

Valuable new guidance for financial institutions involved in the marketing or financing of add-on products has been provided by the CFPB in a Consent Order published June 19. **For the first time, regulators have laid out a step-by-step guide to developing a product compliance plan.** Product Value, Product Transparency, Equal Opportunity and Vendor Management remain top issues.

The [Synchrony Bank/GE Capital Consent Order](#), the result of a **joint CFPB and DOJ enforcement action** pertaining to the telemarketing of add-on credit card protection products, includes a comprehensive description of a **"Compliance Plan for Add On Products"** now required of Synchrony as part of the \$225M+ settlement. The details of the plan, while applicable specifically to Synchrony and the products and allegations at issue, nonetheless provide valuable insight for every finance company involved in the sale or financing of any kind of add-on product. The Order's compliance plan instructions include guidance for **Vendor Management in connection with the add-on products**, and detailed components needed to develop a **system to prevent UDAAP violations** and for **Internal Audit** of the product compliance process - the latter two will be examined in a future issue of *Take Action!*

First some reinforcement of old news: As discussed previously in *Take Action!*, and as seen in previous enforcement actions, **how add-on products are sold to consumers** and the F&I best practice of offering **"every product to every customer every time"** are also on point here. The add-on product portion of this enforcement action was based on two types of alleged violations - 1) **UDAAP** (Unfair Deceptive Abusive Acts & Practices), again regulators took issue with **how the products' benefits, limitations and costs were explained**; and 2) **ECO**A (Equal Credit Opportunity Act) in connection with who purchased the product - **actually, in this case who didn't get a chance to purchase** because the products were allegedly intentionally and systematically not offered to a protected class. You can also click here for [CFPB Director Cordray's prepared remarks](#) about the enforcement action. Here are the Order's details and FNI's Take Aways for Auto Finance Add-On Products.

SUMMARY OF THE ORDER'S REQUIREMENTS FOR AN ADD-ON PRODUCT COMPLIANCE PLAN

1. INCLUDE SAFEGUARDS DESIGNED TO ENSURE THAT THE BANK'S EMPLOYEES, SERVICE PROVIDERS, AFFILIATES, OR OTHER AGENTS REFRAIN FROM ENGAGING IN VIOLATIONS OF LAW OR REGULATIONS IN THE MARKETING, SALE, AND ADMINISTRATION OF ADD-ON PRODUCTS.

FNI Take Away: Ok, well this isn't as detailed as we would like. But "safeguards" means **documented procedures that a) are executed and followed!; b) are effective, i.e. actually work to prevent violations and c) include ongoing monitoring and auditing.** For auto finance products, the Order's language requiring safeguards **beyond marketing and sale, specifically to "administration"**, means developing processes not only for internal and/or dealer network product sales training and program management like customer assistance and cancellation/refund training, but also **substantial oversight and management of the product providers' compliance ability and actual product performance** at every point of their interaction with your customers/dealers.

2. ADDRESS THE MANNER IN WHICH THE BANK INFORMS CUSTOMERS OF ALL FEES, COSTS, EXPENSES, AND CHARGES ASSOCIATED WITH THE ADD-ON PRODUCT.

FNI Take Away: We've been here before - Product costs must be accurately disclosed! Here's the bottom line on cost disclosure no matter what kind of product is at issue: **Accurate cost is half the equation for consumers' calculation of product value** - without it, there can be no informed consumer choice and even the best products offered with the most transparent explanation of product benefits and conditions will not meet consumer protection obligations.

3. DESCRIBE HOW THE BANK WILL INFORM CUSTOMERS OF ANY MATERIAL CONDITIONS, BENEFITS, AND RESTRICTIONS RELATED TO THE ADD-ON PRODUCT, INCLUDING HOW CUSTOMERS WHO DISCLOSE CONDITIONS THAT MAY MAKE THEM INELIGIBLE FOR CERTAIN PRODUCTS OR PRODUCT BENEFITS WILL BE INFORMED OF PRODUCT RESTRICTIONS RELATING TO THOSE CONDITIONS.

FNI Take Away: First, the Bureau's focus on **product transparency** - that is full disclosure of product benefits AND limitations, continues on and should by now be a standard in your documented product sales policy and sales training. Secondly, we learn in the Synchrony case, that during sales presentations, **some of the Bank's customers disclosed conditions that impacted the applicability of the Bank's credit protection products' benefits** - for example the customer may have disclosed their disability or unemployment or other conditions which would limit benefits or make the product valueless to them. Synchrony had no scripting or process to handle this information and **allegedly some of these customers were sold products they could not actually benefit from.** This is not necessarily an issue limited to telemarketers working from an inflexible script: The question of product value remains a top regulator concern - that is, **product value to each individual customer.** In the auto finance product world, **financial institutions are ultimately responsible for ensuring that customers are only sold products that have value to them.** Documented product underwriting policies and effective product marketing training processes are the solutions to meeting this obligation.

4. DESCRIBE HOW THE BANK WILL DISCLOSE THAT BY ENROLLING, THE CUSTOMER IS PURCHASING AN OPTIONAL PRODUCT WITH A COST, AND THAT ENROLLING IS NOT A MANDATORY OR MINISTERIAL PROCESS.

5. DESCRIBE HOW THE BANK WILL ENSURE THAT THE ADD-ON PRODUCT'S AVAILABILITY IS ACCURATELY REPRESENTED.

FNI Take Away: These last two are especially targeted at specific language and practices allegedly employed by Synchrony in the sale of the products at issue. However, several underlying policy issues shine through for consideration in auto finance: First, **optional products must be truly optional** and not automatic or slipped into the rapidly expanding pile of required signatory pages in a car deal-- customers must know they are buying a product and be given sufficient information to make an informed decision about it. Secondly, we learned from a previous action that old school sales language about cost like "for just pennies a day" won't pass regulatory muster - here, **language designed to create a false sense of urgency**, like "limited time offer" is found deceptive. **Parallels for traditional F&I products** could include inaccurate or misleading statements about customer qualifications for a particular product, or whether products may be available from other sources or purchased for cash.

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TAKE ACTION! NEW GUIDANCE FOR VENDOR MANAGEMENT

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SUMMARY OF THE ORDER'S REQUIREMENTS FOR ADD ON VENDOR MANAGEMENT

The Vendor Management portion of the Order closely tracks and elaborates on the CFPB's original [Service Provider Guidance Bulletin](#). The Synchrony Order states, "**Any Add-On Compliance Plan shall also include the development or revision of a written Vendor Management Policy ...** At a minimum, the Vendor Management Policy shall require:"

1. **An analysis to be conducted by the Bank, prior to the Bank entering into a contract with any Service Provider**, of the ability of the Service Provider to perform in compliance with all applicable Federal consumer financial laws and the Bank's policies and procedures;

2. For new and renewed contracts, **a written contract between the Bank and the Service Provider**, which sets forth the responsibilities of each party, especially:

a) **the Service Provider's** specific performance responsibilities and **duty to maintain adequate internal controls** over the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Products;

b) **the Service Provider's** responsibilities and **duty to provide adequate training** on applicable Federal consumer financial law **and the Bank's policies and procedures** to all **Service Provider employees or agents** engaged in the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s);

c) granting the Bank the **authority to conduct periodic onsite reviews of the Service Provider's controls, performance, and information systems** as they relate to the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s);

d) **the Bank's right to terminate the contract** if the Service Provider materially fails to comply with the terms specified in the contract, including the terms required by this Paragraph;

3. **Periodic onsite review** by the Bank of the Service Provider's controls, performance, and information systems.

FNI Take Away: Another reminder that financial institutions must **conduct due diligence and document it** in the selection of a product provider - the subject of previous editions of *Take Action!* - read up by clicking here: [Take Action! Archives](#). Plus, **enhanced details on what financial institution clients should insist is included in their product producer agreements [2(a)-(d) above]**. Lastly, this Order's multiple references to "on site review" of Service Providers suggests that **minimum due diligence efforts must include an onsite investigation - by someone who knows what to look for!**

Applied to auto finance products, these terms make clear the client's responsibility for making sure **product providers' agents or employees that interact with customers or Dealer Partners** are properly trained in applicable consumer financial law and client policies and procedures. In addition, **this Order's language makes it plain that responsibility is not limited to the service provider's compliance ability and efforts but also "fulfillment of services" for the product itself**. For auto finance products that means financial institutions need a complete understanding of the administrative policies and operational ability of their service contract, GAP and financial protection product partners - and processes in place to monitor performance.

If you currently offer or are thinking about offering add-on products like vehicle service contracts, GAP waivers or benefit programs in conjunction with auto or consumer financing, get started with your product compliance and vendor management system by contacting FNI today for expert assistance.



This Newsletter is not offered as, or intended to provide legal advice. Legal advice depends on facts and circumstances unique to each reader and is provided only subject to an executed written Agreement.

FNI SERVICES

Provider & Product Due Diligence

Documented due diligence in selecting product administrators (Service Providers) and vetting of product marketing materials for consumer protection compliance is the first and most important step in your product compliance program.

FNI assists financial institutions with provider and product due diligence and documentation for new or existing product programs.

Product Compliance Process Design & Program Management

Financial institutions are ultimately responsible for a) How captive or preferred products are marketed to consumers by employees and dealer networks; b) The performance of add-on products and c) Service Providers' interactions with customers.

FNI provides complete marketing compliance, training, program and vendor management process design and implementation strategies for your existing or new product program.

Turn-Key Product Solutions

FNI products and benefit programs provide real consumer value and enhanced business profitability for financial institutions. FNI bundles superior products from vetted administrators with a proprietary vendor and product management solution designed for financial institution compliance with CFPB's Service Provider and Add-On Product Bulletins.

You can rely on FNI industry expertise for development and implementation of effective compliance management and risk mitigation processes for Service Provider relationships and product offerings subject to CFPB oversight.

ABOUT FNI

[FNI President David Bafumo](#) has sixteen years of combined experience in financial insurance product development and marketing, finance provider product implementation and sales management, and commercial litigation.

David received his J.D. from Washington & Lee University Law School and is a member of the Virginia State Bar.

Get Expert Assistance!

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