

On June 25 & 26, the CFPB issued Consent Orders against US Bank and Dealers' Financial Services (DFS) resulting from an investigation of the MILES military auto finance program. The investigation zeroed in on the MILES program's use of the military allotment system to collect loan payments from customers and the marketing of their own vehicle service contract and GAP products in conjunction with the loans. Regrettably at the expense of US Bank and DFS, the Orders (Click for [DFS](#) and [US Bank](#) Orders) provide some valuable guidance for auto finance companies who offer preferred or captive F&I products.

### VSC & GAP FINDINGS

First, the CFPB has plainly settled the question of whether F&I products like GAP insurance and vehicle service contracts are indeed "Add On Products" subject to the [2012-06 Guidance Bulletin](#) and that some in the product industry believed were limited to credit card direct marketing programs or were exempt from Bureau oversight as "insurance" products. For the purpose of the US Bank Order, add-on products are defined as (a) included in the vehicle financing; (b) optional and (c) **selected, recommended, marketed or effectively required** as part of the program by the auto finance company. Second, the DFS Order identifies **telephone scripts, websites, product brochures, and auto dealer presentations** as the types of product marketing scrutinized in the investigation. Next, the Bureau specified statements and marketing practices regarding **product cost and scope of coverage** that were considered deceptive and misleading:

- VSC Brochure and Contract: Contained subheadings listing vehicle systems (i.e. Brakes, Engine, Transmission, etc) *without stating important parts that were actually excluded.*
- VSC Brochure: Coverage would add "just a few dollars a month" to monthly payment, while the CFPB calculated an average add of \$40 per month.
- VSC Brochure: 6 point font disclosure referring to contract for coverage details insufficient and *service contract the only place* exclusions were explained. [FYI: This is 6 point font.]
- GAP Phone Marketing: "Add just a few cents to your car payment" and "only a few pennies a day", while the CFPB calculated an average of \$12.55 a month or \$.40 a day.
- VSC Phone Marketing: "You would never think about not insuring your home or your health. However, the likelihood of an auto claim is much

higher." And, "At MILES we don't want you to have to decide between fixing your car and paying your bills."

The Bureau appears to rely solely on the allegedly deceptive language of the product brochures and contracts for its finding that **dealer presentations to consumers were misleading**. No examples of deceptive language are specified in website marketing although the existence of a website is referenced several times. FNI assumes the website incorporated product marketing materials.

### A HINT FOR THE FUTURE? PRODUCT DISCLOSURE FORM

The CFPB's settlement terms with DFS offer useful insight into the agency's intent for add-on products. Other than the steep financial penalty, the **centerpiece of the Order is a mandatory product disclosure form** to be provided by DFS' selling dealer network to customers who are presented with add-on products. **The disclosure form must state:**

- (a) total cash price of the products
- (b) products are optional
- (c) customer does not have to finance
- (d) difference between cash & finance price
- (e) product is cancellable
- (f) clearly state all coverage terms

**Note that the CFPB's calculation of product monthly and daily cost for purposes of determining "deceptive practice" includes the impact of interest rate over the term** - this is a significant departure from the traditional auto F&I product training world and current auto finance practice, where product cost is typically represented in a single retail price, like the car being financed, and monthly or daily cost in dollars or cents by dividing solely by the loan term. **This change to the rules of product presentations** demonstrates the higher level of transparency demanded by the CFPB and is further evidence of the distinction between traditional auto F&I product training and what is required today for compliance.

### PRACTICAL IMPACT

**Three and a half takeaways:** (1) Product benefit and exclusion transparency is non-negotiable; (2) CFPB has changed the rules on calculating and explaining preferred product cost; (3) Lender provided dealer product marketing training is essential; (3.5) Non-cancellable optional products may be disfavored by the Bureau. **A little bit of good news:** despite the CFPB's "anti-profit" reputation, the MILES products **retail pricing and underwriting terms were not directly attacked**. It is worth noting however that MILES GAP retail pricing at "the lesser of state required limits or \$495" according to the Order, is quite modest in comparison with the terms of other auto finance providers. In addition, backing out of the CFPB's interest-including calculation of an "average cost", the actual VSC retail price falls in the low-to-mid range vs. other finance programs.

**If you currently offer or are considering offering preferred or captive products in conjunction with your auto finance program:**

- Read April's Newsletter about Product Transparency! [Click Here](#).
- **Change your math** for explaining product cost to consumers!
- Be able to **justify** your product selection, pricing and underwriting.
- Review your product marketing materials for **clear disclosures**.
- Review product contracts for **cancellation terms** and process.
- Review your **website** for product related advertising language.
- Review your **scripts** and process for monitoring product telemarketers.
- **Manage product providers** who may interact with your dealers or customers about your program.
- Develop, implement and document **dealer and employee training** for compliant product sales presentations. *Do not rely on traditional automotive F&I product sales training.*

Get Expert Assistance! Contact FNI.

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