

Appendix A -

A Critique of CRL's 2011 Report on Auto Financing¹

On April 19, 2011, the Center for Responsible Lending (“CRL”) released an advocacy paper entitled “UNDER THE HOOD: AUTO LOAN INTEREST RATE HIKES INFLATE CONSUMER COSTS AND LOAN LOSSES” (the “Report”) that attacks the dealer-assisted model in automobile financing and purports to conduct an “analysis” that leads to two primary conclusions:

- (1) that dealer participation “lead[s] to more expensive loans;” and
- (2) that dealer participation leads to “higher odds for default and repossession for - subprime borrowers.” -

As outlined below, each of these two conclusions is demonstrably false. What the facts actually demonstrate is that the efforts and assistance of automobile dealers in the automobile financing process help consumers by significantly driving down the cost of financing and greatly expanding access to credit, particularly for subprime borrowers.

I. Overview

The Report has been roundly criticized.² Indeed, it is difficult to fully identify all of the Report’s flaws because the explanation and support for the analysis is so limited and self-contradictory that the reader often has difficulty understanding what the Report is even purporting to claim, much less determining the validity of those claims. For example, a comprehensive review reveals that *not one chart in the entire report accurately reflects the facts.*³ The result is that the analysis and findings in the Report do not meet the basic standards for relevant data or evidence because they are opaque, incomplete, and so limited in explanation as to make them impossible to verify or recreate. Moreover, those portions of the Report that are subject to objective assessment demonstrate its numerous flaws.

1. First, for a report whose main purpose appears to be to demonstrate that dealer participation represents an unnecessary “extra” charge to consumers,⁴ it is striking that the Report fails to demonstrate that consumers who choose dealer-assisted financing actually pay more for financing than they would pay if they obtained financing elsewhere. The Report alleges a massive overcharge, claiming that dealer-assisted financing “lead[s] to more expensive loans,”⁵ without bothering to even attempt to answer the question: *more expensive than what?*

¹ Drafted by Bradley Miller, Associate Director of Legal and Regulatory Affairs, National Automobile Dealers Association.

² See e.g., testimony of Thomas Durkin, (former Senior Economist in the Division of Research and Statistics at the Federal Reserve Board), San Antonio FTC Motor Vehicle Roundtable (“FTC Roundtable”).

³ See discussion below, at Section III.

⁴ Report at 3.

⁵ Id. At 2.

It is self-evident that if, in a highly competitive market, a retailer offers a product with a fully-disclosed price⁶ that is both (i) optional and (ii) less expensive than the price at which competitors offer the same product, that retailer's product or pricing model cannot, by definition, result in an overcharge to the consumer. For example, as noted in the body of the NADA comments, if Grocery Store A offers a gallon of milk at \$3.75 and Grocery Stores B, C, and D offer the same gallon of milk at \$3.95, \$4.00, and \$4.05 respectively, it cannot plausibly be asserted that Grocery Store A's pricing model somehow causes harm to the consumer.

CRL's failure to offer any evidence (let alone establish) in its 23-page report that dealer-assisted financing is more expensive to consumers than financing that is available from alternative creditors causes the entire framework upon which CRL builds its overcharge theory to collapse.⁷ A simple review of the evidence that is available on the relative cost of dealer-assisted financing compared to retail vehicle financing offered directly by banks, credit unions, and others suggests *why* the Report may have failed to make any such comparison: if it had, it would have revealed that dealer-assisted financing increases choice and competition for consumers and that *customers save billions of dollars per year* by financing their vehicle purchases through dealerships.

Indeed, a comparison of overall average interest rates charged by dealers for 48-month new car loans⁸ with the average rates charged for the same loans by direct lenders reveals the following about dealer-assisted financing:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Commercial banks ⁹ -	7.02%	6.72%	6.21%
Dealers ¹⁰ -	<u>6.25%</u>	<u>5.50%</u>	<u>4.40%</u>
Average Consumer Savings:	0.77%	1.22%	1.81%

⁶- CRL alleges that because the portion of the APR that represents dealer participation is not separately and uniquely disclosed, consumers are somehow misled or placed at a disadvantage. That fallacy is addressed in the main body of the NADA comments.

⁷- Nor is this failure surprising since dealers, despite having to compete in an intensely competitive market, are selected by consumers for their vehicle financing needs, according to CRL, in nearly 8 out of 10 vehicle financing transactions.

⁸- The term "loan" is used in this paper for ease of reference. However, automobile dealers do not issue loans. Instead, they engage in three-party financing, whereby they engage in a credit sales with a consumer related to the sale of their own goods and services (a retail installment sales contract, or "RISC"), and then assign the RISC to a third party lender.

⁹- Federal Reserve, G19 ("Interest rates are annual percentage rates (APR) as specified by the Federal Reserve's Regulation Z. Interest rates for new-car loans and personal loans at commercial banks are simple unweighted averages of each bank's most common rate charged during the first calendar week of the middle month of each quarter"). Found at <http://www.federalreserve.gov/releases/g19/current/g19.htm>

¹⁰- JD Power and Associates data. The numbers are an average of rates across all credit tiers and include only indirect loans made through banks. Because it does not include captive finance sources, any effect of subvented rates is dramatically reduced.

What this means is that customers borrowing under 48-month loans *across all credit tiers* saved between 0.77 and 1.81% by choosing to finance their new car or truck purchase through the dealership over what they would have had to pay if they had borrowed money directly from a bank. Indeed, because of dealers’ purchasing power and negotiating flexibility, consumers who financed through a dealership, with the dealer assigning the credit contract to a bank, are often able to pay less through the dealer than if they had financed directly through the very same bank. In fact, if one were to use the Report’s own analytical approach, this data would suggest that from 2008 to 2010 consumers saved over \$21 billion on new car purchases alone by financing through the dealership, as illustrated in the following chart:¹¹

	New Vehicles	Avg. Interest Saved Using Dealer-Assisted Financing	<i>Total Saved annually by new vehicle consumers</i>
Amt Financed	\$24,500		
Loan Term (Mos)	60		
Avg. Savings 2008	0.77%	\$635.40	<i>\$5.27 billion</i>
Avg. Savings 2009	1.22%	\$779.40	<i>\$6.47 billion</i>
Avg. Savings 2010	1.81%	\$1,162.20	<i>\$9.65 billion</i>

The Report’s actual allegation in this connection appears to be not that the retail finance prices offered by dealers via dealer-assisted financing are more expensive than other retail financing options; rather, it is that those retail prices are higher than the dealers’ wholesale prices. In other words, using the example above, the Report would allege, in effect, that the \$3.75 charged by Grocery Store A includes a \$0.25 overcharge because A’s *wholesale cost* was \$3.50. But it simply makes no sense to allege that because a retailer offers a product or service at a price above the wholesale price, the retailer’s entire margin is an overcharge. In the end, because it focuses on just one of the many pricing elements that make up a retail rate, this allegation does no more than to divert attention from the only relevant item for cost comparison purposes – the retail cost of credit.

2. The second “conclusion” in the Report is based entirely on CRL’s “analysis” of the features of certain Asset Backed Securities (“ABS”) containing automobile loans. This analysis led CRL to conclude that there are several additional nefarious effects of dealer-assisted financing – namely, that dealers “mark up” loans more for borrowers in a lower credit tier than for those in a higher credit tier and that dealer participation somehow increases repossession rates for the former.

The Report’s attempt to derive the dealer participation percentage – that is the portion of the APR in an auto loan that the dealer retains as compensation for the services it provides – from the public filings associated with certain auto ABS issuances and then to connect that figure with reported default and repossession rates is opaque, inconsistent, and erroneous.

¹¹ This is an extrapolation across the entire market, based on the data above for 48 month loans.

The public filings associated with ABS issuances do not appear to contain the information needed to derive the dealer participation.¹² Nonetheless, the Report engages in an “analysis” of the ABS issuances to divine the facts needed and then purports to conclude from those “facts” that dealer-assisted financing increases repossession rates for subprime borrowers. Unfortunately, an objective observer attempting to understand this “analysis” cannot determine what the actual analysis was or fully decode what the Report is purporting to allege in relation to this analysis. The only thing that is clear is that the Report’s mix of statistical manipulation, unexplained “assumptions,” and ignored facts is flawed.

In an attempt to assess the validity of the Report’s ABS analysis, NADA undertook its own detailed analysis of the publically available 2008 auto ABS data¹³ utilizing (as best as could be determined from the limited and confused explanation of) CRL’s own methodology. As part of this analysis, NADA uncovered a crucial fact undisclosed in the Report – namely, that some of the 2008 Auto ABS issuances contained only direct auto loans (those made outside of dealerships) (“Direct ABS”). The NADA analysis compared the “dealer participation” as derived by CRL in those ABS issuances containing indirect loans (those made through dealerships) with the same derived “dealer participation” in Direct ABS. Of course, in a direct loan, where no dealer is involved, there can be no “dealer participation” because, by definition, there is no payment to a dealer. This means that no such dealer participation can legitimately be derived from those issuances. However, NADA’s analysis using the Report’s methods produced results where (a) even the Direct ABS issuances reflect “dealer participation;” and (b) the Direct ABS issuances generally reflected a *higher* “dealer participation” figure than those containing indirect loans.¹⁴

The NADA analysis demonstrates that what the Report’s ABS “analysis” derives is not the dealer participation amount, but is (at best) likely some portion or combination of the marketing and other loan distribution costs that are included in the APR of all of the loans underlying these ABS issuances. This reflects at least two unsurprising realities: (1) that *all auto loans* have overhead and other distribution costs as a element of their price; and (2) that there are tremendous efficiencies created by the dealer’s participation in the vehicle finance process that allow dealers to provide the same (and often superior) service for less. Each of these realities undermines any notion of a connection between dealer participation and

¹² - NADA consulted a number of experts in statistics, structured finance, and auto ABS issuances, and all agreed that not only are dealer participation amounts not disclosed in the public ABS filings, it is not possible to derive dealer participation from the public filings or other publicly-available information related to an ABS issuance. Indeed, even with transaction level details about each loan in the ABS issuance, it would be impossible to determine the dealer participation level without access to the records of the dealer or the finance source, or both. Even then, because there are numerous ways dealers are paid in connection with dealer-assisted financing, it would be difficult to reach macro-level conclusions about dealer participation amounts. Naturally, this informal survey of experts is not intended as definitive proof. However, it does further demonstrate that there is a need for caution, and indeed skepticism, before this Report is given any weight by the Commission – even as pure advocacy. NADA would urge the Commission’s economists and experts to investigate whether it is even possible to derive dealer participation from Auto ABS offerings as the Report alleges.

¹³ CRL did not identify what specific 32 ABS issuances it reviewed. NADA found a total of 35 public ABS issuances for 2008, and these are the ABS filings NADA used. They are described in more detail below.

¹⁴ See discussion below, and Exhibit A.

repossession rates and indeed undermines any notion that dealer-assisted participation represents a greater cost to consumers than direct loans. To the contrary, this is further evidence that dealer-assisted financing saves consumers billions of dollars each year.

II. - The Report Is Misleading, Inaccurate, and Fails to Demonstrate any “Facts” About Dealer-Assisted Financing

Perhaps the most fundamental analytical flaw in the Report is an assumption that underlies CRL’s entire analysis and criticism of dealer participation – *the unfounded assertion that consumers “qualify” to borrow at the wholesale buy rate at which finance sources agree to buy credit contracts from dealers.* The reason why this assertion represents a fundamental misunderstanding of basic economic concepts and the dealer-assisted financing business model is thoroughly covered in the main NADA comments. However, in the context of the Report, CRL nevertheless relies on this assertion in making the claim that *every single dollar* that dealers earn in connection with dealer-assisted financing – which it estimates was \$25.8 billion in 2009 – is extra and thus represents an overcharge to consumers.

Even if one were to ignore the fallacy that any amount over the wholesale price is an overcharge, the Report would still fall far short of demonstrating its allegations about dealer-assisted financing by any objective standard because the allegations themselves are unclear, the purported “findings” in support of the allegations are inconsistent, the data underlying those “findings” is opaque, and the explanation of the methodology is inadequate and poorly sourced. To fully explain these flaws, we must take a closer look at some of the details in the Report’s methodology, data sources, and analysis.

The Stated “Objectives”

There are three stated “objectives” of the “research” reflected in the Report. They are:

1. *“To estimate the magnitude of markups nationally;*
2. *[to] explore loan conditions that influence rate markup; and*
3. *[to] investigate rate markup's impact on loan performance.”*

The Report contains some limited explanation of the “Data and Methodology” used to reach these objectives. The following attempts to decode each of these three explanations.

Objective #1: “To Estimate the Magnitude of Markups Nationally”

The “data and methodology” used to determine the Report’s first “objective” is described as follows:

“To estimate the magnitude of rate markup volume, we acquired survey data from 25 auto finance companies that reported information on loan portfolios representing a combined 1.7 million accounts at year-end 2009. The survey allowed us access to self-reported information

on revenues gained from rate markups. We then used the weighted averages for markup revenue in the survey along with reported figures for dealer financed loans in 2009 in order to calculate a national estimate.”

The “Research Findings” associated with this objective are found in Figure 3 of the Report (p.10). Figure 3 cites the following data related to dealer participation:¹⁵

	New Vehicles	Used Vehicles	Total Vehicles
2009 Total Dealer Participation	\$4.1 billion	\$21.7 billion	<i>\$25.8 billion</i>
Average Rate Markup 2009	1.01%	2.91%	2.47%
Average Markup Per Loan 2009	\$494	\$780	\$714

As outlined above, the Report then goes on to allege that this \$25.8 billion figure represents a “hidden” overcharge to consumers.¹⁶ This overcharge figure lies at the heart of the Report, and has been cited repeatedly by CRL and others. The question is: where does that number come from and is it accurate?

The “dealer markup data” in Figure 3 is supposedly “derived” exclusively from a survey undertaken by the National Automotive Finance Association called the “2010 Automotive Financing Survey” (“NAF Survey”). There are, however, numerous problems with citing the NAF Survey for this data, not the least of which being that the NAF Survey contains no such numbers, and in fact contains *different* numbers, which do not appear in the Report.

Data Sources: The NAF Survey

The NAF Survey was conducted in 2010 by the National Automotive Finance Association in an effort to determine key trends and events in the U.S. auto finance industry in 2009. This survey was not undertaken to determine dealer participation percentages, *and there are no questions in the entire survey* that ask about average dealer participation rates.

Another critical fact conspicuously absent from the Report is that the National Automotive Finance Association is an association of *subprime lenders only*. Indeed, the actual title of the report is “2010 Indirect Non-Prime Automotive Financing Study.” The “Average

¹⁵ - The last row of Figure 3 inexplicably lists “Gross Dealer Profit Per Retail Sale.” It is unclear why this figure was included because gross dealer profit per retail sale is completely irrelevant in determining dealer participation. That figure includes *all* profit on the sale of a car – that is, all income from the sale of finance and insurance as well as all profit on the sale of the car itself. Given its general irrelevance, the inclusion of this number in this chart suggests that it was provided to include a number that appears “high” and to imply that it relates somehow to dealer participation.

¹⁶ - Report at 2.

Origination FICO” for respondents in the NAF Report is 559 for new vehicles and 538 for used versus an overall average FICO score of 761 for consumers who finance new vehicles and 670 for consumers who finance used vehicles.¹⁷

The fact that the NAF Survey contains data related only to subprime lenders is enough to make its results non-representative. Perhaps an even greater concern is the lack of transparency in the Report as to the specific source of the alleged dealer “mark up” percentage figures and amounts.

In order to determine the magnitude of dealer participation, CRL had to first determine how much dealers charge, on average, for their role in the dealer-assisted finance process. The Report claims to have determined that the average dealer participation expressed as a percentage is 1.01% for new, and 2.91% for used vehicles, with a general cite to the NAF Survey. However, the exact source of those figures is unclear as there was no NAF Survey question that asked for dealer participation percentages. There were several NAF Survey questions that asked respondents to list “Average Contract Rates” and “Average Discount Rates.” Given enough detail about those two figures, one could theoretically derive information about dealer participation rates. However, such details simply do not exist in the NAF Survey. For example, the NAF Survey asks “For CY 2009, provide the following CONTRACT TERM information,”¹⁸ and respondents provided answers to certain “Case Summaries.” The NAF Survey then lists unweighted mean averages of the responses. The responses to one “Case Summary” were reported as follows:

For new vehicle loans (N= number of respondents):

Class Size		NEW 09 Avg Amt Fin	NEW 09 Avg Term	NEW 09 Avg LTV	NEW 09 Avg Contract Rate	NEW 09 Avg Disc Rate
Medium	N	5	5	5	4	2
	Mean	\$20,702.20	69.40	101.43	16.6050	14.8700
Large	N	3	3	3	3	2
	Mean	\$19,327.33	63.67	97.99	17.8570	18.6300
Total	N	8	8	8	7	4
	Mean	\$20,186.63	67.25	100.13	17.14100	16.7500

¹⁷ - Experian Automotive, STATE OF THE AUTOMOTIVE FINANCE MARKET, FOURTH QUARTER 2011, available at <http://www.experian.com/assets/automotive/brochures/experian-auto-2011-q4-credit-webinar-presentation-2-28-12.pdf>.

¹⁸ - See NAF Survey, appx. at 11.

A similar response for used vehicle loans appeared as follows: -

Class Size		USED 08 Avg Amt Fin	USED 08 Avg Term	USED 08 Avg LTV	USED 08 Avg Contract Rate	USED 08 Avg Disc Rate
Small	N	8	8	6	6	
	Mean	\$8,988.63	39.13	131.43	23.6930	
Medium	N	9	9	7	8	2
	Mean	\$13,516.89	54.33	123.19	22.691	18.0450
Large	N	3	3	3	3	2
	Mean	\$12,906.33	55.33	109.78	19.1830	19.1850
Total	N	8	20	16	17	4
	Mean	\$11,674.00	48.40	123.76	22.14260	18.6150

Presumably (we cannot be certain because the Report contains no citation or explanation), the Report “derived” the “dealer mark up” percentages by looking at the difference between the average reported contract and discount rates. In these examples, it would be an average 0.391% “mark-up” for new and 3.5276% for used.¹⁹

However, even if this were the source, the limitations of using this data for the purpose CRL does are immediately clear. First, the NAF Survey reported only non-weighted, mean average figures, which are completely meaningless when used as a comparison.²⁰ A simple example demonstrates this. Assuming there was a question about average dealer participation percentages, you could have 2 small company respondents reporting a mean average of 2% (out of a total of 1000 accounts) and 2 large company respondents reporting a mean average of 1% (out of a total of 500,000 accounts). The non-weighted mean of those respondents would be 1.5% even though the true overall market “average” would be far closer to 1%.

In addition, any attempt to “derive” dealer participation amounts from this type of data would suffer an even more serious flaw because there is no way to know *which* respondent’s “contract” rate corresponded with which respondent’s “discount” rate. That is especially true where, as here, there are unequal and incomplete numbers of respondents to each question. For example, in the used case summary above, if 4 of the 8 “medium” respondents reported a contract rate of 25% and the other 4 reported a contract rate of 20%, you would end up with a reported “mean” of 22.5% (approximately the same as reported). However, that mean figure would be useless in determining what the actual “dealer mark up” percentage was because there is no way to know whether the 2 respondents who reported an 18.05% average discount rate were among those with the 25% or the 20% contract rate. This flaw is even more

¹⁹ We could find no responses to connect with the Report’s figures of 1.01% and 2.91%. Perhaps those figures resulted from some effort to consolidate this response with the various other responses to similar questions in the NAF Survey. However, it is unclear and unexplained in the Report. Moreover, reviewing the other limited responses in the NAF Survey that contain discount rates and contract rates appears to show used spreads ranged from 0.8%-1.6% (appx. p. 13) with new spreads at .35% (id. at 2). It is difficult to determine how the 1.01% and 2.91% figures could have been so derived from the NAF Survey.

²⁰ CRL claims that it “used the weighted averages for markup revenue in the survey.” However, NAF did not weight the averages and did not supply enough detail to allow weighting, so it is difficult to determine how CRL could have accurately weighted these figures.

egregious where, as here, there are *no* responses to the discount rate question among the “small” respondents – those with the highest reported average contract rate. Interestingly, the one subcategory of responses where the connection is the most statistically likely, that of the “large” respondents, shows little to no dealer mark up of retail rates.

The bottom line is that this data is the closest thing in the NAF Survey to data connected to dealer participation percentage rates, and it is meaningless as a measure of that figure.

In addition, the Report misleadingly characterizes both the source and its methodology concerning the NAF Survey. It states that NAF Survey data includes “*self-reported information on revenues gained from rate markups.*” Stating that the data is “self-reported” misleadingly suggests that the NAF Survey contains data provided by dealers; it does not. The Report also claims to “use weighted averages for markup revenue,” but NAF did not weight the averages and did not supply enough detail in their data to allow for weighting of the averages. It is far from clear, therefore, how the Report *could have* produced weighted averages as it claims. Even if it did, the Report fails to explain how that weighting was done, what information was used to accomplish the weighting, the assumptions used, or even what raw data was “weighted.”

Using The Actual Reported Data

Most perplexing of all, however, is that while the Report purports to derive “dealer markup” data from the NAF Survey, the Report inexplicably ignores the *actual* dealer reserve figures reported directly in the survey results. As noted above, the Report alleges that dealer reserve averages were \$494 for new, \$780 for used, and \$714 overall. But pages 19-21 of the NAF Survey prominently report that average gross dealer reserve paid by respondents on new car subprime finance transactions was \$477, on used cars it was \$280, and combined, the overall average was \$330. Of course, this figure is far lower than the numbers listed in the Report.

In fact, recalculating Figure 3 of the Report using the actual NAF Survey dealer reserve figures (and our best guess at the remainder of their undisclosed methodology), produces very different results:

FIGURE 3: Using **Actual Reported** NAF Dealer Reserve Data: -

	New Vehicles	Used Vehicles	Total Vehicles
2009 Total Dealer Participation	\$2.32 billion ²¹	\$5.25 billion ²²	<u>\$7.57 billion</u> ²³
Average Markup Per Loan 2009	\$477 ²⁴	\$280	\$330

By simply using the actual dealer reserve amounts reported in the Report’s sole data source, the Report’s \$25.8 billion figure is reduced to \$7.57 billion, an overall dealer participation amount more than *three times lower* than that alleged in the Report.

Other Flaws in the NAF Survey

While the NAF Survey may be well-suited to the purpose for which it was undertaken – to inform subprime lenders about trends in subprime financing generally – there are a number of other problems with relying on the NAF Survey for the purpose used in the Report:

- **It represents a limited sample:** The NAF Survey contains results from 25 respondent companies (out of a total of 175 companies NAF has identified as being in the subprime space), 10 of which were “small” lenders (less than 10,000 accounts), and only 4 of which were “large” lenders (80,000 accounts or more). The 25 respondents included 2 large banks, 1 small local bank, and 22 “Independent Finance Companies.” This not only represents only one small portion of the overall automobile finance market, it reflects only a small and limited slice of the subprime market.
- **Limited and Incomplete Responses:** Of those 25 respondents, only a very limited number responded to most questions, and in many cases those low numbers further skewed the results. Most of the companies did not respond to all the questions asked. For

²¹- Data derived from CNW Doc 270: 10.55 million new vehicles sold in 2009, 6.134 million financed. Of the 6.134 million financed, CRL asserts that 79.2% are financed through dealers, for a total of 4.86 million new vehicles financed through dealers. Applying the NAF dealer participation amount of \$477 to that 4.86 million nets the \$2.32 billion figure. Please note, however, that CNW Doc 544 shows that the most recent figures (2006) indicate that only 39.6% finance through the dealer, therefore this number is very likely overstated. Using the CNW data, the totals are \$1.16 billion (new); \$2.63 billion (used); and \$3.79 billion (total). In addition, this number is also likely overstated in terms of an impact on consumers because it does not exclude corporate, business, or fleet sales.

²²- See CNW Doc 270. Of the 35.07 million (non-casual) used vehicles sold in 2009, approximately 67.55% were financed (not exact because the 67.55 represents % of total purchase amount and not units sold), 79.2% financed through dealers.

²³- A review of the NAF Survey data for “Average Dealer Reserve: New, Used, and Combined”, pp. 19-21, reveals average dealer participation percentages far lower than those stated in Figure 3 as well: 0.7% for new, 1.0% for used, and 0.9% overall. Those figures are derived by a calculating average rate participation needed to achieve the actual average dealer reserve amount reported, using the average term, average contract amount, and average contract rate reported in the NAF survey for new, used, and combined.

²⁴- See NAF Survey, pp. 19-21.

example, only 15 of 25 respondents were “core respondents” – that is, those who reported in more than one year to allow for comparison. No more than 10 respondents answered questions about average used car “discount” and “contract” rates. Only 5 respondents provided answers regarding new car average “discount” and “contract” rates. In one important example, there were 21 respondents to a survey question about average used car rates, with only 2 reporting ANY difference in the buy rate versus the contract rate at all.

- The survey respondents have vastly different methods of paying and reporting “Dealer Reserve”: It is also difficult to use figures from the NAF Survey as the basis for an extrapolated nationwide total because of the various ways the respondents pay what they term “dealer reserve.” Finance sources reported payment methods including a flat fee, a percentage of the finance charge, a percentage of the amount financed, and others. This factor alone would skew any dealer participation figures derived from the reported rates and makes it misleading to extrapolate a national “overall” figure based on an average percentage charged for dealer participation.
- Potential Errors: In addition, there were several obvious outliers in the NAF Survey that materially skewed the limited results. In one important example,²⁵ a category consisting of 2 self-described “small” company respondents reported an average of more than \$2,400 in “dealer reserve.” That number is many times greater than any other reported response. It is so out of line with all other responses that it must be either erroneous or such an anomaly that it should be ignored (at least without verifying the accuracy of the figure). These obvious outliers led to an overall average figure closer to \$750. Without those outliers, the figure is \$250-300 range (much closer to the other reported data sources described below). Whether an error or other anomaly, it had an outsized and statistically significant effect on the overall averages.

What the Data Truly Shows About Dealer Participation

Rather than making overly broad extrapolations based solely on one limited and unscientific survey, NADA looked at real-world data to determine how much dealers actually earn as compensation for their role in arranging financing for consumers. First, what is dealer participation as reflected in *actual transactions*? According to JD Power, a review of over 3.5 million actual transactions at dealerships over a three year period demonstrates that new vehicle loans have an average dealer participation rate of 0.7%, and used loans have a rate of 1.0%.²⁶ This translates to an average gross dealer reserve of \$8.58 per month out of an average \$450 monthly payment for new cars, and \$6.89 per month out of an average \$347 monthly payment for used cars.²⁷ For new cars, this represents a gross amount of \$531.96, and for used

²⁵ - See *id.*, Appx. at 13.

²⁶ - The JD Power data include a total of nearly 3.5 million transactions at dealerships over a 3 year period and reflect average figures from loans with all credit sources (banks, credit unions, captives, etc.), across all credit tiers. These figures are supported by the NAF Survey data detailed in footnote 23 of 0.7% for new, 1.0% for used, and 0.9% overall.

²⁷ - The average new vehicle selling price in 2009 was \$28,966, while the average used vehicle selling price was \$14,976. (2010 NADA Data) The average amount financed in 2009 was \$26,178 (Federal Reserve G19) (note that this is likely a high (conservative) number because the loan to value % reported in G19 is 80%). The

a gross amount of \$399.62. NADA also reviewed the public filings of five of the largest publicly traded dealership groups for additional data regarding dealer participation.²⁸ The reported data represent over 955,000 vehicles sold in 2010,²⁹ and reflect a reported average gross dealer participation amount of \$324.00.³⁰

The Report also inappropriately cites an “average gross profit” figure from NADA Data (in Figure 3). Citation to this number is inappropriate because it reflects the average overall total gross amount a dealership earns when it sells a new vehicle, not just F&I income. However, using this data, along with other figures reported by dealers regarding the F&I office, one can determine an approximate average gross dealer reserve figure. This calculation demonstrates that the average overall gross F&I income is \$334.87 for new vehicles and \$430.25 for used, and the total figure for dealer reserve is approximately \$167 new and \$215 for used.³¹

The bottom line is that non-speculative *real world* data reflects dealer participation figures ranging from \$167 to \$531, much lower than the figures “derived” in the Report.

The Report also vastly overstates actual dealer participation amounts because it ignores the fact that most loans do not go to maturity. In fact, while the average initial term of an automobile loan is just over five years, the average vehicle loan is paid off at approximately three and a half years. When a vehicle is traded in or the loan paid off before the end of the loan term, the total finance charge is never earned by the financial institution and the dealer participation portion of the finance charge is never paid to the dealer. Of course this means that there is a vast difference between the theoretical total finance charge on a loan and the actual finance charge paid. While there are several ways to address this risk of pre-payment as between the dealer and finance source, a common way is for the dealer to accept payment of less than 100% of the total gross dealer participation in exchange for the finance source agreeing not to charge the dealer back if the loan is prepaid after the initial stage of the credit contract.³² The general market standard amount, which reflects the actuarially accurate level of pre-payment, is approximately 70-75%. In other words, dealers who opt for this form of risk-shifting are only paid 70-75% of the gross dealer reserve amount on all dealer-assisted financing transactions. This means that based on the gross amounts reported above, dealers are actually paid somewhere between \$117 and \$398 per vehicle financed.

average term for new was 62.9 months (G19), and 58 months for used (Experian) but the average months that a loan is actually outstanding is approximately 47 months for new and 43 for used.

²⁸- See 2010 10-k filings for Group 1, Sonic, AutoNation, Penske, and Lithia Automotive Group.

²⁹- Group 1 Automotive reported an overall F&I income figure, as well as a specific number for dealer participation of \$314. Sonic, AutoNation, Penske, and Lithia also reported (similar) overall F&I income numbers, and the averages of \$293, \$361, \$296, and \$308 respectively were derived assuming the same percentage of overall F&I income was earned from dealer reserve.

³⁰- All figures are pre-tax and weighted by number of units sold.

³¹- This figure is conservative because it is derived by multiplying the overall gross profit figure by the % of new- and used-vehicle department gross profit derived from finance and insurance (which includes products and services beyond dealer reserve).

³²- This is explained at p.6 of NADA’s April 6, 2011 comments to the Commission.

In addition, it is important to note that even these amounts are *gross figures*, which of course overstates what dealers actually retain. Dealers have a variety of fixed and variable costs associated with the F&I office, and the average F&I profit margin is approximately 10%.³³ Using the numbers outlined above, that means that after covering costs, conservatively speaking, dealers keep between \$17 and \$54 in net profit, pre-tax, per car sold from dealer reserve. Looking at the actual facts, it is difficult to see how dealers are overcharging anyone.

Other Flaws in the “Dealer Markup” Estimate

With the usefulness of the NAF Survey in this context undermined, it is also worth discussing the other areas of weakness in the Report’s \$25 billion overcharge estimate reflected at Figure 3. First, the Report provides neither the mathematical formula nor the source of the needed inputs for the \$25.8 billion figure.

One possibility is that the \$25.8 billion figure was determined by multiplying the “average markup per loan” dollar amount by the number of new vehicles financed through dealerships. Again this is mere speculation since it goes unexplained in the Report, but assuming that this was the case, it begs the following questions: Where do those dollar figures come from? How were they determined without the amount financed, average term, and other information listed above? And, as discussed above, why are they different from the reported figures in the NAF Survey?

Regarding the methodology used in the Report, the numbers simply do not add up. Using the Report’s own data sources, 10.55 million new vehicles were sold in 2009, with 6.134 million of those vehicles financed. Of the 6.134 million financed, CRL asserts that 79.2% are financed through dealers, for a total of 4.86 million new vehicles financed through dealers. At an average of \$494 “average markup per loan,” that would be a total of \$2.4 billion in dealer participation on new vehicles sold, not \$4.1 billion. As outlined above, their primary data source notes that the 79.2% figure is actually 42%, meaning that only 2.58 million vehicles were financed through dealers, for a total of \$1.27 billion.

However, this approach does not appear to have been the approach taken. The footnote to Figure 3 states that “[a]verage markup figures assume a rate markup occurs on every dealer-financed sale, leading to more conservative averages.” This suggests that the \$25.8 billion figure presented in Figure 3 must have been derived using the average rate participation figures.

The problems with that approach, however, are immediately apparent. Even assuming the 1.01% and 2.91% figures are correct, any calculation to determine the total amount of dealer participation nationwide based on those figures would also require:

- the average amount financed;
- the average term (not the contract term, but the length of time prior to payoff);

³³ See 2010 NADA Data.

- the total number of new cars sold;
- the total number (or percentage) of those cars that were financed;
- the total number (or percentage) that were financed through the dealer, and;
- the number (or percentage) financed through the dealer that included any dealer participation.

The Report *does not claim to have any of these data points*, and does not explain how these figures are determined without them. The Report's only other data source for all these necessary figures is CNW Marketing Research, which is the source for "sales data for dealer financed purchases, excluding leases." Here, again, we enter the realm of speculation, because it is difficult, if not impossible, from the facts given to determine how the Report reached the conclusions listed in Figure 3 even using CNW data. It is not only unclear from where the alleged CNW data is derived,³⁴ it is impossible to tell the purpose for which the Report is using it. The Report also inexplicably fails to use more relevant CNW data. For example, while the Report states that over 79.2% of all "auto loan volume" is financed through dealers, CNW Doc 544 reports that figure at less than 42%. Of course, using this figure would instantly halve the \$25.8 billion figure.

In addition, the CNW Data is itself poorly sourced. There is no description either in the Report or via CNW as to the source of this data, and no verification of the validity or quality of the data. It may or may not be useful data, but to cite it as authority requires, at a minimum, some explanation of its origins and validity.

In addition to supporting the \$25 billion overcharge allegation, Figure 3 is also used to support the claim that "*F&I staff are effectively billing consumers from \$952 to \$1,587 per hour to finance the vehicle.*" This inflammatory allegation is based solely on the claim that consumers who finance a vehicle spend 45 minutes in the F&I department. Yet again, and as discussed below, this claim fails to account for a number of critical factors affecting net earnings.

The vast majority of businesses do not provide services or charge by the hour. And whether billing by the hour or not, any viable business model requires that the retail price of the goods or services provided must include payment to cover *all* the costs of the operation, including, but not limited to, time actually spent with the customer. The fees charged by the dealer must cover all the costs of the F&I office, as well as a proportional amount of all other indirect costs of operating the dealership. Among many other duties, the F&I office must establish relationships and keep up-to-date with its numerous financing sources and conduct training and undertake other responsibilities in relation to point of sale legal and regulatory compliance. That is in addition to costs associated with advertising, technological assets, and other indirect operational costs. Even in terms of direct costs, there is significantly more time spent by dealers in connection with a finance transaction than that spent face-to-face with customers who end up financing through the dealership, including a great deal of effort gaining approval and final funding of a customer's retail installment sales contract. In many cases, (particularly

³⁴ - CRL cites Doc 270 in another section of the Report, but do not seem to use numbers from Doc 270.

with subprime customers), F&I personnel spend far more time fulfilling the finance company's stipulations and otherwise working to gain final approval of the loan *after* the customer leaves than they do when the customer is at the dealership. Of course, they also spend time with all the customers who do not choose optional dealer-assisted financing. None of the foregoing is recognized in or addressed by the Report's allegation of the per hour cost of financing.

Objective #2: "Explor[ing] loan conditions that influence rate markup"

The second of three "objectives" in the Report, is "[to] explore loan conditions that influence rate markup." The Report engages in this exploration by undertaking an "in-depth" examination of auto ABS offerings. However, the Report's explanation of its ABS analysis is limited at best, misleading at worst, and leads to far more questions than it answers. It is worth repeating in its entirety:

"To examine rate markups more in-depth, we used auto loan asset-backed securities (ABS), and we were able to build a dataset of 32 loan pools from 16 different issuers in 2008. The pool-level data contained information on factors that may influence loan delinquency and loss, including FICO scores, amount financed, used vs. new purchases, type of lender, loan term and APR. The most recent cumulative loss and 60-day delinquency rates for each pool (as of Nov 2010) were also included from Bloomberg reports. Likewise, knowing the issuer of each pool allows us to control for loans made under self-imposed rate markup caps.

In order to determine the objective investor rate associated with each ABS pool, we documented the yields and payment schedules for each class in every pool in our dataset. Having payment schedules allowed us to calculate one cashflow of all issued classes, and further determine what rate an investor would be willing to pay based on each pool's combined yield and the comparable 5-year Treasury bond rate. Adjustments were made for the presence of overcollateralization and withheld pool tranches, as they both can affect an investor's perception of the pool's risk, and therefore its price.

The calculated rate after adjusting for overcollateralization and withheld tranches is what we estimate as an objective market rate on each pool as determined by investors. Therefore, a pool's weighted average APR in which consumers observe on their financing includes both the objective market rate, plus an overage that is allowed for dealer compensation and profit. We determine this estimated overage as a dealer rate markup that is assigned on a much more subjective basis. Having this estimate for subjective rate markup allowed us to use it as a dependent variable in linear regression, while using other loan conditions (term, FICO, etc.) as independent variables.

In analyzing the impact of rate markup on loan performance, we separated the pools in our dataset into two cohorts: pools from subprime finance companies and pools from all other lenders. Then using 60-day delinquency and cumulative loss rates as dependent variables, we conducted a linear regression controlling for rate markup as an independent

variable. A separate regression model was conducted for each cohort in order to analyze rate markup's impact given different lending environments.

Stratifying into two groups not only allowed us to explore rate markup's relationship with defaults, but also see if that relationship differs between lenders that target different lending markets.

To be sure, this explanation sounds authoritative. The trouble is that it sheds little to no light on what CRL actually did or why.

2008 Auto ABS

Before listing some of the more critical unanswered questions, we need to review the actual facts regarding 2008 auto ABS. In 2008, there were 35 total ABS issuances in the “auto” space from a total of 19 different issuers. Five of the offerings were from issuers that do not offer indirect loans,³⁵ which of course cannot, by definition, contain any dealer “markup.” One of the offerings was made up entirely of leases,³⁶ one involved motorcycle loans,³⁷ and one included indirect loans from a finance source that does not pay dealer participation as the difference between the buy rate and contract rate.³⁸ Seventeen of the remaining offerings were from eight captive finance companies, all of which presumably contained a significant percentage of loans with subvented rates. Such loans generally pay no dealer participation or only a small flat fee.³⁹ Each of these highly relevant facts differs in numerous ways from those presented in the Report, and none are provided, explained, or controlled for in the Report’s “analysis.”

Rate Caps

The Report alleges that the contractual limits on dealer participation instituted by financial institutions to address claims of racial discrimination⁴⁰ “have all expired.”⁴¹ This is flatly untrue and misleading. To be sure, it is true that most of the settlement agreements that instituted rate caps have expired; but that is not the relevant question for the assertion made. NADA was able to establish (by simply asking) that financial institutions (both those that entered into the settlement agreements and those that did not) almost universally continue to have contractual rate caps in place. Indeed, other than the one financial institution that does not allow dealer participation at all, we confirmed that all of the financial institutions that issued ABS offerings in

³⁵ USAA had a total of 3 issuances in 2008 and CarMax had 2. -

³⁶ Nissan Lease. -

³⁷ Harley Davidson. -

³⁸ Huntington Finance generally pays the dealer a percentage of the amount financed. -

³⁹ Generally, they pay the dealer a small flat fee. These included NMAC (3 ABS offerings in 2008), Ford Motor - Credit (3), GMAC (2), Chrysler Financial (2), VW Credit(2), Hyundai Motor Finance, Honda Financial (2), and World Omni (2).

⁴⁰ Such allegations were settled out of court.

⁴¹ Report at 14.

2008 have rate caps.⁴² NADA also interviewed dealership F&I personnel, all of whom reported that they were not aware of any lender that pays dealers based on a percentage of the APR that does not have rate caps in place. In addition, NADA conducted a survey and reviewed materials from 37 (non-credit union⁴³) lending institutions in the automotive retail space and found that *100% of the financial institutions we looked at that pay dealers based on the difference between the buy rate and the retail rate continue to have rate caps in place.*

Lastly, prior to 2008 and continuing today, California and Louisiana both have statutorily required rate caps.⁴⁴ Those two states represent nearly 15% of all new cars sold in the United States. Simply put, those rare few financial institutions that do not have caps (we could find none, but they may exist) simply cannot have any statistical effect on the market even close to the participation percentages cited in the Report.

Finally, and perhaps most conclusively, we again reviewed actual data. NADA asked JD Power to review its data regarding dealer participation to get an idea what the actual transactional data from dealers reflects regarding rate caps and found that the data supports the fact that rate caps are nearly universal. In 2011, of all dealer-assisted financing transactions that include any dealer “mark-up” of the interest rate, *more than 99.7%* contain a dealer participation percentage of less than 3%, with nearly 95% of all such transactions including dealer participation rates of less than 2.5%, and nearly 90% at less than 2% dealer participation. This completely rebuts the conclusion reached in the report that subprime loans are marked up *over 5% on average*. It is mathematically impossible for 5%+ average increases to exist where 99%+ of all transactions have a total participation of less than 3% and any “analysis” that produces such mathematically impossible results must be flawed.

Indeed, despite the allegations in the Report to the contrary, this shows that while the rate caps have never gone away, the market is a far greater source of discipline on rates than any artificial caps. The Report’s allegation that *“racially discriminatory practices [could] now re-emerge now that rate markups could again run unbridled,”* is inflammatory, factually inaccurate, and does not contribute to a responsible analysis of the issue.

Many Crucial Unanswered Questions

The Report ignores, distorts, or fails to explain all of the facts outlined above about the ABS market and rate caps in its description of its ABS analysis. In short, the Report’s ABS analysis falls woefully short of any objective standard because it leads to far more questions than it answers. Among other issues, the Report fails to explain the following crucial facts about its ABS analysis:

⁴² Those listed plus, Fifth Third; Americredit (3 ABS issuances in 2008); Wachovia Non-Prime (2) (now Wells Fargo), Bank of America, JP Morgan, Franklin, Merrill Lynch (Mitsubishi Motor Credit of America).

⁴³ Credit Unions generally pay a flat fee to compensate dealers in indirect financing transactions.

⁴⁴ See e.g., California Civil Code Section 2982.10 (effective July 1, 2006).

- Which 32 of the 35 ABS offerings were used in building their dataset?
 - Which did they leave out, and why?
 - How was the dataset built?
- Did CRL review data available in the public filings associated with those offerings?
 - Which public filings?
 - Which were relied upon?
 - What data was obtained or considered?
- Did they have access to other data?
 - If so, what data?
- How were the loan pools represented in those ABS offerings created?
 - What did they contain?
- What does it mean when they state *“knowing the issuer of each pool allows us to control for loans made under self-imposed rate markup caps.”*
 - How did they “control”? (since all of the auto ABS issuers in 2008 had rate caps in place)
- Did they contact the issuers to determine whether they had caps?
 - Why not?
- Did they control for the one issuer that does not pay dealer participation as a % of the APR?
 - Did they include that ABS offering in their analysis?
 - What does their analysis reveal about the “dealer participation” in these deals?
 - What effect did this erroneous “control” have on their “analysis”?
- Did they control for loans in California or Louisiana? How?
 - Did they otherwise account for those 15% of all sales in extrapolating the information from the ABS analysis? If so, how?
- What is the *“objective investor rate associated with each ABS pool”*?
 - This appears to be the lynchpin of this entire analysis - is there such a thing?
 - It is not a recognized term by experts we consulted.
 - There is no such ABS analogue.
 - If it is essentially the “cost of funds” --
 - How is that at all relevant?
 - Does the rate they use have any relation to auto ABS?
 - Does the rate investors pay in interest on bonds have anything to do with the rate on the underlying loans in the collateral pool?
 - Does that rate have any relation to the APR in the underlying loans?
 - Any relation to the percentage of the APR that represents dealer participation?
- What does the 5-year Treasury bond rate have to do with the analysis?
 - Why was it chosen? (It is not an industry-standard measuring stick)
- The goal appears to have been to determine the delta between a “safe” return, and the return on the ABS. Assuming that is the case, how is that relevant or related to the dealer participation on any particular loan?
- How did they *“adjust[] for overcollateralization and withheld tranches”*?

- Why did they do that?
- Is it relevant?
- Is it supported by data?
- Because overcollateralization and withheld tranches data is not always available in public filings, did they estimate?
 - If so, how?
- Have they controlled for other external costs/risks that could explain the difference in return?
 - *E.g.*, subvented interest rates could have a significant effect;
 - The percentage of used car loans would also be significant, and that ranged from 0% to 98.94%. (See Appx. 4). Did they control for this wide variation? How?
- What does this statement mean? *“We determine this estimated overage as a dealer rate markup that is assigned on a much more subjective basis.”*
 - Why did they make this “determination”?
 - What was their basis for doing so?
 - What exactly is “subjective”?
- What does this mean?: *“Having this estimate for subjective rate markup allowed us to use it as a dependent variable in linear regression, while using other loan conditions (term, FICO, etc.) as independent variables.”*
 - Experts we have consulted do not understand this statement, noting that it is not adequately explained from a technical or scientific standpoint.
 - There is not enough background data provided for this to make any sense.
 - If theory is viable, there is not enough data or explanation to test or confirm.
- What assumptions were built into their analysis? For example:
 - What are the associated statistical analytical data such as R squares, error testing (Type I and Type II) of the various hypotheses, etc.?
 - What is the exact calculation for the “objective rate?”
 - Were net losses included?
 - Were the cost of interest rate swaps and insurer guarantees included?⁴⁵
- What were the assumptions used for the equity for each transaction?
 - Since detailed information about the equity in ABS issuances is not publicly available for a vast majority of transactions, how were they derived?
 - The amount of equity can vary significantly depending on ABS structure and loan characteristics (subprime vs. prime.)
 - Equity returns can also vary significantly depending on loan pool prepayment, default and loss rates, economic conditions and notably, ABS structure.
- Did they control for the ABS “Waterfall” rules?
 - ABS deals have inviolable rules (the “Waterfall”) that route cash flow away from equity investors if losses exceed certain parameters.⁴⁶ The Waterfall structural

⁴⁵ - The first is critical since a lack of or an inadequate deduction could leave an overly large residual pre-equity “markup rate.” With subprime finance companies, it would be logical under risk based pricing to have a higher cash flow before credit losses. Banks would not show the effect because they lend to higher quality borrowers. Figure 5 on Page 12 of the Report reflects this fact.

characteristics make trend analysis and basic approximations very suspect since returns are loss path dependent.

- What is the basis for deducting the equity returns to arrive at “*subjective rate markup*” when equity returns are by definition the residual returns after all investors have been paid?
 - Investors and entities that structure ABS transactions use mathematical models to create simulations that estimate a range of returns. It is not valid to simply use an assumption since returns can vary widely based on a number of factors including the vintage of auto loans, loan structure, and others.

NADA Review and Analysis of ABS Data

In an effort to understand and decode the Report’s ABS analysis in light of these and other missing facts, NADA spoke to numerous structured finance experts and economists and, as discussed above, undertook a detailed analysis of the 2008 auto ABS offerings using the best estimate of the Report’s methodology. This analysis demonstrates that even the loans in the ABS offerings issued by lenders who offer direct loans only (“Direct Issuances”) reflect a “dealer markup” amount. This could not be the case if the CRL ABS analysis were valid. Of course, as explained above, what this most likely reflects is the reality that that direct lenders incur the same (and in many cases additional) costs as dealers in the indirect model. In other words, whether the loan is direct or indirect, the APR of that loan is composed of all of the same general cost and profit components.⁴⁷

Not only does the NADA analysis show that the APR in direct loans include a component related to marketing and related distribution costs (which, according to the Report, reflects “markup”), it also showed that component of the overall rate was generally *higher in the Direct Issuances* than in the ABS offerings that include indirect loans (“Indirect Issuances”). There were five Direct Issuances, and even without considering FICO weighting, 2 of the top 3, and 4 of the top 10 average “markup” amounts were in the Direct Issuances. Controlling for Average Weighted FICO, the effect is even more pronounced, with 3 of the top 5 “markup” spreads among “Prime” loans being Direct Issuances, and 2 of the top 3 spreads among “Subprime” loans being Direct Issuances.⁴⁸ Yet again, this demonstrates that the efficiencies of the dealer-assisted financing model translate to lower costs for the consumer than direct – especially for loans that are, on average, lower credit profile.

⁴⁶ - U.S. Auto Loan Static Index and Collateral Trends Report: Auto Loan ABS Ratings Remain Relatively Stable Amid Recession, But Performance Is Mixed Across Issuers, Amy S. Martin, Standard and Poors, March 25, 2009.

⁴⁷ - Of course, because direct and indirect lenders compete in the same marketplace, market forces will act so that the ultimate retail price, the APR, will be competitive.

⁴⁸ - See Exhibit A.

Objective #3: “To Investigate Rate Markup's Impact on Loan Performance”

Despite the numerous flaws outlined above, the Report relies exclusively on the ABS analysis in making perhaps its most inflammatory allegations: that dealers “tend to mark up interest rates more for borrowers with weaker credit” and that “dealers may use certain borrower or loan characteristics as a way to identify people who would be vulnerable targets for increased rate markups.”

The Report Alleges Without Support That Borrowers with Weaker Credit May Pay a Higher Dealer Participation Percentage

First, there are simply no facts to support the allegation that dealer participation is higher on subprime loans, and no reason to believe that this is true. The only authority in the Report for this assertion is the ABS analysis, reflected in Figure 4 of the Report. The stated explanation of the data in Figure 4 is poorly sourced and so deficient that it does not allow an objective observer to understand or accurately duplicate the analysis. However, the data that appears to be reflected in Figure 4 illustrates the weakness of this “analysis” in that it purports to show that “loans made by subprime finance companies”⁴⁹ include an *average 5.02% increase* in dealer participation. Apparently (although this is unclear), this 5.02% additional dealer participation is *in addition to* the average dealer participation on similarly situated loans. Yet at the same time, the Report alleges that average dealer reserve ranges from 1.01% for new to 2.91% for used car transactions, relying exclusively on the NAF Survey. In other words, the Report is alleging on one hand that a survey of subprime lenders shows that dealer participation is approximately 1% for new cars and 2.9% for used cars, while at the same time, through its “regression analysis,” concluding that subprime loans are “marked up” more than 5% on average. This is internally inconsistent and demonstrates the errors in this analysis – the analysis upon which the Report is primarily based.

Even if this inconsistency were subject to explanation, these figures are also belied by actual real-world dealer transactional data which, as discussed above, shows that more than 99% of all loans (prime and subprime) include dealer participation of less than 3%. Given these facts, it is mathematically impossible for the Report’s subprime loan regression analysis to be accurate.

The true facts are that lower credit tier loans do not have a higher dealer participation percentage than prime loans. For example, the Consumer Bankers Association published an Automotive Finance Study (“CBA Data”)⁵⁰ that includes information about automobile loans. The CBA Data is arguably more reflective of the market because it includes data from prime and

⁴⁹ It is unclear whether this means all loans issued by subprime finance companies or only subprime loans issued by such companies. It should be noted that subprime finance companies do issue prime and near-prime loans. See, e.g., NAF Survey at 31 (showing that approximately 40% of approvals and 30% of booked deals were over 620 FICO score.) It is also unclear how CRL controlled for the different measures of prime and subprime used in the market or whether the subprime analysis included “deep” subprime as well.

⁵⁰ The most recent available data is contained in the 2008 CBA Report, analyzing 2007 data.

subprime lenders. The CBA Data breaks down new and used dealer participation amounts by FICO score and shows that dealer participation is not always a higher percentage in the lower credit tiers.⁵¹ Indeed, for both new and used cars, deep subprime loans *have the same average dealer participation percentage as the overall average for all loans all tiers.*

The Implication that Dealers Intentionally “Target” Subprime Borrowers Is Irresponsible and Completely Baseless

The Report does not stop with the unsupported allegation that subprime rates have higher dealer participation rates. Instead, it goes on to speculate as to the reasons behind this assertion, leveling an allegation that is clearly intended to be provocative and to overstate the Report’s asserted concerns: that *“dealers may use certain borrower or loan characteristics as a way to identify people who would be vulnerable targets for increased rate markups.”*

First, as discussed above, all of the lenders we are aware of, including subprime lenders, either have rate caps or do not allow dealer participation at all. As a result, it would be impossible for dealers to extract increased participations anywhere near the magnitude alleged from any borrower, prime or subprime.

Second, it makes no sense to allege that dealers are intentionally targeting subprime customers in light of the other “data” reflected in Figure 4. The theory that there is some “additional” component of the APR that results from dealers’ intentional targeting of subprime borrowers fails to explain why the dealer “markup” rate is also apparently increased by other cited factors such as length of contract term, new versus used, etc. Are dealers also intentionally “targeting” used vehicle purchasers, regardless of credit tier? How does such targeting occur, and why? The Report strongly implies that there are some nefarious reasons (*e.g.*, fair lending violations) that lie behind dealers targeting of subprime borrowers. Do those same reasons lead to the disparity with longer term loans? How exactly does that work?

Third, while the data suggests that no such increase exists, there are valid reasons why dealers would charge higher fees (expressed as a participation percentage) to subprime borrowers. The simple and undeniable fact is that, as a general matter, considerably more effort is involved in securing credit for credit challenged consumers than is involved in securing credit for prime consumers. One objective, industry standard measure of this is the “look to book” ratio, which is the number of deals that are actually booked by the finance source, expressed as a percentage of the total number of deals a dealer sends to that finance source.

⁵¹ CBA Data regarding average dealer participation percentage by credit tier is as follows (at pp. 20-21):

NEW avg (by FICO):

720+ -- 0.5%
680-720 – 0.8%
620-679 – 0.7%
550-619 – 0.9%
<550 – 0.7%
Unscored –0.9%
Overall – 0.66% (appx. p. 5)

USED avg (by FICO):

720+ - 1.5%
680-720 – 1.6%
620-679 – 1.8%
550-619 – 2.0%
<550 – 1.8%
Unscored –1.5%
Overall – 1.78% (appx. p. 6)

In other words, if a dealer sends 10 applications to a finance source, but that finance source is ultimately able to book only five (based on that finance source's underwriting standards), the "look to book" ratio is 50%. On the other hand, if the finance source is only able to book one of those ten, the "look to book" ratio is 10%. Because dealers typically spend the same amount of up-front time and effort with all customers, the end result for the dealer is that in order to make the same amount of compensation, they have to submit applications and work with five times as many customers at 10% than at 50%.

The CBA Data shows that this ratio is much higher in prime and deteriorates sharply in the lower credit tiers. For example, while the overall "look to book" ratio for new cars was 29%, the ratio was 48% for "prime" borrowers, while it was 7.2% for subprime borrowers, and 3.6% for "deep" subprime (under 550 FICO).⁵² In other words, a dealer would have to work with and submit applications on behalf of nearly seven times as many subprime customers (and nearly fifteen times as many deep subprime customers) in order to gain underwriting approval for the same number of transactions.

We can look to another data source relied on in the Report for further proof of this difference. According to CNW Research, 81.36% of all prime loans are "eventually approved," while only 22.71% of subprime loans are eventually approved.⁵³ In addition, dealership F&I personnel must shop an average of 3.2 financial institutions before a prime deal is accepted, while they must shop well over twice as many – an average of 7.9 institutions – before a subprime deal is accepted.⁵⁴ This means that dealers must establish and maintain relationships with far more lenders and work much harder on behalf of subprime customers. And even then, nearly 8 in 10 times a dealer submits a subprime application to a finance source no financing can be arranged and the dealer earns no compensation.

Dealers generally have to work harder to get subprime loans approved because the finance sources will often grant conditional approval of a subprime loan, but only provide final approval after the dealer and the borrower have met numerous stipulations (or "stips"). These can include such requirements as confirmation of the customer's address, copies of utility bills, length of time at an employer, verification of income, co-signers, or other conditions that require the dealer to follow up with the borrower, the borrower's employer, landlord, or other third party. Each of these can be very time consuming and add to the complexity and uncertainty with subprime loans. Moreover, they are generally not required (or if required, are far less extensive) with prime applicants.

Dealers may also be justified in charging a higher percentage of dealer participation in subprime transactions because subprime contracts generally involve a lower amount financed, and since subprime lenders are generally willing to lend less⁵⁵ and at shorter terms, as a matter of simple math, dealers stand to make *less* from subprime deals with the same dealer

⁵² Similar "look to book" rates are reflected in the NAF Survey. -

⁵³ CNW Research, Doc. 1339. -

⁵⁴ Id. -

⁵⁵ See Experian Report. -

participation percentage. Therefore the percentage of dealer participation to earn the same compensation would necessarily be higher.

Lastly, dealers also take on additional risks with subprime loans. For example, it is common for the finance source to include provisions in the dealer-finance source agreement to charge back the dealer for any unearned dealer participation if there is a default or other unmet condition in the first 90 days after the loan is issued. Because subprime borrowers have a higher incidence of default – including within the first 90 days – this risk is inherently greater for the dealer.

This shows that not only are the allegations about dealers targeting subprime customers completely unsupported and unwarranted, the notion that dealers are intentionally targeting subprime customers to somehow enhance their earnings has it *exactly backwards*. Dealers must work harder and spend more of their time with a lower chance of earning compensation on finance transactions involving consumers with weaker credit than when they arrange financing for consumers with stronger credit. This may explain why many direct lenders focus heavily, and in some cases exclusively, on prime consumers.

Finally, even if one ignores the facts as they exist, this allegation fails independently because the Report does not present any evidence that (in those limited instances of direct lending to subprime borrowers), the amount direct finance sources charge subprime borrowers over their costs and risk premium *is any less* than the amount dealers charge. In other words, even if dealer participation on subprime loans was higher than prime loans (which it is not), the Report does not show that the retail rates subprime borrowers pay through dealer-assisted financing is *higher* than the rates they pay to direct lenders. Without establishing that basic principle, it is impossible to conclude, as the Report does, that dealers are intentionally “targeting” subprime consumers by “marking up” the loans.

CRL Fails to Establish a Causal Relationship between Dealer Participation and Defaults

Despite their failure to demonstrate (i) via their “ABS analysis,” the average dealer participation; (ii) that dealers’ subprime rates were higher than those charged by direct lenders; (iii) that dealer participation increases for subprime borrowers; or (iv) that the sole cause of those higher rates is dealers’ nefarious targeting of subprime borrowers, CRL nevertheless relies on this set of assertions in making their final allegation: that higher dealer participation itself somehow creates a higher risk of default in subprime borrowers. And, amazingly, this last assertion is leveled without even controlling for creditworthiness.

As with other areas of the Report, this claim is difficult to review, test, or even completely understand because the assertion is vague, the data relied upon is opaque, and the required logical underpinnings are missing. However, what CRL appears to be asserting here is that an increase in dealer participation *alone* – without regard to whether the APR is actually higher – somehow leads borrowers to default on their auto loans at a higher rate. This is based on

repossession rates, again ostensibly derived via an analysis of ABS issuances. In other words, the Report breaks new ground in the field of economics by asserting that a higher *rate* leads to a higher *risk* – overturning the universally recognized truth and the fundamental basis of risk based pricing, that it is a higher default *risk* that leads to the need to charge a higher overall *rate*. Not only that, the Report advances the proposition that this risk is driven by one particular sub-component of the APR – dealer participation – and when that component is raised, that *alone* increases the rate of default for a subset of borrowers, independent of the overall APR.

According to CRL's logic, Consumer A with an automobile loan at 8% that includes 2% in dealer participation will be more likely to default than Consumer B with the same credit rating but with a 12% loan that includes 1% in dealer participation. In other words, CRL alleges that higher dealer participation in and of itself somehow leads to higher repossession rates. This is completely unsupported by fact and belied by logic. The Report includes data (at Figure 8 on page 16) noting that repossession rates are higher in indirect loans. Not only is this data erroneous (discussed below), but because the data does not control for creditworthiness it is completely meaningless. As discussed above, direct lenders generally focus on prime loans, and generally do not buy as deeply into the credit tiers. As a result, this data reflects little more than the fact that loans at the lower credit tiers tend to default at a higher rate than prime loans. It is universally recognized that financing in the subprime market is, by its very nature, inherently more risky than financing in the prime market and therefore can be expected to result in higher levels of default and repossession.⁵⁶ Therefore, before one can responsibly conclude that an element of the pricing structure in the subprime market is alone triggering higher default and repossession rates, one must control for all other variables and then demonstrate that other creditors operating in the same credit tier (i) provide the same element (*i.e.*, their retail margin) at a lower price; (ii) provide retail credit terms to consumers that are more affordable than those offered by dealers; and (iii) experience fewer defaults and repossessions as a result.

Not only does the Report fail to establish any basis for concluding that any one component of the APR somehow has a different or greater effect on default and repossession than any other, but it fails to explain how this allegation could be true without controlling for creditworthiness, loan term, down payment, or any other loan feature or borrower characteristic. The Report simply does not support the causal relationship it advances.

In addition, this data ignores the fact that ABS issuances generally contain very strict covenants that *require* repossession in cases of delinquency. In non-securitized loans, lenders often have a great deal of flexibility (and incentive) to work with customers who fall behind on their loans. The contractual prohibitions in ABS offerings, however, severely restrict and

⁵⁶ Indeed, this reality is clearly demonstrated in the ABS issuances CRL purports to have analyzed. For example, a (simple unweighted) average of the cumulative losses in the issuances containing weighted average FICO scores over 725 was 1.195%, while the average in the issuances containing weighted average FICO scores under 700 was 8.78%, with a pronounced increase to the 11- 15% range in the "deep subprime" issuances. See Exhibit A.

generally prevent loan servicers from such negotiation. Of course, such terms are completely outside the control of dealers. As a result, this is yet another reason why an analysis of repossession rates in securitized loans is misleading when compared to repossession rates in non-securitized loans.

III. Every Single Chart in the Report Is Flawed

The Report includes a number of other charts, assertions, implications, and accusations – all of which are based on either the unsupported \$25 billion overcharge allegation and/or the dubious “ABS analysis,” and all of which are thus faulty by definition. There are also a number of additional independent reasons why, as noted above, every chart in the Report is erroneous.

1.) FIGURE 1: This chart purports to demonstrate that F&I income is growing as an overall percentage of dealer profits. The Report alleges that it is this “fact” that leads to “pressure” in the F&I office to maximize income. The thinly-veiled implication is that this “pressure” is leading dealers to increase their efforts to overcharge or otherwise victimize consumers.

As an initial matter, these unsupported and unexplained numbers are simply wrong. Total F&I income has accounted for between 20 and 30% of overall *new and used car department* gross profit over the last ten years,⁵⁷ so it is difficult to understand how it could comprise a larger percentage of overall gross profit at the same time.

In addition, this chart is misleading because it does not view F&I profits in the context of overall dealer profitability. Where F&I profits remain steady, the percentage of the overall profit coming from the F&I department will grow in an environment where overall dealership profitability is decreasing. This would be true even where profit margins in the F&I office have also dropped, but at a slower rate. Indeed, what the data shows is that over the last 10 years, F&I profit margins have declined even faster (over 67% for new cars, and nearly 40% for used cars) than overall new car department profit margins (29%, from 6.2% to 4.5%)⁵⁸ over that same period – and independent of relatively steady overall dealership profits.

⁵⁷ See 2010 NADA Data at 9.

⁵⁸ See id.

Dealer Profit Margins⁵⁹

	F&I New	F&I Used	New Car Dept. ⁶⁰	Overall Dealership
2000	10.6%	13.9%	6.2%	
2001	10.7%	12.1%	6.0%	
2002	8.8%	10.6%	5.7%	
2003	6.2%	11.1%	5.6%	
2004	5.7%	10.4%	5.2%	1.7%
2005	5.83%	11.26%	5.1%	1.6%
2006	5.77%	12.46%	5.2%	1.5%
2007	5.59%	12.53%	5.0%	1.5%
2008	2.71%	7.23%	4.4%	1.0%
2009	3.0%	8.58%	4.5%	1.5%

Therefore, Figure 1, which appears to show a huge increase in the profitability of the dealership F&I office, is misleading at best, and hides a precipitous drop in profitability over that same time. Indeed, not only did F&I profit margins decrease even more precipitously than new car margins during this period, *net profit* for the entire new car department was *negative* from 2006 through 2009.⁶¹ In other words, on average, dealers *lost money* on every new car sale from 2006 to 2009. The fact that the Report would allege massive overcharges in this environment is shocking.

Lastly, the Report claims to use “gross dealer profit per unit” to “estimate” the percentage of profit from F&I. While F&I income is a portion of gross dealer profit, they are two different numbers. The Report uses Figure 1 to make claims about a number of F&I issues, but it is important to clarify that even the faulty numbers presented are overall F&I figures, of which dealer participation is only a portion.

2.) FIGURE 2: Cites an article⁶² as support for the fact that indirect financing makes up 79.2% of the vehicle finance market. First, although it is not stated and it is unclear from the description given, this figure presumably relates only to new vehicle purchases. In addition, the second pie chart in Figure 2 appears to break down indirect financing by sector, although it is unclear whether this includes direct and indirect, or indirect only. It also appears to be inconsistent with the text, which states that “credit unions . . . are responsible for the majority of direct loans. . . .”

⁵⁹ F&I Department margins: CNW Document 925; New Car Department and Overall dealership gross profit margins: 2010 NADA Data (not available for 2000-2003).

⁶⁰ Over this same period, CNW data reflects a steeper drop in “New Sales” profit margin from 2.3% to 0.84% (over 60%), and a drop in “Used Sales” profit margin from 4.7% to 2.96% (37%). Even these figures are smaller than the percentage decreases in the F&I profit margins over this same period.

⁶¹ See 2010 NADA Data.

⁶² The JD Power article cited does not appear to be publicly available.

In addition, CNW Research, a source for much of the data in the Report, reports a much lower number. The financing breakdown for all financed new vehicle transactions reported by CNW is 52.5% direct financing and only 41.5% financed through the dealer (with the rest financed via the internet). For used cars, 59.0% involve direct financing, with only 38.3% financed through the dealer. Overall, the numbers are 56.4% that involve direct financing and 39.6% of all vehicles purchased were indirect or dealer-assisted finance transactions.

3.) FIGURE 3: See discussion above.

4.) FIGURE 4: See discussion above.

5.) FIGURE 5: *“Increase in Odds of Default Due to Rate Markups for Subprime Finance Companies.”* As discussed above, it is unclear exactly what this chart is trying to convey, what data was used, or what the methodology was. The experts we asked all contend that the purported explanation of this chart is inadequate at best. It states:

“Odds ratios based on coefficients from linear regression models using auto ABS data. Changes in odds are based on an increase of one standard deviation of rate markup for finance companies (4.55%). Regression model for non-finance companies produced results that were not significant.”

Again, this raises more questions than it answers. What is one standard deviation markup? It says 4.55%, but Appendix 4 indicates it may be 3.81817%. Either number is completely belied by the JD Power data demonstrating that 99+% of dealer-assisted financing involves dealer participation of less than 3%. Why does this apply only to subprime finance companies? Do “non-finance company” loans not reflect any increase in default due to dealer participation? What explains the difference? If so, doesn’t that absence completely undermine the theory that it is dealer participation that is driving defaults? If it is the participation that is driving default, why would that not happen in all deals? How did CRL determine that there were no subprime deals among the various ABS offerings when only average FICO scores were available?

Assuming that what this purports to show is that subprime loans default at higher rates than prime loans, this truism does nothing to support CRL’s assertions. As outlined above, there is no evidence whatsoever of any connection to the dealer participation portion of the loan. There is no evidence of any effort to control for performance of deals in the same credit tier, at the same rate, with dealer participation and those without. That is because controlling for creditworthiness, those two deals would logically perform exactly the same. CRL has not cited any valid number for dealer participation; has not explained how an indirect loan with dealer participation is at a higher average rate than a direct deal (because it is not); and has not even alleged that an “increased” rate resulting from a dealer participation has a different or greater effect on repossession than any other component of the APR (because they cannot). In the end, this is little more than an effort to make numbers that simply reflect basic credit risk appear to reflect an effect from dealer participation. This assertion simply has no basis in fact.

6.) FIGURE 6: This figure is misleading at best, and is completely irrelevant. As a simple matter of math, the basic equation may be accurate, but the numbers presented are disconnected from reality – even from CRL’s own numbers. Figure 3 of the Report alleges that the average dealer participation amount on a new car is 1%, but for some unexplained reason the numbers in Figure 6 reflect an increase of 2.5%. The explanation given in footnote is inaccurate and does not shed any light on the reasoning: *“Note that the average markup amount in Figure 2 is \$714 per vehicle, notably more conservative than the totals in this example. This is largely due to the fact that the average amount includes loans that do not have a rate markup, which brings down the average.”*

This does not follow. First, the footnote cites Figure 2, but presumably meant Figure 3. As discussed in detail above, the flawed average number in Figure 3 is derived from the NAF survey. However, in Figure 6, CRL ignores its own data in Figure 3 and simply applies the overall “average” to new and used cars. This explanation misleadingly suggests that the Report’s figures are “conservative,” when they are vastly overstated. Not only are these figures internally inconsistent, as described above, most loans do not go to their full term, and thus extrapolations across the market based on a loan maturing to a full 60 month term are inaccurate and misleading.

7.) FIGURE 7: For the reasons described in detail above, this chart is erroneous or, at best, outdated. All lenders listed in Figure 7 still have rate caps.

8.) FIGURE 8: First, as discussed above, without controlling for creditworthiness or other relevant factors, the data in this chart is completely meaningless. It may have been included to make it appear that some dealer practice is causing repossessions of vehicles financed through dealers, but as outlined in detail above, this allegation is completely unsupported by any data or facts.

In addition, the data in the chart is simply incorrect. NADA reviewed the publicly-available quarterly reports from the ABA. The data in those reports did not match Figure 8. For example, the report from 1Q 2010 shows that direct auto loans delinquencies fell from 1.94 to 1.79%, and indirect auto loans delinquencies fell from 3.15 to 3.03%.⁶³ Figure 8 reflects different numbers for those months.

9.) Appendices

The Report concludes by listing a number of appendices that purport to provide support to the claims above. Appendix 1 includes a laundry list of perceived abuses that is addressed in the main body of NADA’s comments and was addressed by industry representatives during the FTC Roundtables.

⁶³ - See ABA Release, “CONSUMER DELINQUENCIES RISE SLIGHTLY IN FIRST QUARTER 2011,” found at <https://www.aba.com/Press+Room/070711DelinquencyBulletin1Q2011.htm>.

Appendices 2 and 3 purport to provide support and data underpinning the statistical analysis reflected in the Report. Given the paucity of data and explanation, we can only note that experts consulted by NADA were left unclear by these appendices. These two appendices do not provide the necessary data to recreate or test the analysis, or to determine exactly what analysis was even performed. Again, we note this not as evidence in and of itself, but merely to urge the Commission to seek expert review of the CRL analysis before relying on the data provided.

Appendix 4 appears to reflect a “one standard deviation markup” of 3.8% and to assert that dealer participation percentages ranged to 11.63%. As outlined above, those figures are mathematically impossible given the dealer data provided to NADA by JD Power.

Appendix 5 appears to reflect that “markup” is most frequently negative. It also appears to reflect that, other than a few outliers, dealer participation is generally lower than the rate caps. As discussed repeatedly above, the figures between 7.5% and 10% simply cannot be accurate, despite the outcomes of the model and assumptions chosen by CRL. Otherwise, the averages reported in Figure 4 and elsewhere in the Report cannot be consistent with the data reflected in Appendix 5.

Other Claims Related to Disclosure of Dealer Participation

As discussed above, the Report advocates for disclosure of dealer participation despite the fact that such calls have repeatedly been rejected in the past because it would lead to increased consumer confusion. The report also adds several additional allegations that do not make sense in this context.

First, the Report alleges that “[w]ithout any legal requirement to disclose the markup or how much it costs, the consumer is at a disadvantage when comparing and negotiating prices.” However, disclosure of one portion of the APR in order to allow comparison shopping makes no sense especially when one considers the fact that the Report never once mentions the source of those competing prices. The truth is that competing and negotiating prices is dependent on market forces, and that the dealer finance market is a highly competitive,⁶⁴ mature market with numerous players. There are only two places where a consumer could get other prices to compare to an APR quoted by a dealer: another dealer or a direct lending finance source. In any event, for all the reasons described in detail in the main body of the NADA comments, it is completely irrelevant what portion of the APR comes from dealer participation – just as it is completely irrelevant what portion represents a bank’s costs of funds, internal profit margin, or any other portion of the APR.

⁶⁴ See, e.g., The FDIC, “The Changing Landscape of Indirect Automobile Lending”, available at http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum05/article04_auto_lending.html (noting that automobile lending is a “highly competitive market,” and expressing concern for the safety and soundness standards for banks operating in this highly competitive atmosphere).

Nevertheless, the Report cites several non-public surveys in support of disclosure.⁶⁵ The first survey purports to demonstrate that “the majority [79%] of consumers are generally unaware that dealers can markup rates without their consent.” The survey question and results are not publicly available, even on the CRL website, so it is impossible to determine the validity of these results. While the actual survey question does not appear, the response is nevertheless unsurprising given the lack of clarity in the question as it was apparently posed. What does it mean that consumers are “generally unaware”? Are they somewhat aware? What does it mean from a survey respondents perspective for a dealer to “mark up rates”? Does that mean after the sale? How can that be done without the consumers consent? Were the respondents vehicle purchasers? If so, how recently had they purchased? Did they finance through the dealership? Again, however, this is mere speculation as it is unclear what the question was, who the survey respondents were, whether they had ever even purchased or financed a vehicle, or how long it had been since they had done so.

The second survey reported that “61% of consumers with auto loans do not know the interest rate they are paying.” This survey was conducted by Capital One Financial Corporation in support of its auto loan refinancing services. The Report’s characterization of these results as 61% of consumers are “ultimately unaware of what the APR is on their loan” is misleading. Again, the survey questions are not publicly available. However, given that the goal of the survey was to highlight the benefits of refinancing, the survey presumably included consumers at a variety of points in their loan, not at the point of sale. In other words, the fact that many people cannot recall the APR on their car loan at some undetermined point, perhaps years after the transaction occurred, is unsurprising and completely unrelated to the disclosure, knowledge, or ability to negotiate that APR at the point of sale. And it *has nothing whatsoever to do with the disclosure of dealer participation or any other sub-component of the APR*. Using this figure to argue somehow that dealers are hiding the true cost of a loan or that consumers are not told their APR is misleading.

IV. Conclusion

At best, the Report is a flawed advocacy piece; at worst, it is an effort to put poorly sourced, highly-charged speculation in the public domain. The actual facts show that the dealers’ role in the dealer-assisted financing process lowers the cost of credit, increases convenience for consumers, and greatly increases access to credit, particularly for customers in the lower credit tiers. We would urge the Commission to, at the least, carefully scrutinize the assertions and “data” in the Report, and absent a great deal of further explanation and support, would urge that the Report be completely disregarded as a source of data or analysis.

⁶⁵ - “Meanwhile, survey data confirms that the majority of consumers are generally unaware that dealers can markup rates without their consent (79%), and ultimately unaware of what the APR is on their loan (61%).” (p. 8).