Written Comments by Thomas Domonoske[1]

Given the American need for transportation, almost all people end up purchasing cars at several times in their lives. Most people's lack of knowledge about cars coupled with this need to purchase a car makes ordinary people prime targets for several types of predatory practices. This risk is significantly increased when the sale is financed by the dealer or a related finance company.

To understanding what occurs in car financed transaction requires a basic knowledge of the motor vehicle titling procedures and statutes, the regulatory structure for financed sales, several federal consumer protection statutes, and the relationships between car dealers and the finance companies that back them.

In addition to the basic regulation of a car sale for cash, when a car dealer decides to finance a car sale, the credit side of the transaction is then subject to the ordinary credit regulations. Consequently in the credit sale of a car, the federal laws that are usually involved include the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Truth in Lending Act, the federal Odometer Act, the Magnuson-Moss Warranty Act, the Buyer's Guide Regulation, and the FTC Preservation of Claims and Defenses Rule. After deciding to become a banker, many car dealers also decide to be insurance salesmen. Consequently, in addition to state law on financed sales, the statutes regulating the sale of insurance also apply. Finally, the general requirements of the UCC on sale of goods, remedies, and enforcing security interests need to be followed. Given the pervasive use of arbitration clauses, systematic deceptive and discriminatory practices are not subject to the historic check of the civil justice system.

Based on an estimate of driving 15,000 miles per year, the American Automobile Association calculates the average cost to own and operate a new vehicle is approximately $8,500 per year.[2] The majority of all car purchases are financed, with 86% of new cars and 54% of car sales financed in 2018.[3] Since 2010, the total debt Americans owe on their cars has increased from $70 billion to $1.24 trillion, a 77 percent increase.[4]

As of the second quarter of 2018, Maryland had the second highest percentages of auto loan balances that are more than 30 days past due (3.62% with only

[1] Much of the information below is from research done by the National Consumer Law Center, the U.S. PIRG Education Fund, and Frontier Group.
[2] AAA, *Your Driving Costs 2018*, 13 September 2018, archived at https://web.archive.org/web/20181004201830/https://newsroom.aaa.com/auto/your-driving-costs/.
[3] 2018 data: Melinda Zabritski, Experian, *State of the Automotive Finance Market: A look at loans and leases in Q2 2018,* Slide 11. Accessed at: https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/q2-2018-state-auto-finance-markets.pdf.
[4] Federal Reserve Bank of New York, Center for Microeconomic Data, *Household Debt and Credit Report (Q2 2018)*, August 2018, data downloaded Nov. 11, 2018, from https://www.newyorkfed.org/microeconomics/hhdc.html.

Mississippi higher at 3.71%), and was also the second highest of 60 day past due loans (1.10% with only Mississippi higher at 1.14%).[5]

Based on date from Federal Reserve Bank of New York, Center for Microeconomic Data, *State Level Household Debt Statistics 2003-2017*, as of the start of 2018, Maryland was ranked ninth in the country for the highest auto debt by household- an average of $5,110.00, (downloaded November 11, 2018 from www.newyorkfed.org/medialibrary/Interactives/householdcredit/data/xls/area_report_by_year). The range was a high of $6,520 in Texas to a low of $2,320 in Puerto Rico, with the median at $4,450 in Idaho.

The term of car loans remain high. For a new car loan the average is nearly 69 months, and for used car loans it is 67 months.[6] The payments for both new car loans and used car loans have reached all time highs, with new car loans averaging $525.00 and used car loans averaging $394.00.[7]

Many car buyers are induced to buy a replacement while they still owe more money on their existing vehicle than it is worth. "The growing proportion of underwater trade-ins means that at least some borrowers are getting deeper and deeper in debt with every car they buy, said Jason Grohotolski, an analyst at Moody's Investors Service." [8] In 2017, this meant that nearly one-third of all cars traded were underwater, up from about 25% ten years ago.[9]

Many auto loans are part of the securitization market and can suffer from the same problems that contributed to the housing crash a decade ago. As one example, "Santander Consumer USA Holdings Inc., one of the biggest subprime auto finance companies, verified income on just 8 percent of borrowers whose loans it recently bundled into $1 billion of bonds, according to Moody's Investors Service."[10]

Several years ago, the National Consumer Law Center proved systemic discrimination in the auto financing based on data that revealed the race of individual borrowers. In the late 1990s, NCLC co-counseled class action lawsuits against many of the major auto finance companies challenging the use of

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[5] 2018 data: Melinda Zabritski, Experian, *State of the Automotive Finance Market: A look at loans and leases in Q2 2018,* slide 7. Accessed at: https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/q2-2018-state-auto-finance-markets.pdf

[6] Id. at Slide 20 and 21.

[7] Id. at Slide 23 and 24.

[8] Claire Boston, "Worthless Auto Trade-Ins Signal Riskier Loans," *Bloomberg*, 25 January 2018. https://www.bloomberg.com/news/articles/2018-01-25/underwater-on-your-trade-in-no-problem-u-s-car-lenders-say

[9] Id.

[10] Matt Scully, "Auto Lender Santander Checked Income on Just Eight Percent in Subprime ABS", *Bloomberg,* 22 May 2017. Accessed at: https://www.bloomberg.com/news/articles/2017-05-22/subprime-auto-giant-checked-income-on-just-8-of-loans-in-abs.

discretionary dealer markups. In discovery, NCLC obtained data on individual loans, and NCLC hired an expert witness to match the loans to drivers' license data in states that collected the drivers' race.

The results were overwhelming: dealers were twice as likely to add a markup to the loans of African-Americans than to loans taken out by comparable white borrowers. Furthermore, when African-American and compatible white borrowers both were marked up, the African-American borrowers paid significantly more.

Specifically in Maryland, analysis for credit contracts sold to Primus (Ford), GMAC, and Honda showed discriminatory loan markup rates between white borrowers and African American borrowers of 256 %, 255%, and 172% respectively. In whole dollars, this translated to markups of $452 for white borrowers to $1159 African American borrowers at Primus, $329.00 to $838 for GMAC, and $724.00 to $1245.00 for Honda. These large dollar amounts were just markups on the financing rate and do not even take into account discrimination on the price of the car, or the price of add-on products.

The powerful evidence compiled by NCLC convinced the courts that "the plaintiffs have proved their case" and that permitting discretionary markups led to unacceptable racially disparate impacts. The auto finance companies settled with NCLC, paid millions in compensation, and agreed to limit discretionary auto dealer markups for five years or more. All those timeperiods have now expired.

In 2013, the Consumer Financial Protection Bureau (CFPB) and Department of Justice (DOJ) "ordered Ally Financial Inc. and Ally Bank (Ally) to pay $80 million in damages to harmed African-American, Hispanic, and Asian and Pacific Islander borrowers and $18 million in penalties. The CFPB and DOJ determined that more than 235,000 minority borrowers paid higher interest rates for their auto loans between April 2011 and December 2013 because of Ally's discriminatory pricing system." [11]

In 2015, "the Consumer Financial Protection Bureau (CFPB) announced two separate actions against Fifth Third Bank, for discriminatory auto loan pricing and for illegal credit card practices. The joint CFPB and Department of Justice (DOJ) auto-lending enforcement action requires Fifth Third to change its pricing and compensation system to minimize the risks of discrimination, and to pay $18 million to harmed African-American and Hispanic borrowers."[12]

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[11] Consumer Financial Protection Bureau, *CFPB and DOJ Order Ally to Pay $80 Million to Consumers Harmed by Discriminatory Auto Loan Pricing* (news release), 20 December 2013, accessed at https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-to-consumers-harmed-by-discriminatory-auto-loan-pricing/

[12] Consumer Financial Protection Bureau, CFPB Takes Action Against Fifth Third Bank for Auto-Lending Discrimination and Illegal Credit Card Practices (news release), 28 September 2015, accessed at

Also in 2015, the CFPB "resolved an action with American Honda Finance Corporation that will put new measures in place to address discretionary auto loan pricing and compensation practices. Honda's past practices resulted in thousands of African-American, Hispanic, and Asian and Pacific Islander borrowers paying higher interest rates than white borrowers for their auto loans, without regard to their creditworthiness" and which required "$24 million in restitution to affected borrowers."[13]

In 2016, the CFPB "resolved an action with Toyota Motor Credit Corporation, under which Toyota Motor Credit will change its pricing and compensation system to substantially reduce dealer discretion and accompanying financial incentives to mark up interest rates. As part of [that] order, Toyota Motor Credit is also required to pay up to $21.9 million in restitution to thousands of African-American and Asian and Pacific Islander borrowers."[14]

As explained by the CFPB, "[a]s an indirect auto lender, Toyota Motor Credit sets interest rates, or "buy rates," for consumers based on credit scores and other risk criteria. Those rates are conveyed to auto dealers. Indirect auto lenders like Toyota Motor Credit then allow auto dealers to charge a higher interest rate when they finalize the deal with the consumer. This is typically called "dealer markup." Markups can generate compensation for dealers while giving them the discretion to charge consumers different rates regardless of consumer creditworthiness. Over the time period under review, Toyota Motor Credit permitted dealers to mark up consumers' interest rates as much as 2.5 percent. . . . Toyota Motor Credit's pricing and compensation structure meant that for the period covered in the order, thousands of African-American borrowers were charged, on average, over $200 more for their auto loans, and thousands of Asian and Pacific Islander borrowers were charged, on average, over $100 more for their auto loans."[15]

Because dealers arrange most car financing, the important aspects of the transaction occur between the dealership and the customer. The core questions are why did the dealership offer the credit on the terms presented and what did the dealership do that induced the consumer to accept the credit. The answers rarely shows up in the documents but requires investigation into specific dealer practices.

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https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/.

[13] Consumer Financial Protection Bureau, *CFPB and DOJ Reach Resolution with Honda to Address Discriminatory Auto Loan Pricing*, (news release), 14 July 2015, archived at https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-honda-to-address-discriminatory-auto-loan-pricing/.

[14] Consumer Financial Protection Bureau, *CFPB and DOJ Reach Resolution With Toyota Motor Credit To Address Loan Pricing Policies With Discriminatory Effects* (news release), 2 February 2016, accessed at https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-toyota-motor-credit-to-address-loan-pricing-policies-with-discriminatory-effects/.

[15] Id.