Podcast: *Moving the Metal: The Auto Finance Podcast*
Episode: Same Pie, Different Slices: What Q2 Auto Finance Data Means for Compliance and Litigation Risk
Hosts: Brooke Conkle and Chris Capurso
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Brooke Conkle (00:10):
Welcome to *Moving the Metal*, the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Chris Capurso (00:19):
And I'm Chris Capurso, of counsel in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Brooke Conkle (00:24):
Today we'll be discussing recent insights from a consumer reporting agency on the state of the auto finance market in Q2. But before we jump in, let me remind you to please visit and subscribe to our financial services hub, troutmanfinancialservices.com. And also, we have a bevy of other podcasts that you might find interesting. *The Consumer Finance Podcast*, which as you might guess, is all things consumer finance related. *The Crypto Exchange*, devoted to trends, challenges, and legal issues in Bitcoin, blockchain, fintech, and regtech. *FCRA Focus*, a podcast dedicated to all things credit reporting. And finally, *Payments Pros*, a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out. And speaking of those platforms, if you like what you hear, please leave us a review and let us know how we're doing. We'd love to hear from you. Alternatively, please feel free to reach out to us directly. Our contact information can easily be found on the firm's website, troutman.com. If you enjoy reading our hub content or listening to our podcasts, please also check out our financial services mobile app. To download, simply go to your iOS or Android app store and search for Troutman Pepper. Not only does our app have all of our hub content and podcast episodes in one handy place, it also has a listing of all of the firm's financially focused attorneys. So check it out and see what you think.

For today, as I mentioned, we'll be discussing a recent report on the state of the auto finance market driven by data from a consumer reporting agency. Chris, what are the main headlines here? What are we looking for from Q2?

Chris Capurso (02:04):
The report is divided into different sections, and the first being the market report. We'll talk about the different market items. And to be honest, in most cases, as you might

guess, the general market characteristics don't move a whole lot. They generally stay the same. Now, that's not a certainty. There are certain things that did change, but generally year-over-year, which is how this is compared, certain market characteristics stay the same. A great example and kind of a good segue into our whole discussion is talking about vehicle purchases in general. What is the typical financing method? And this has generally stayed the same. So in 2026 so far, it's been roughly 60% loan, retail installment sales contract financing to finance the purchase, about 23% to 24% lease, and then between 16% and 17% cash. And those numbers have oscillated maybe by a percentage, but those have generally stayed the same, which, again, not very surprising because we're talking about the market as a whole.

What has been interesting is that generally used vehicles are taking a bigger share of financing, but volume in general is down year-over-year for both new and used. It's a very interesting chart because it shows used volume, for example, hit a high as a share of financing back in 2022, which we remember we were coming out of that time where the inventories are low, where we're dealing with all that. And as a share of financing, used vehicles were about 62.5%, which is pretty considerable. We're talking at that point, what, two-thirds of financing was used vehicle as opposed to new. That number has dropped, according to the chart, precipitously. It depends on what the chart looks like, right? But it has actually bounced back a little bit. So over the last couple years, it's gone down from 62.5% to a little over 58.5%, but it did jump a little bit year-over-year this year. So we are seeing the used rebound, so to speak, and new then obviously, kind of the yin and the yang, falling a little bit there.

We have seen independent dealers actually increase the share of used vehicle purchases. Again, we're talking not huge numbers. These numbers generally stay the same. Franchise dealers are generally in the 52% to 53% range, which means independent dealers are in that 47% to 48% range. But we have seen a jump in the amount of transactions from independent dealers. We also see some slight differences in market share. So we've got some different charts in this report, the first being the market share of total financing. So we're talking new and used, and we're talking loan and lease. So the whole financing bucket, roughly based on what I said earlier, about 83% to 84% of the total sales are covered by this. Last year at this time, we saw banks take back the lead from captives at the top of that total market share. They had taken it back at 27.25% to 26.68% for captives. They still have the lead, but it is shrinking somewhat. They still have the lead, but the amount of market share for the banks is actually a smidge lower. It's 0.1% lower at 27.15%. The interesting part is the captive market share has actually also dropped. It dropped from 26.68% to 26.26%. So that begs the question, in the total financing, who kind of picked up that slack? So we go to the next highest level, credit unions. They also dropped. They actually dropped almost a full percentage point from 21.2% to roughly 20.4%.

And then we look and we see the big one. We see finance companies really picking up the slack. The non-captive finance companies have jumped almost an entire percentage

point from 15.36% to 16.24%. We've also seen a rise in buy here, pay here as a percentage of the total market from 9.5% roughly to about 10%. So obviously we are talking about a pie that is 100%, right? So when you see a dip in one area, you're going to see the rise in the other. And I think it's interesting here that we saw dips in both of the top two and actually the top three, to be clear, but the bottom two in terms of the percentages, the non-captive finance companies and the buy here, pay here dealers and other financing sources, have all risen. So it's a very interesting thing in terms of total market share. When we go into new versus used, in the new financing space, financing of new vehicles, nothing touches the captives. I mean, they are up over 50% market share. It's actually dropped the last two years, but it's still, they are the kings. They are tops in market share. And everyone else has generally fallen in line over the years. In fact, the order has not changed since this chart has been back to 2021. The order has been the same. Number one being captives, number two being banks, number three credit unions, number four non-captive finance companies, and number five buy here, pay here. So new financing, very predictable. It's going to oscillate a little bit, but the top five are the top five. We've talked about the total market share. We've talked about total new market share. Brooke, what else does the report tell us about these market trends?

Brooke Conkle (07:35):
One point that I saw that was really interesting, Chris, is the credit side. Average scores fell. For average new vehicle purchases, the scores fell about five points. The average used score fell one point. Now, Chris, we're still above where we were in 2021 and 2022, but that drop signals a gradual shift in who is getting financed. So it's not alarming in isolation, but it's still a data point that's worth noticing. The second really big, important trend that we're seeing here is where the growth is occurring. And the growth is occurring outside of the prime range. Super prime and prime still combined, the heart of the market is still there. But super prime and prime combined fell year-over-year.

Again, still making up over 70% of total financing, but we're seeing a reduced share for those credit categories. The growth, however, is occurring in near prime, subprime, and deep subprime. So the market is still mostly prime. It's a trend and not a crisis, but the growth segments are where the disputes tend to concentrate. And so, like I said, Chris, we're still in an economy where over 70% is still in the super prime and prime categories, but we are seeing that rise in near prime, subprime, and deep subprime. Who is lending outside of the prime categories? Banks. That's who's lending outside of prime. Banks grew outside of prime. Finance companies increased across all risk segments. And so we see different lenders moving into different credit tiers. Lenders that traditionally served prime borrowers are now reaching to those borrowers who are in the near prime, subprime, and deep subprime credit spectrum.

So we've talked a little bit about the lender mix, and those two halves really reinforce each other: who is lending and who is that lending going to. For pricing and payments, they're following those credit scores. Rates rose outside of prime on new loans, while

used rates fell across all risk segments. Monthly payments rose for everyone, with larger increases as the scores decrease. So borrowers with sort of the least cushion, we're seeing have the biggest increase in their average monthly payment. This natural setup for affordability and delinquency, we're going to talk about that later, Chris, aren't we?

Chris Capurso (10:07):
We sure are.

Brooke Conkle (10:08):
We're also seeing delinquencies increase year-over-year. The deterioration is not confined to those borrowers in the lower segments. It's a more nuanced story than anything other than super prime and prime is the problem. What's the takeaway from a litigator's perspective? With a shifting lender mix and credit mix changing, that alters who's exposed to which claims. We've got different lenders, different borrowers, and different theories, and all of that adds up to a different picture when it comes to litigation. Chris, the credit mix is moving, the terms are stretching, and payments are climbing. So what does that mean on the compliance side?

Chris Capurso (10:49):
Right. So I think first, and this is probably one of those "of course" kind of things, longer terms and higher payments are becoming the norm. And that's true not just for the loan/retail financing, but also for leases. I found it interesting, lease payments continue to increase year-over-year. I mean, we're talking $4. Last year it raised $25 year-over-year, which is pretty huge. This year, four, but it's still rising is the point. And interesting this year is that average lease term rose. Last year it had dropped while we had the payment going up, so that might explain some of the $25. This time we've got lease term going up by almost half a month, to be honest, and then we've got the average payment going up by $4. So put that all together across an industry, leases are seeing the same kinds of things we would expect to see in credit, where we've got higher payments, higher terms. So from the kind of loan/retail financing mix, over one third of loans now run longer than six years, which is considerable. I mean, I feel like when we started in this, five years felt like the max. You got to that 60 months and it's like, okay, anything beyond that isn't typically what you're going to see, right? And now we're seeing seven-year, eight-year not being outliers per se. I mean, we're talking about the average being over six years. So the growth in those kind of seven, eight-year loans are pretty significant.

We're also seeing new loan amounts increase. They've reached now nearly $44,000 for new cars. The loan amount for used cars is up to nearly $28,000. Both of those numbers are increases year-over-year, and they're both numbers that have been increasing year-over-year. We are seeing the stair step. And another interesting point here is that over 18% of loan payments are now $1,000 or more. And again, one of those things that when we started in this, over $1,000, I mean, you had to be talking

about a luxury car, right? Like, you had to be talking about something, the type of thing that may not be street legal, right? That's what we're thinking. And yet now, I mean, that is the over 18% of loan payments. I mean, over 18% of cars are not cars that you're going to see in Fast and Furious, right? It's just a change. And obviously we've got the pricing concerns broadly in the economy and just the idea of trying to make things more affordable. But we've also got the problem of the sticky rates and the fact that the rates are going back up, and just combine those two things, and then we're looking at 18% of loan payments being $1,000 or more.

So what does it mean from a compliance perspective? I mean, obviously you're talking about vehicle pricing. Brooke and I, we can't talk about vehicle pricing enough, that dealers need to be really on top of that because literally everybody is looking at that right now. But it also feeds into financing disclosures. It feeds into everything. Those disclosures obviously have to be truthful. They have to be upfront, clear and conspicuous to the consumer about what they're going to be paying. Obviously we have the separate issue with fees and hidden fees and things like that. But just in general, you got to make sure pricing disclosures and everything else is right. That goes for the contracts and the advertising. And we're also talking about how products are described to consumers, which actually feeds right into my next talking point, which is LTV and negative equity.

Average loan-to-value for new vehicles is actually increasing year-over-year. It's now the average is up to 112.43% for new vehicles. It actually dropped for used vehicles from 122.41% down to 113%. So a pretty significant drop in used, but a rise in new. And they're actually very close to each other now, kind of in that 112% to 113% range. What does that mean? I mean, it means that the LTV is going to rise with the loan term. Obviously if we're talking higher rates, higher car purchase prices, the loan value is going to kind of increase for new vehicles. It's interesting that the used vehicles has dropped, to be honest, and that significant of a drop as it is.

But in this case, we're talking loan-to-value, we're talking negative equity, whether that's being rolled in. We're talking add-on products. And that's obviously a big concern for dealers and finance companies out there. If you're putting kind of caps on where the add-on products fit into the LTV cap, what we're now seeing averages that for used vehicles are dropping fairly significantly. I would call it near 10% drop, pretty significant. And we're seeing for new vehicles it rise a little bit, but it's still in that same range. We're talking 112% to 113%. So for finance companies out there, if you have caps, are those in line with what the average actually is? Have you looked at them recently? Have you kind of considered the prices of the add-on products versus the rising value in vehicles, the rising cost of credit, those types of things? So just different things to think about from both the dealer perspective and from the finance company perspective.

Another key point is just, and Brooke, you kind of touched on it, kind of this growth outside prime. Rates rose outside prime for new loans, new car financing. And monthly

payments rose most as scores fell, which of course makes, I mean, that's what the scores are there for, right? To kind of give an idea of what credit risk is. As credit risk raises, the rate is going to raise, which likely makes the payment rise. Of course we're talking about changes in terms and all those types of different things. And we've got dealers and F&I professionals talking about, "Well, are you trying to get a certain payment? Are you trying to get a certain term?"

All those things carry with them their own compliance burdens, right? You don't want to tell somebody, "Oh yeah, the 10-year loan gets you down to X payment," without saying that, well, the 10-year loan is going to carry more interest than the five-year loan, right? So those are just compliance considerations as well. And the final point I'll talk about, and it's something that we've always predicted would be coming, but with the sticky rates, a little tricky to predict, and it's the refinancing. We've constantly been saying the 4% to 5% prime rate is something that maybe this is the high and maybe we're going to start coming down. And that was the case before early this year and everything that happened, and now the rates are actually going up and they're kind of being stubborn, and we're not seeing that drop down from the top of the hill that we all expected that seemed like it was on the precipice. Obviously macroeconomic factors change, and that's the reason for that.

But the thought was, well, refinance volume is going to go through the roof in the next couple of years with the rates dropping. Well, the rates didn't drop. So what's happening to refinance volume? And it's honestly remaining consistent, which not horribly surprising if the rates are where they are, pretty much status quo. And in fact, Q1 and Q2 of 2026, the exact quarterly volume and total amount refinanced. So we've got status quo in refinance. The average months to refinance in 2026 have generally stayed the same. It's gone down by about a half a month. And to be honest, since the beginning of 2025, we have been in this kind of 26-ish month range to refinance. So again, we're kind of talking status quo.

We're still seeing, interestingly, the major rise in refinancings coming in the super-prime category, which you would think they were the ones with the better rates to begin with, maybe in the refinance realm taking advantage of some potential better offers for refinancing. For those folks, they're roughly 19% of the refinance market. Still the biggest and unquestioned king of the refinance market is the prime market. They're typically around 50%, and then we see near-prime next, and obviously subprime is at the lowest for the refinance because you're probably not going to be able to take advantage of a better rate.

So all in all, we're kind of in this weird keeping it steady in terms of refinance. I still think it's an area that folks, especially finance companies, need to be cognizant of, be ready when the change actually comes. It's just not quite here yet. So I mean, maybe look at it as a benefit, and it's the opportunity to continue to make sure that your refinance processes are up to snuff. And that's not only from the financing perspective, but also

lien recording, things like that. Those are the types of issues we see a lot where a refinance process is kind of the one that's less thought of than the originations process. And then you talk lien recording, you talk transfer liens with payoffs and everything else. We see a lot of problems come up in that area. So maybe take this as the opportunity to say this is going to come eventually. The refi boom is going to come, especially when we're talking about average length of credit being six years. A lot of the people who got financing at these higher rates are still going to be in those contracts because we're talking about longer contracts. So maybe get all of that together. But that's the compliance lens. Brooke, what are you seeing kind of from the litigation perspective in this report? What's piquing your interest?

Brooke Conkle (20:03):
Yeah, and Chris, we've talked a little bit about it so far. Really the overall trend that... I don't want to say bellwether, but an overall trend that is interesting for the industry is the delinquencies and the repossessions. Overall delinquencies rose year-over-year, and outstanding balances grew about 2%. So those outstanding balances currently are $1.5 trillion. That's a boatload of cash. The newer deals can look weaker too. New vehicle delinquency is higher on 2023 originations than in prior years, and near-prime and prime-plus performance is, not as good as it has been historically.

So those are interesting data points that are showing it's running across the spectrum. It's not just delinquencies in categories where you normally would expect them. Chris, we're not here to predict a specific rise in filings, but as a practitioner, here is what I would watch. With more delinquencies, that generally means more collection activity, more repossessions, and more disputes about how those repossessions were handled. So there are two recurring battlegrounds that we see consistently: one, the post-repossession notice, and two, whether the sale was commercially reasonable under the UCC. If a notice is defective or a sale was not handled properly, the lender's deficiency claim can be at risk and the borrower may have counterclaims. Those are details that are worth getting right before anything goes wrong.

Second, what I see sort of in the data, if I'm looking at my crystal ball: potential consumer class action exposure. Chris, we've talked about disclosures, pricing, and fair lending. We've talked about it a lot, frankly. I hear the same facts that a plaintiff's lawyer would put in a complaint when I look at some of this data. Pricing practices for non-prime borrowers, add-on products, and rate markup are the kinds of issues that can support putative class action claims because when they're applied uniformly across numerous contracts using the same process, that can make them extremely attractive to plaintiffs' lawyers. The report shows that auto finance companies and buy-here-pay-here lenders are picking up a share. That changes the defendant profile. These lenders may be operating under different sort of legal regimes, so state law claims really deserve a lot of attention here.

Third, long terms and deficiency balances. And Chris, we talk about when we started in this game, 60 months felt like a really, really long time. And that, frankly, has got nothing on the standard terms right now. Over a third of loans are now running longer than six years, so longer than 72 months, with growth in the 73-plus-month terms. And just as you mentioned, Chris, that loan-to-value is rising as those terms get longer. So what does that mean? After a default, a borrower with a long term and a high value is often underwater. So if the vehicle is repossessed or totaled, that gap, and yes, I'm saying the word gap, that gap can be a large deficiency. It drives deficiency suits. It drives defenses and counterclaims to deficiency claims. Borrowers can challenge how the repossession was handled, as I mentioned, and that negative equity can shape the damages arguments on both sides. A bigger balance means bigger stakes. There's more motivation to fight. There's more money on the table.

Fourth, refinance and disclosure disputes. With the average refinance saving consumers about $80 a month, the effective term still is over 90 months. And from a litigation view, that gap is where a dispute can start. If a refinance is marketed on savings and the extended effective term isn't made clear, the borrower can feel like that's a misleading practice. The practical answer, of course, is documentation. What was disclosed at origination? What was disclosed at the refinance? If you can show that, obviously you're in a much stronger position to defend the deal.

Practical takeaways for lenders: let's talk about two of them. First, records, records, records. Origination files, communications, repossession notices, these are the documents that litigation turns on, and it's really hard to reconstruct later the good facts that you have to show that all of this information was disclosed. Second, let's get our compliance and litigation folks talking early and often. When a portfolio trend can change like the ones that we've talked about today, the people who write the policies and the people who defend them need to be in the same room and need to know what the other is saying. So, Chris, with Thanksgiving on the horizon, we would be remiss without talking about the best Thanksgiving sides. What are on your top two list?

Chris Capurso (25:04):
I'm very plain. My Thanksgiving plate is not colorful. It's got a very particular palette and it's got that kind of brownish palette. I would put my two sides, and I'm sure I'm going to get roasted for this. Number two, rolls. Who doesn't love a good roll, especially the plump Thanksgiving rolls? I feel like I only have that kind of roll at Thanksgiving, so it's just I go to town. Number one is stuffing. And I see Brooke's face look at me just ultra confused. I will take any kind of stuffing you want. The Stove Top box? That is just delight in a box. Yes. If you want kind of a more artisan and really taking apart the bread, putting a bunch of different things in it, that's great. It's all great because stuffing is the best. So that is my top side. The other things I have no time for. Brooke, I assume you have a different top two.

Brooke Conkle (26:00):
I do have a different top two. Rolls and stuffing, I will say mine is also quite carb heavy, so no shade there. Coming in at number two, green bean casserole. Chris's plate is going to look very monochromatic. I need a little bit of green in my life. So green bean vegetable, number two. Put the weird, crunchy onions on top. Let's get a little bit of texture in there. Absolutely. Number two, green bean casserole. Number one, undefeated for the Irish family, mashed potatoes. Cannot go wrong. You cannot screw up a potato. Trust me, the Irish have tried, but you cannot screw it up. It reigns supreme consistently, the number one side.

Chris Capurso (26:41):
That's a good one. Yeah. I do like mashed potatoes. They just don't hit the roll threshold to be number two. I did say the plate had a very particular color scheme to the point that the only color is going to come from the turkey on the plate. And by turkey on the plate, I mean the one printed on the plate, not the cooked one. Whatever picture of a turkey is on the bottom, that is where the color is coming from. We would also be remiss if we didn't talk dessert. And this was a point of contention before recording because Brooke said there is only one option.

Brooke Conkle (27:06):
There's only one.

Chris Capurso (27:07):
And then we said there are two different options. Brooke, what is your pick?

Brooke Conkle (27:10):
The only one. And frankly, I don't even like it that much, but you cannot have Thanksgiving without pumpkin pie. There must be some sort of pumpkin-themed dessert. I will never be someone who's going to go buy a pumpkin spice latte. Get that out of here. But it's not Thanksgiving without pumpkin pie.

Chris Capurso (27:29):
And see, I love pumpkin things. Pumpkin pie just doesn't have the right consistency to me. It just never sits right. What does sit right is pecan pie. And it is something that I didn't really eat before. Honestly, even meeting my wife, I didn't eat pecan pie. And the first time I had it, I swear to God, everything got brighter because the sugar went through my body so fast that I didn't know how to react and I thought I was ill. Since then, I've developed more of a tolerance. It's now more just of a rush rather than, oh my God, what has happened to me? It is delightful. It is wonderful. I only really have it around this time of the year. It's not like a summer treat for me. But pecan pie, I also love a good chocolate pie, but I could eat that anytime, to be frank. Pecan pie really feels Thanksgiving to me, so that's my pick.

Brooke Conkle (28:16):
There we go. All right. Can't go wrong with dessert.

Chris Capurso (28:19):
That's right. Unless it's fruity, in which case I want no part of it. With that, we'll wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out the Financial Services Hub where you can subscribe to all of our financial services content, or you can still go to the Consumer Financial Services Law Monitor for specific content you might find most helpful. That is troutmanfinancialservices.com for Financial Services Hub or consumerfinancialserviceslawmonitor.com for the specific blog.

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