, all Chinese products, salvaged vehicles, branded vehicles, lemon law buy-backs, van conversions, vehicles over 100K miles, gray market vehicles

Participation/Chargeback Guidelines: 75/25 split. Chargeback on unearned amount if voluntarily pre-paid within 90 days from purchase, or in event of repo, bankruptcy or charge-off, if buyer has made fewer than 3 payments.



Building relationships. Creating solutions.  
That's the AmeriCredit difference.

**New & Used Non-Recourse Auto Finance Program -**

**Oklahoma**

Effective January 17, 2008

Tier	I	II	III	IV	V	VI	VII	VIII
CB Score	720+	680-719	650-679	620-649	580-619	550-579	525-549	<525
Buy Rates from*	8.10%	8.10%	9.35%	10.10%	12.10%	12.85%	13.85%	15.85%
	to	to	to	to	to	to	to	to
	15.10%	15.45%	15.65%	16.90%	19.35%	20.35%	21.65%	22.35%
Max Participation**	2%	2%	2%	2%	2%	2%	2%	2%

**All Participation Paid at 70/30 Split with No Chargebacks!**

\* Contract APRs cannot exceed State usury limitations by model year

\*\* The dealer will receive participation of up to 2% based on the applicant's credit quality

**Program Guidelines**

<b>Term Eligibility</b>	<p><u>61-72 month term:</u> Mileage cannot exceed 60,000 Min. Wholesale Value or Invoice: \$10,000</p>	<p><u>49-60 month term:</u> Mileage cannot exceed 70,000</p>	<p><u>48 month term or less:</u> Mileage cannot exceed 80,000 Additional \$295 fee for 12 mth term extension to 60 months</p>
<b>Dealer Advance</b>	<p>Invoice or Wholesale + TT&amp;L + L/AH + Service Contract + GAP + approved Documentation fees Standard advance is &lt; 135% - Additional rate will be added for higher advances. Additional \$100 Acquisition fee on Suzuki, Mitsubishi, Oldsmobile, and Chevy Aveo</p>		
<b>Acquisition Fees</b>	<p>A non-refundable acquisition fee may be assessed for each loan based upon the applicant's credit quality</p>		
<b>Dealer Buydown</b>	<p>Any rate can be "bought down" by substituting fee equal to 2% of amount financed for every 1% of required rate</p>		
<b>Assignment Fee</b>	<p>A \$75 non-refundable fee will be assessed for each contract funded</p>		
<b>Eligible Vehicles</b>	<p>7 years old or newer with less than or equal to 80,000 miles Vehicle must be in appropriate value guide to be considered</p>		
<b>Ineligible Vehicles</b>	<p>Commercial vehicles; Exotics; Cross Lander; "Gray Market" vehicles (odometer fraud, salvage titles, repaired flood damage and VIN cloning)</p>		
<b>Joint Applicants</b>	<p>Average bureau score will determine pricing. Bureau score based on AmeriCredit bureau score.</p>		
<b>Other</b>	<p>Simple interest contracts only Proof of Insurance (No Binders/30-Day Policies) Program exceptions will be considered on a deal-by-deal basis</p>		

NAME  
STOCK #  
MAKE

CHEVY

DATE: 12/8/2005  
YEAR 2005  
MODEL CLASSIC

[Redacted]

Cost \$ 8,893.00 Hold Back

2 Fee

ADDITIONAL EQUIP: \$ 99.00 PROCESS FEE  
\$ 35.00 gas  
\$ 1,860.00 BANK FEE  
~~\$ 500.00 REBATE~~  
\$ - TRADE OVER ALLOW  
DEALER CASH

TOTAL VEHICLE COST: \$ 11,387.00

SALE PRICE \$ 14,488.29

TRADE INFO

NT

DEALER PROFIT \$ 3,101.29  
Profit less Hold Back \$ 3,101.29  
TAX \$ 724.41  
TAGS \$ 196.00  
CASH DOWN \$ 1,000.00  
REBATE \$ 500.00  
TRADE \$ -

WHO:  
PAYOFF:  
ACV \$  
SHOWED 0

HOLD BACK:

FINANCE DEPARTMENT:

FINANCE SOURCE:

RESERVE \$ -  
WARRANTY \$ -  
GAP \$ -  
CL/AH \$ -  
TOTAL F&I \$ -

**TOTAL DEALER PROFIT: \$ 3,101.29**

[Redacted]

SALESMAN: I

COMMISSION \$ 650.32 \$ AGE RES TTL COMM  
\$ 650.32

# BANK FEES FUEL THE NEED TO SELL ADD-ONS

- Especially for customers with bad credit scores, auto lenders will demand “bank fees” to compensate them for higher risk
- Sale of profitable add-ons can make it possible to cover the bank fees
- Bank fees are not disclosed to the buyer, distorting the fair and efficient operation of the marketplace

# HOW A SALES MANAGER STRUCTURES A DEAL FOR MAXIMUM PROFIT

- Works backward from desired monthly payment
- Uses software to identify the most profitable deal or reviews rate sheets from different lenders
- Has to work within limits imposed by customer's income and downpayment
- Often has to "rehash" the deal if the lender balks at how hard the dealer is pushing

# How to Challenge Abusive Add-ons

First, look to whether they are properly disclosed under your state law

- Some states require that Retail Installment Contracts and/or Buyer Orders contain an itemized disclosure of charges not included in the MSRP or base price of the vehicle
- Are the charges for the add-ons hidden in the cash price of the car, i.e., did dealer bump up the sales price by the cost of the add-ons?

# Do add-ons kick price in excess of MSRP?

- Where cash price of car exceeds MSRP, dealer may have duty to disclose why car was sold in excess of its advertised price.
- Bill Crouch Foreign, Inc., 96 F.T.C. 111 (1980) Consent Order (violation of FTC Act when dealer failed to disclose clearly and conspicuously that total purchase price exceeded MSRP)

## Was add-on a bona fide product offered in good faith?

- The UCC requires that all parties act “in good faith.” Per NCLC Consumer Warranty Law Manual, a court is authorized “to police the transaction for unreasonableness and to reach a decision based as much on equities as on the written agreement.”

# Was the add-on worthless?

- Some old FTC cases suggest a retailer can be prevented from making reference to a deceptive price. By setting a price of \$895 for its Appearance Package, the dealer is representing the customer is getting a substantial product of real value (not pinstripes and cheap plastic door edge guards).

## Use the add-ons' high price

- “. . . the price at which a merchant closes a contract is an excellent index of the nature and scope of his obligations . . .” Comment 7 to UCC §2-314.

# Unconscionability

- While always a tough argument to make, you can show the dealer forced the product on the buyer by pre-loading it, because it knew that given a choice, no customer in her right mind would pay \$895 for pinstripes and cheap plastic door edge guards.

## Where add-on description is ambiguous or misleading

- Often, only the 2 or 3 words on the dealer sticker inform the buyer of what is being sold. Those few words may be incomplete, misleading or ambiguous and subject to UDAP challenge.

# Look for double-dipping

- Some dealers like to charge fees for work they have already been paid for by the manufacturer, such as getting the car ready for delivery to the customer (“Glaze” packages and other prep fees)

## False implication the add-on was provided by the manufacturer

- Dealers sometimes convey the false impression an add-on was provided by the manufacturer when, in fact, it was provided by the dealer. Potential UDAP violation, often intended to make buyer think dealer had no control over price.

## Did dealer fail to provide the add-on?

- Dealers have been known to charge for, but not provide, add-ons. Potential UDAP violation, of course. Can also be TILA violation. *Gibson v. LTD, Inc.*, 434 F.3d 275 (4<sup>th</sup> Cir. 2006).

# Working Cars for Working Families

*Add-ons and Loan Packing: How and why car dealers “pack”  
loans and the products they use to do it*

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Mary C. Lobdell  
Assistant Attorney General  
Tacoma Section Chief  
Consumer Protection Division

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The Honorable Peter D. Jarvis

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

v.

RESOURCE DEALER GROUP, INC., an  
Illinois Corporation; ASSOCIATES DEALER  
GROUP OF BELLEVUE, WASHINGTON,  
INC., a Washington Corporation; and DOES 1  
THROUGH 57,

Defendants,

RESOURCE DEALER GROUP, INC.; and  
ASSOCIATES DEALER GROUP OF  
BELLEVUE, WASHINGTON, INC.,

Counterclaimants,

v.

STATE OF WASHINGTON,

Counterclaim Defendant,

-and-

CHRISTINE O. GREGOIRE, individually  
and in her official capacity as the Attorney  
General of the State of Washington.

Additional Party Defendant.

NO. 97-2-15754-4 SEA

CONSENT DECREE

(CLERK'S ACTION REQUIRED)

CONSENT DECREE  
Espcscases\995079\Consent Decree

ATTORNEY GENERAL OF WASHINGTON  
Consumer Protection Division  
999 Fourth Avenue, Suite 2000  
Seattle, WA 98164-1012  
(206) 462-7744

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**I. JUDGMENT SUMMARY**

1.1 **Judgment Creditor:** State of Washington

1.2. **Judgment Debtor:** Resource Dealer Group, Inc.; and  
Associates Dealer Group of Bellevue, Washington, Inc.,

1.3. **Principal Judgment Amount:**

a. *Cy Pres* and Complaint Procedure: Complaint and arbitration program; and \$400,000.00 in *cy pres* payment (\$200,000.00 to Legal Aid for Washington (The Law Fund); \$100,000.00 to National Consumer Law Center, Inc., and \$100,000.00 to an interest bearing *cy pres* account with the Washington State Attorney General, Consumer Protection Division for consumer education purposes.)

b. **Civil Penalties:** \$150,000.00

1.4. **Costs and Attorney Fees:** \$350,000.00

1.5. **Total Judgment:** \$900,000.00

1.6. **Post Judgment Interest Rate:** 12% per annum

1.7. **Attorney Fees:** \$100,000.00

5           4.3    Injunctions. Defendants and all their successors, assigns, transferees, officers,  
6 agents, servants, employees, representatives and all other persons or entities in active concert or  
7 participation with Defendants are hereby permanently enjoined and restrained from directly or  
8 indirectly engaging in the following acts or practices in the state of Washington and from failing  
9 to comply with the provisions of the Consumer Protection Act, chapter 19.86 RCW, and chapter  
10 48.30 RCW, including but not limited to:

11                   a.     Teaching, training, counseling, tracking, or aiding or abetting others, in  
12                   any manner, to misrepresent, directly or by implication, the amount of a monthly  
13                   automobile payment;

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b. Teaching, training, counseling, or aiding or abetting others, in any manner, to misrepresent, directly or by implication, the voluntary and optional nature of purchasing Defendants' products;

c. Teaching, training, counseling, or aiding or abetting others, in any manner to misrepresent, directly or by implication, the actual price of credit insurance, or service contracts charged to a consumer;

d. Teaching, training, counseling, or aiding and abetting others, in any manner, to utilize any technique where a monthly payment is deceptively adjusted higher than that previously quoted and/or agreed to by a prospective purchaser.

# NAAAG Resolution on Packing

## NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted  
Spring Meeting  
March 23-26, 1999  
Washington D.C.

### RESOLUTION

#### CONSUMER PROTECTION REGARDING “PACKING:” DURING CAR SALE/LEASE NEGOTIATIONS .

**WHEREAS**, “packing” is the deceptive practice of misrepresenting monthly payments to consumers during auto sales and lease negotiations in order to facilitate the sale of automobile related products and services; and

**WHEREAS**, consumers are entitled to be dealt with in a fair and non-deceptive manner during negotiations to buy or lease a car; including their right to receive timely, accurate and non-misleading information about the cost of the vehicle and all related products and services; and

**WHEREAS**, auto sales complaints to our respective consumer protection units continue to rank high among concerns expressed by consumers; and

# NAAAG Resolution on Packing

**WHEREAS**, some automobile dealers use “packed” payment schemes and poor disclosure to trick consumers into believing that services such as credit insurance, automobile service contracts, chemical protection, and security devices are included or provided “free” in the purchase or lease contract or are discounted or that such products and services are not optional when financing a vehicle; and

**WHEREAS**, the misrepresentation of monthly payments violates the “good faith” or fiduciary duty of those who engage in the business of selling insurance; and

**WHEREAS**, states continue to pursue vigorous law enforcement, business training, and consumer education to deter deceptive practices in the automobile industry:

**NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:**

1. Supports voluntary efforts by the auto sale\lease, credit insurance, and service contract industries to eradicate the practice of misrepresenting monthly payments and related deceptive practices in order to facilitate the sale of automobile related goods and services.

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# NAAAG Resolution on Packing

2. Undertakes to educate consumers in recognizing the misrepresentation of monthly payments during the negotiation process.
3. Hereby encourages the Federal Reserve Board and the Federal Trade Commission (FTC) to investigate and review auto industry sales practices employed during negotiations for the purchase or lease of a vehicle and the quoting of monthly payments with respect to compliance with Truth in Lending Act, 15 USC § 1601 and the FTC Act, 15 USC § 41 *et seq.*
4. Authorizes its Executive Director and General Counsel to transmit these views to Members of Congress, The Federal Reserve Board, the Federal Trade Commission, other federal and state enforcement agencies, industry groups, and other interested parties.

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# Add-ons and Loan Packing

## ■ Questions

# Working Cars for Working Families

*Add-ons and Loan Packing: How and why car dealers “pack”  
loans and the products they use to do it*

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John W. Van Alst- National Consumer Law Center

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# Dealer Add-ons- Back end/ Loan Packing

The Problem- A wide range of overpriced that the dealer uses to “pack” the loan

- Rust Proofing
- Window Etch
- Service Contracts
- Key Chains and Pens
- GAP Insurance

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# Dealer Add-ons- Back end/ Loan Packing

## The Problem-

The dealer presents the consumer with a monthly payment during the purchase process without disclosing the loan term or itemizing what is being purchased

In the F&I department loan is “packed” without consumer’s knowledge or consent.

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# Dealer Add-ons- Back end/ Loan Packing

## The Solution

- Require Add-ons to be negotiated after agreement is reached as to the purchase price of the car
- Posted pricing of all add-ons
- Disclosure of two different options-
  - Price of car alone
  - Price of car with add-ons
- For 3<sup>rd</sup> party add-ons, amount being retained by dealer should be posted
- Regulation of relationship between dealer and add-on supplier
- Right to Cancel- Rebate Calculations

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# Add-ons and Loan Packing

## ■ Questions