

Baltimore V. Toyota Motor Credit Corporation

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), FMCC (Ford Motor Credit Company) and TMCC (Toyota Motor Credit Corporation). Typically, these companies are wholly owned subsidiaries of automobile manufacturers. The business of captives is to provide financing for customers through dealerships.

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 Toyota Motor Credit Corporation, 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 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 *Baltimore v. Toyota Motor Credit Corporation* about?

The plaintiffs in this case contended that African-Americans and Hispanics who financed automobiles through Toyota Motor Credit Corporation paid higher prices for credit because they received higher markups. The plaintiffs contended that as a result of markup pricing, Toyota Motor Credit Corporation discriminated against African-Americans and Hispanics as a class and has violated the ECOA. A separate law suit, entitled *Finance Charge Markup Cases*, has been brought against Toyota Motor Credit Corporation in California state court challenging the same practices under California state law. Toyota Motor Credit Corporation has denied all claims in both cases.

11. Has the Case of *Baltimore v. Toyota Motor Credit Corporation* Been Settled?

Yes. A Settlement Agreement was preliminarily approved by the Federal District Court of the Central District of California on May 22, 2006. This settlement covers all claims asserted both in the *Baltimore v. Toyota Motor Credit Corporation* case and the *Finance Charge Markup Cases*. On November 6, 2006, 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?

Toyota Motor Credit Corporation 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 sixty one (61) to seventy one (71) months; and 1.75% on loans for terms of seventy two (72) 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 directed to African-Americans and Hispanic communities which will help consumers with respect to credit financing;
- d. Offer 850,000 pre-approved, no mark up offers of credit to African-Americans and Hispanics over the next five years;
- e. Offer a certificate of credit or cash to eligible class members.

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

Toyota Motor Credit Corporation will examine the credit history of current and former customers who are African-American and Hispanic and send to them 850,000 offers of no markup loans for the purchase of new or used Toyota or Lexus vehicles over the five 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 and Hispanic consumers who entered standard rate contracts with Toyota Motor Credit Corporation since January 1, 1990. African-Americans and Hispanics 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 also will indicate whether the consumer qualifies for any Special Rate Programs for specific Toyota or Lexus models. The certificate will be good for at least 90 days. During this period of time, the consumer can take the certificate to a Toyota or Lexus dealer and purchase an automobile without further credit qualification, and without paying any markup.

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 African-American or Hispanic Toyota Motor Credit Corporation customer, or have been a Toyota Motor Credit Corporation customer at any time since January 1, 1990, you may receive a Pre-Approved No Markup Offer of Credit without doing anything. Toyota Motor Credit Corporation will be examining its customer records for African-Americans and Hispanics 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 Toyota Motor Credit Corporation?

The Plaintiff's Complaint in this action included claims for damages relief on behalf of class members against Toyota Motor Credit Corporation. As part of the settlement of the case, Toyota Motor Credit Corporation has offered to provide a certificate of credit or cash payments to Class Members in return for the release of their individual federal and state law claims for damages against Toyota Motor Credit Corporation.

The amount a Class Member may receive depends on how much the customer paid in markup and on whether the customer chooses to receive credit for future financing with Toyota Motor Credit Corporation or a check.

If the settlement receives final Court approval, the Claims Administrator will accept claims from eligible Class Members according to the following table. Eligible Class Members in the categories below will receive a claim form once the settlement receives final approval and need not do anything now to preserve their recovery.

Markup Amt. Paid	Credit for Future TMCC Financing†	OR	Cash
At least \$150*	\$50		\$25
\$750-1000**	\$150		\$100
\$1001-2000**	\$250		\$150
\$2,001+**	\$400		\$225

* Only for those who entered into a financing contract within the last twelve (12) months

** Account holder must have made one year of payments and cannot have declared bankruptcy or been charged off.

† There is no time limit for using the credit on future financing.

Class Members who paid less than \$750 in markup or entered into a contract within the last 12 months and paid less than \$150 in markup are not eligible to receive a certificate of credit or cash.

Class Members who want to pursue their own claims for monetary relief against Toyota Motor Credit Corporation and do not want their claims for monetary relief to be released or waived as part of the settlement may “opt out” with respect to their claims for monetary relief. To opt out and keep your individual claims for monetary relief, you must submit a written, signed letter that includes the following information: (i) your name, address and telephone number; (ii) your minority status; (iii) your Toyota Motor Credit Corporation account number and social security number; and (iv) whether you are represented by counsel and if so, the name, address and telephone number of your lawyer. A copy of the letter must be sent to:

Baltimore Settlement Administrator
c/o Rust Consulting, Inc.
P.O. Box 1120
Minneapolis, MN 55440-1120
1-877-506-4028

Your letter must also include the statement: “I want my claims for monetary relief to be excluded from the Baltimore v. TMCC Class Action Settlement.” The letter must be postmarked **by September 21, 2006**. Class members who opt out will not receive a claim form and will not be entitled to a cash payment or credit under the settlement.

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 are to receive payments from Toyota Motor Credit Corporation. 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.

If you have other questions about the Settlement Agreement, the Notice of Proposed Class Action Settlement, the Court’s rulings, or whether you are a Class Member, please contact an attorney.