

**Borlay v. Primus Automotive Financial Services, Inc. and Ford
Motor Credit Company,**

**United States District Court for the Middle District of Tennessee,
at Nashville (Civil Action No. CV-3-02-0382)**

ANSWERS TO FREQUENTLY ASKED QUESTIONS

1. What is Markup?

When the American 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 by 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 American 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 by a corporate representative in writing.

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), Chrysler Credit (Daimler-Chrysler Services) and Ford Credit (Ford Motor Credit Company). Typically, these companies are wholly owned subsidiaries of automobile manufacturers.

The automobile financing business previously conducted by Primus Automotive Financial Service, Inc. and Primus Financial Services, a division of Ford Motor Credit Company, the original defendants in the *Borlay* case, has been absorbed into Ford Motor Credit Company, a Delaware corporation, and is no longer being operated as a separate corporation or separate division.

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 credit worthiness. 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 credit worthiness 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 cases brought by plaintiffs' counsel against captive and non-captive auto finance companies other than Ford Motor Credit Company, Federal District Courts have ordered data productions that have allowed an analysis of deal files which shows that as a result of markup African-Americans are paying more for the same credit. Plaintiffs contend that African-Americans are more often victimized by the markup system, causing African-American customers to pay more for the same credit. Plaintiffs contend that this effect of the markup system violates ECOA.

10. What Is Borlay v. Primus Automotive Financial Services, Inc. and Ford Motor Credit Company about?

The plaintiffs in this case contended that African-Americans who financed automobiles through Ford Motor Credit Company doing business as Primus Automotive Financial Services, Primus Financial Services, Mazda American Credit, Land Rover Capital Group, Jaguar Credit, Subaru American Credit, American Suzuki Automotive Credit or Kia Financial Services paid higher prices for credit because they received higher markups. The plaintiffs contended that as a result of markup pricing, Ford Motor Credit Company discriminated against African-Americans as a class.

11. Has the Case of Borlay v. Primus Automotive Financial Services, Inc. and Ford Motor Credit Company Been Settled?

Yes. A Settlement Agreement was preliminarily approved by the Federal District Court of the Middle District of Tennessee on November 13, 2006. On February 26, 2007, the Court, will consider the final approval of the proposed settlement agreement. Copies of all of the relevant settlement documents and disclosures can be found at www.ecoa-settlement.com

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

Ford Motor Credit Company has agreed to do the following:

- a. Limit the amount of markup on certain automobile loans for the next three years with a cap of 2.50% on loans for terms of sixty (60) months or less; 2.00% on loans for terms of greater than sixty (60) months up to and including seventy two (72) months; and 1.50% on loans for terms of seventy three (73) months or more;
- b. Disclose to consumers that loan rates are negotiable and can be negotiated with the dealer;
- c. Fund consumer education and assistance programs which will help consumers with respect to credit financing; and
- d. Offer 200,000 pre-approved, no mark up offers of credit to African-Americans over the next three years.

13. What is a Pre-Approved No Markup Offer of Credit?

Ford Motor Credit Company will examine the credit history of current and former customers who are African-American and send to them 200,000 offers of no markup loans for the purchase of new or used vehicles at any dealership with which Ford Motor Credit Company does business over the three year period following final approval of the Settlement. A priority will be given to members of the Class certified in the case, defined as all African American consumers who entered auto finance contracts with Ford Motor Credit Company doing business as Primus Automotive Financial Services, Primus Financial Services, Mazda American Credit, Land Rover Capital Group, Jaguar Credit, Subaru American Credit, American Suzuki Automotive Credit or Kia Financial Services since January 1, 1990. African-Americans receiving these offers will be approved for an interest rate based solely on their credit history. This interest rate cannot be marked up by the dealer. The offers may also indicate whether the consumer qualifies for any Special Rate Programs. The certificate will be good for at least 30 days.

14. What is the Value of the Pre-Approved No Markup Offer of Credit?

First, the consumer is pre-approved for a loan at a certain interest rate and will not be required to further qualify for credit at the dealership. Second, the dealer is not allowed to markup the interest rate.

15. How Can I Receive a Pre-Approved No Markup Offer of Credit?

If you are a current or former African-American customer of Ford Motor Credit Company doing business as Primus Automotive Financial Services, Primus Financial Services, Mazda American Credit, Land Rover Capital Group, Jaguar Credit, Subaru American Credit, American Suzuki Automotive Credit or Kia Financial Services at any time since January 1, 1990, you may receive a Pre-Approved No Markup Offer of Credit without doing anything. Ford Motor Credit Company will be examining its customer records for

African-Americans who are eligible for future financing and mailing Pre-Approved No Markup Offers directly to them.

16. What if I Have Individual Claims for Damages Against Ford Motor Credit Company?

Individual claims for monetary relief against Ford Motor Credit Company were excluded from the case and the Settlement and were not released. Therefore, you may accept the benefits of the pre-approved no markup offers of credit without waiving any of your personal claims or releasing Ford Motor Credit Company from any potential liability for monetary relief. In order to recover such damages, however, you will have to bring your own case against Ford Motor Credit Company.

17. Who are the Class Representatives and Why are They Receiving Payments?

The Settlement provides that certain former and current class representatives specifically named in the suit will receive payments from Ford Motor Credit Company. These payments are being made to compensate these individuals for the time and effort they expended in connection with the litigation and are not available to other members of the class. In return for these payments, the former and current class representatives, unlike the other class members, are releasing all of their potential claims against Ford Motor Credit Company, including claims for monetary relief.