

## CFPB Bites of the Month - 2024 Annual Review - Auto

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In this article, we share a timeline of our monthly "bites" for 2024 applicable to the auto finance industry.

### **Bite 9: CFPB Issues Report on Price Complexity**

On April 30, 2024, the CFPB released a report on price complexity. The report addressed the CFPB's research into how complex pricing options can impact consumer decision making. Participants in the experiments acted as buyers and sellers. The first experiment controlled how complex the sellers were allowed to make their prices, using one single number, up to eight sub-prices, and up to 16 sub-prices. The first experiment found that allowing more complex pricing resulted in buyers choosing a higher-priced offering, leading to higher overall average transaction prices. The second experiment investigated the effects of increased competition on market outcomes and it found that increased competition generally improved pricing, but did not entirely eliminate negative effects of price complexity. Overall, the CFPB found that more complex pricing led to worse outcomes for consumers such as higher sale and transaction prices.

### **Bite 8: CFPB Issues New Guidance on Comparison Shopping**

On February 29, 2024, the CFPB issued a new circular explaining how comparison-shopping tools may violate consumer protection laws when they steer consumers due to incentives like "kickbacks." According to the CFPB, consumers often encounter manipulated results or practices the CFPB calls "digital dark patterns" when using comparison-shopping tools for financial services including credit cards. The CFPB claims that manipulated results appear because some providers pay financial kickbacks, sometimes referred to as "bounties" to create the lists of results that consumers see. According to the Circular, comparison-shopping tools may violate the federal prohibition on abusive conduct, because these comparison sites may take "unreasonable advantage" of consumers relying on the comparison-shopping tool to act in their interests.

### **Bite 7: CFPB Issues Circular on Deception in Fine Print**

On June 4, 2024, the CFPB issued a new Circular on Deception in Contract Fine Print. The

Circular addressed whether including unlawful or unenforceable terms in consumer financial contracts violate the Consumer Financial Protection Act's prohibition on deception. The Circular responded that such terms may violate the CFPB's prohibition on deception, when applicable law renders such terms unlawful or unenforceable. The CFPB gave examples of contract terms purporting to waive rights that cannot be waived, including the use of qualifiers such as "subject to applicable law" or "except where unenforceable." According to the CFPB, such qualifiers are unlikely to cure a provision's misleading or material nature. The CFPB is expected to finalize a proposed rule later this summer which will require certain supervised nonbank companies to register certain contractual terms with the CFPB.

#### **Bite 6: CFPB Issues a Final Rule Creating a Repeat Offender Registry**

On June 3, 2024, the CFPB issued a final rule that requires covered nonbanks to report orders and judgments to the CFPB. A covered order is a final, written public order (including consent orders) effective on or after January 1, 2017, obtained by a federal, state, or local agency and issued by an agency or court with public provisions requiring or limiting certain actions based on alleged violations of covered laws. Covered laws are enumerated in the rule, and include federal consumer financial laws, other laws enforced by the CFPB (e.g., Military Lending Act), and certain federal and state unfair, deceptive, or abusive acts or practices (UDAP or UDAAP) laws. Some larger entities will be required to provide an attestation from a senior executive that confirms compliance with the relevant orders. The CFPB's press release also touted the CFPB's Repeat Offender Unit. The Final Rule is effective on September 16, 2024, and has a phased initial registration period by nonbank type that begins as early as October 16, 2024.

#### **Bite 5: CFPB's Auto Finance Data Pilot Report - Negative Equity**

On June 17, 2024, the CFPB released its first report in a series using data collected from 3 banks, 3 captive finance companies, and 3 independent finance companies that received "market monitoring" orders from the CFPB in February of 2023. Key findings from the report include:

- More than 10% of consumers financed negative equity from a prior vehicle financing transaction into a new one.
- Consumers who financed negative equity from a prior vehicle transaction into a new transaction were more likely to have their account assigned to repossession within two years.
- Consumers who financed negative equity financed larger transactions than consumers with a positive equity trade-in, which resulted in higher average monthly payments.
- Consumers who financed negative equity had lower credit scores, lower household income, longer terms and were more likely to have a co-borrower than consumers with no trade-in or a positive equity trade-in.
- Consumers who financed negative equity had larger LTV and payment-to-income

ratios.

- Nearly a quarter of consumers financing less expensive vehicles financed negative equity into their transactions, compared to nearly 16% of consumers who purchased more expensive vehicles.
- The percentage of negative equity financed compared to the prices paid for the vehicle was larger for consumers who financed less expensive vehicles.

#### **Bite 4: CFPB Publishes Summer 2024 Supervisory Highlights Addressing Auto Finance**

On July 2, 2024, the CFPB published its Summer 2024 Supervisory Highlights. The report shared key findings from recent supervisory examinations of auto finance servicing and other industries. The CFPB examiners found that auto servicers engaged in unfair practices by failing to debit consumers' final payment via their autopay system without adequate notification to consumers enrolled in autopay that they needed to pay their final payment manually.

#### **Bite 3: CFPB Publishes Supervisory Highlights for Auto Finance**

On October 7, 2024, the CFPB released an Auto Finance Special Edition of its Supervisory Highlights that focuses on the auto finance market. This edition covers select examinations that were completed between November 1, 2023 and August 30, 2024. According to the CFPB, consumers encountered difficulties with optional products, including being charged for products they did not agree to purchase, had difficulty canceling these products, and did not receive refunds for early payment. Regarding unfair, deceptive, and abusive acts and practices related to add-on products, the CFPB noted a failure to ensure that consumers get refunds, miscalculation of refunds, and delays in applying refunds to account balances. According to the CFPB, examiners found that auto-loan servicers unfairly failed to timely deliver the titles to vehicles after a payoff or when consumers requested the title in connection with transferring vehicle registrations to a different state. The CFPB also indicated that servicers' policies are generally to provide title documentation within two business days but that delivery times significantly exceeded this timeline. The CFPB claims that servicers engaged in both deception and unfairness by applying consumers' auto-contract payments to post-maturity contracts in a different order than that disclosed to consumers on their websites, which resulted in borrowers having to pay late fees. The CFPB also claimed that creditors were improperly applying payments and wrongly repossessing automobiles. The CFPB examiners also claimed to find that creditors misled consumers about the chance to qualify for a low interest rate and noted that creditors were placing inaccurate account information on thousands of consumers' credit reports.

#### **Bite 2: CFPB Takes "Repeat Offender" Action Against National Bank**

On July 9, 2024, the CFPB issued a consent order against a national bank alleging unlawful repossessions. The CFPB claims the bank repossessed vehicles when the delinquency was caused by the bank charging allegedly unnecessary and duplicative

fees for insurance coverage when the consumers already had insurance. The CFPB alleged that the national bank conducted unlawful sales practices by charging fees that allegedly provided no value to the consumers. The CFPB further alleges the bank opened unauthorized accounts and enrolled customers in products without their consent. The CFPB claims the bank violated the Fair Credit Reporting Act; the Electronic Fund Transfer Act/Regulation E; and the Consumer Financial Protection Act. The consent order requires the bank to pay redress to 35,000 consumers, pay a \$5 million penalty, and pay a \$15 million penalty for opening unauthorized accounts. The bank will also be prohibited from setting employee sales goals that incentivize opening accounts without customer authorization.

### **Bite 1: CFPB Prevails at Supreme Court 7-2**

On May 16, 2024, the U.S. Supreme Court, by a vote of 7-2, rebuffed a challenge to the constitutionality of the CFPB's funding structure, reversing a Fifth Circuit decision holding the CFPB's funding was unconstitutional. The Supreme Court held that Congress' statutory authorization allowing the CFPB to draw money from the "earnings" of the Federal Reserve System to carry out the CFPB's duties satisfies the Appropriations Clause. The Court stressed that "an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes" and that the CFPB's funding scheme "fits comfortably" within that framework, consistent with historical practice.

That same day, the CFPB Director issued prepared remarks on the decision, claiming that the Supreme Court rejected a "radical theory" that would have rattled financial markets. He also said that the ruling makes clear that "the CFPB is here to stay." The Chair of the House Financial Services Committee, Patrick McHenry issued a statement vowing to revisit the CFPB's authority through reform legislation. Several CFPB investigations and enforcement actions were stayed pending resolution of this case, and the CFPB appears to be ready to move those matters forward.

### **Extra Bite: FTC Takes Action Against Online Used Car Dealer**

On July 2, 2024, the FTC proposed a settlement with an online used car dealer to resolve allegations that the company violated the FTC Act, the Used Car Rule, the Pre-sale Availability Rule, and the Mail, Internet, and Telephone Order Rule ("MITOR"). The FTC alleged that the company failed to deliver purchased cars within the advertised timeframe, failed to conduct the thorough inspection process as advertised, and failed to provide the requisite Buyers Guide until late in the purchase process. The FTC alleged that the company's website and advertising told consumers that cars would be delivered in 14 days or less, but that the company often did not meet this delivery timeline. The FTC also alleged that the company regularly failed to give consumers the opportunity to consent to a longer delivery timeline or to cancel their purchase and receive a refund, as required by MITOR. The company neither admitted nor denied the allegations, but agreed to pay \$1 million to the FTC for consumer refunds, agreed to document all claims about promises it makes regarding shipping times, agreed to refrain from making misleading claims about inspections and shipping times, and agreed to abide by the rules at issue in this case.

**Still hungry?** Please join for our next CFPB Bites of the Month. Here is our [lineup](#) for 2025. If you missed any of our prior Bites, [request a replay](#) on our website

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