

LESSONS FROM THE SANTANDER / BCFP S-GUARD GAP CONSENT ORDER

ON NOVEMBER 20, the BCFP published a [Consent Order](#) detailing violations of the Consumer Financial Protection Act of 2010 resulting from **the alleged unfair and deceptive marketing of Santander's captive "S-GUARD" GAP (Guaranteed Asset Protection)** add-on product program. GAP, a common loan add-on that provides consumers (and lienholders) with protection in the event of a total loss of the vehicle and a less than full payoff from the underlying insurer, has come under increased regulatory and consumer advocate scrutiny in recent years.

While not admitting to any wrongdoing, **Santander agreed to pay a civil penalty of \$2.5M and over \$9M of restitution** to customers affected by the GAP product (and those impacted by a payment extension program, a second issue addressed in the Order.)

1) BASIS FOR DECEPTIVE ACTS & PRACTICES

The Bureau hangs their enforcement hat on just one element of the S-Guard GAP program, basing the entire "unfair and deceptive" finding on a 125% loan-to-value benefit limitation found in the S-Guard consumer contract. **The cap means that no GAP benefit coverage is provided for the amounts financed over 125% - potentially leaving those customers partially unprotected.** In the Bureau's opinion, the limitation makes the S-Guard GAP **marketing materials deceptive**, as they do not specify the limitation and instead, make multiple references to **"true full coverage" implying that a customer's complete deficiency balance would be covered** by the GAP contract benefits.

[Probably for only a very short time, you can click these links to see the actual [S-Guard GAP Brochure](#) and [S-Guard GAP Placemat](#) used for marketing the program.]

Since 2012 and 2013 when the original CFPB weighed in on the add-on product scene, **one of the first marketing corrections** in the GAP industry was to **change the original product marketing pitch** – including F&I word tracks and collateral marketing materials:

FROM: "In the event of a total loss, **GAP pays the difference** in what you owe on your loan and what your insurance company settles for."

TO: "...GAP **HELPS** pay the difference in what you owe..." **recognizing there are exclusions to coverage and to imply the possibility of a balance still due.**

Missing this well known, industry-wide adjustment in GAP marketing was a mistake by Santander's due diligence team and by the S-Guard GAP Administrator who provided both the product and the marketing materials.

2) TIP OF THE GAP EXCLUSION ICEBERG?

In the GAP industry, 125% and 150% LTV caps are common contract options. Interestingly, the Bureau zeroed in on this particular limitation despite numerous other industry-standard terms that often impact consumer benefits. Probably, the 125% cap made for the easiest determination of potential "victims" – a simple portfolio analysis to identify all loans with GAP made over 125% of LTV. Indeed, with impressive precision, the Order estimates that since 2012, "approximately" 44,180 Santander customers with loans over 125% LTV were sold S-Guard GAP!

But what about other limitations and contractual claim policies that commonly reduce consumer GAP benefits:

- In the event the underlying insurer reduces its settlement due to prior unrepaired damage to the vehicle
- Underlying insurers can arbitrarily determine excess wear and tear or assess condition adjustments that may be subsequently excluded from the benefit calculation
- Storage or towing fees incurred by the underlying insurer may also be excluded from coverage
- GAP Administrator determined criteria for "commercial use" of the vehicle can impact consumer expectations
- Some GAP administrators may calculate the "what your insurance company pays" portion of the benefit formula with their own "what they should have paid" ACV determination, rather than the insurer's actual settlement

(Note these are general issues and not necessarily representative of the actual S-Guard GAP contract terms, which were not available for analysis.)

Bottom line is that there are plenty of exclusions and limitations in ordinary GAP contracts to go around and disclosure issues to consider. **Based on the flawed marketing materials and lack of corrective consumer product disclosures**, Santander is fortunate the order applies only to customers with LTVs over 125%, rather than everyone with a GAP policy and a claim who did not receive a complete payoff, for whatever reason.

3) FOUR TAKE ACTION! TAKE-AWAYS

Compared to other loan add-ons, GAP is seen by finance providers as a simpler, easier to manage product. This case is a reminder to be vigilant about product compliance, no matter how simple the product appears on paper. And critically, that responsibility for ensuring product marketing materials and marketing efforts meet consumer protection expectations should never be delegated to a Product Administrator.

- Document your product vendor & marketing due diligence.
- Establish a standardized, compliant marketing process.
- Implement a product-specific consumer disclosure form.
- Require product vendor agreement terms that protect you.

Take Action! author and [FNI President David Bafumo](#) has over 18 years of experience as a trusted advisor to consumer and auto finance companies for add-on product programs, product sales training & management, and consumer protection compliance. David received his JD from Washington & Lee Law School and is a member of the Virginia State Bar.

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