



# Voluntary Protection Products

Lender Best Practices to Address the Growing Compliance Risk

April 27 Webinar

**AFSA**  
AMERICAN FINANCIAL SERVICES ASSOCIATION

# Introductions



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# Roadmap to Today's Webinar

- What are voluntary protection products?
- Critical part of a dealership's business
- Current and future legal compliance requirements
- Lender best practices
  - Approaches to address the refund problem
  - Approaches to address the content control issues
- Barriers to implementing a compliance management system for VPPs
- Key takeaways

# What Are Voluntary Protection Products?

## (aka Add-Ons)

- GAP Waiver
- Vehicle Service Contracts
- Vehicle Protection Products
- Prepaid Maintenance Agreements
- Lease-end Excess Wear and Use
- Vehicle Value Protection Agreements
- Motor Club
- Credit Life Accident and Health



# VPPs: A Critical Part of Dealership Business

- Since the mid-2010s, **F&I income has increased in large part due to the increased emphasis by dealerships on consistently selling VPPs**
  - 70% of all F&I revenue per vehicle is from VPPs with a goal to get that number to 75%
    - Asbury Automotive Group
- **Data shows that 60% of indirect auto loans have a VPP product financed** by the loan and of the loans that finance a VPP product, each loan has at least 1.5 products per loan
  - Current data suggests that this penetration rate continues to rise
- Of the 60% of loans that have VPP products financed by the loan, **data shows that 70% of those loans have a GAP waiver attached to them and 50% of those loans will terminate prior maturity**



# The Regulatory Landscape

## Current and Future Legal Compliance Requirements

- What's directly in front of us?
- What should we expect to see?
- What's over the next ridge?



## CFPB Consent Order

- \$12 million impact to lender due to financing of GAP waiver
- LTV cap not properly disclosed in marketing and at point of sale



## FTC issues advance notice of proposed rulemaking on “junk fees”

By **Brian Turetsky** on October 30, 2022

POSTED IN FTC, REGULATORY AND ENFORCEMENT



## CFPB Auto Finance Examination Manual

Contains entire module dedicated to the financing of F&I aftermarket products



## CFPB Supervisory Highlights

Consumers suffered substantial injury because they were essentially required to pay for services they could no longer use, as the relevant products terminated when the loan contract terminated.



## AB 2311 and SB 1311

### California cracks down on auto loan GAP coverage

California Assembly Bill 2311, signed into law Sept. 13 by Gov. Gavin Newsom, bans guaranteed asset protection sales for car loans below 70% of vehicle value and caps GAP pricing at 4% of the amount financed.

September 28, 2022 11:23 AM

JOHN HUETTER



## CFPB and New York Attorney General Sue Lender for hiding Auto Loan Costs, Setting Borrowers Up to Fail

Major subprime auto lender targets Americans with loans that it predicts they cannot afford to repay.

Jan 04, 2023



## State Attorneys General Settlement

\$37 million plus impact to lender due to early termination refunds not being paid to consumers

**What's directly in  
front of us?**



# VPP Refund Liability

## Refunds

### WHO OWNS IT

**Auto loan servicer** for the refundable portion of an optional / ancillary product purchased at origination

### HOW IT'S TRIGGERED

Triggering event examples include **collections, and early pay off**, among others

### WHO IS RESPONSIBLE?

**Laws are not clear.** All three parties must be aligned: lenders, dealer, and product administrator

**Lenders are increasingly the one held ultimately responsible, regardless of state law**

**What should we  
expect to see?**

# VPP Contract Content Control

## Non-bank lenders

- The CFPB is proposing to use its data gathering special authority for non-banks to **adopt rules that would require registration, inventory, and report of a long list of contract provisions**, which will then be published by CFPB.
- Comment period closed April 3, 2023
- Final rule expected by the end of the year

**Remember, GAP waiver is YOUR contract, and the proposal expressly applies to dealer paper that you take assignment of.**

# What's over the next ridge?

- Expansion of Abusiveness Standard
- Oversight of Dealer Activity

# Expansion of Abusiveness Standard

## VPP Content Control: UDAAP?

- CFPB Policy Statement on Abusiveness (April 2023)
  - If a transaction would entail material . . . costs and people would likely derive minimal or no benefit from the transaction, it is generally reasonable to infer that people who nonetheless went ahead with the transaction did not understand those material risks or costs.” [citing GAP waiver case].
- **GAP waiver is your contract.** You need to know it won't trigger this standard through exclusions and limitations.
- Other products? Solvency of obligor?

# Oversight of Dealer Activity

## FTC Proposed Rule on Dealer Sale of VPPs

- Comments long closed but NADA will surely sue
- So-called “**Holder Rule**” makes lender liable for dealer violations of rule (with limits)
- AFSA correctly requested a safe harbor based on “face of the contract” theory
  - **Do you see the entirety of the VPPs that you finance?**



# Oversight of Dealer Activity

## CFPB Activity

- New York lawsuit suggests that **lender can “recklessly provide substantial assistance”** to dealer UDAAP, **creating lender liability for dealer** “packing” and overcharging
  - Strongly **suggests lender obligation to monitor complaints** about dealer VPP practices (should be in CMS)
- If FTC adopts VPP dealer rule, **dealer UDAP will no doubt qualify as a CFPB UDAAP, and CFPB may try to create imputed liability for lender**
- “Big 9” auto lender data order
  - Includes extensive information about VPP financing, including dataset of retail prices of VPPs
    - For what? Remember 2013 (discriminatory pricing of GAP)
    - Evidence of patent overcharging?

# What to do as a lender?

**Don't Do Nothing**

# Lender Best Practices



Monitor Activity Relating to Voluntary Protection Products

- *FIS Industry Insights*



Funding Considerations

- *CITADEL<sup>®</sup>*



Servicing and Resolution Considerations

- *FAIRRCalc<sup>®</sup>*

# Lender Best Practices

## **Refunds**

# Lender Best Practices

## **Content Control**

# Barriers to Implementing a Comprehensive Compliance Management System for VPPs





# Key Takeaways

**1**

Be  
Proactive

**2**

Involve upper  
levels of  
management

**3**

Put the management  
of your approach in  
the right hands

F&I Sentinel's Industry Insights is dedicated to keeping you informed of legislative and regulatory actions around the country affecting F&I products, and how those actions could affect the way these products are financed and serviced. This edition is divided into the following sections: (1) New – representing items that have not previously been reported; (2) Previously Reported – representing items that were previously reported in an earlier Industry Insights or in an Alert and have had developments since then; and (3) Previously Reported and Enacted – representing items that were previously reported in Industry Insights or an Alert and have since been enacted.

#### NEW ITEMS

##### Arkansas House Bill 1770

Arkansas House Bill 1770 was introduced and referred to the Committee on Insurance and Commerce on March 29, 2023. The bill would transfer the Service Contracts Act to the Insurance Code.

If passed, the bill would become effective 90 days after the final day of session.

##### California Assembly Bill 1756

With California Assembly Bill 1756, lawmakers are already seeking to update the GAP waiver law that became effective in California this past January 1. Under existing law, if the termination of a GAP waiver occurs more than 30 days after the buyer

purchased the GAP waiver, the buyer is entitled to a refund of the unearned GAP waiver charges, calculated on a pro rata basis using the original term of the conditional sale contract. This new legislation, however, provides that if the original term of the conditional sale contract exceeded the original term of the GAP waiver, the prorated refund calculation must be based on the term of the GAP waiver, not the term of the conditional sale contract.

If passed and signed into law, the bill would be effective January 1, 2024.

##### Connecticut Senate Bill 1033

Section 7 of Connecticut Senate Bill 1033 seeks to create a new law relating to GAP waivers and establishes that GAP waivers are not considered to be insurance. GAP waivers are defined to include excess wear and use (EWU) waivers and may provide a GAP Plus benefit that waives an amount or provides a borrower with a credit toward the purchase price of a replacement motor vehicle.

This section has two notable requirements:

- GAP waivers must be cancellable, and refunds shall be calculated pro rata on a monthly basis with increments starting on the 15th of the month; and
- In the event of full satisfaction of the finance agreement or upon repossession, the creditor, holder, or administrator shall

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# Questions?