

Voluntary Protection Products: A Matter of "Interest" for State and Federal Regulators

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Voluntary protection products like credit insurance, debt protection, GAP, service contracts and motor clubs, have gained increased attention by state and federal regulators overseeing the consumer finance industry. Creditors' practices related to product cancellation and refunding of unearned product fees have been at the center of the regulators' crosshairs. But, a recent Consumer Financial Protection Bureau consent order suggests that regulators have found a new area of "interest," which is a focus on creditors' practices related to finance charges that may accrue on voluntary protection product fees that are financed as part of a credit transaction.

On May 21, 2021, the CFPB issued a consent order against an automobile finance company creditor for allegedly engaging in unfair acts or practices by charging interest on late payments of Loss Damage Waiver fees without consumers' knowledge or consent. According to the consent order, the finance company, which takes assignment of and services subprime retail installment sales contracts, required consumers to authorize it to add LDW to the consumers' accounts if the consumers failed to maintain the required auto insurance. In the event of a total loss or damage to the vehicle, the LDW covered the cost of the repair or canceled the consumers' credit balance. The creditor added the cost of LDW to the consumers' credit balance for each month that the consumer failed to maintain auto insurance. The LDW contract and related notices described the cost of the LDW as either an extra dollar amount per month or as a fee included in a "new monthly payment," but, according to the CFPB, they failed to disclose that interest accrued on late LDW payments. The consent order also alleged that the creditor charged more than \$500,000 in interest on late payments of LDW fees without consumers' consent or knowledge. Under the consent order, the CFPB required the creditor to refund the interest collected on late LDW payments and to request that consumer reporting agencies, to which the creditor furnished inaccurate information, correct or update the inaccurate information or delete the tradeline. In addition, the consent order required the creditor to pay a \$50,000 penalty. Finally, the consent order prohibits the creditor from charging interest on late payments of LDW without disclosing to consumers that interest will be charged and how it accrues.

The May 2021 consent order is not the only recent instance of regulators focusing on the interest accruing on voluntary protection product fees. Specifically, we are aware of regulators inquiring about creditors' practices related to refunding accrued interest following product cancellation (in particular in the first 30 days). Anyone who has been paying attention knows that state and federal regulators are keenly interested in creditors' voluntary protection product refund practices. However, this new line of inquiry is a twist, suggesting the regulators might view a creditor's failure to refund accrued finance charges as an unfair or deceptive act or practice, even if the creditors provide refunds in compliance

with the product agreements and state law. State law governing GAP, credit insurance and vehicle service contracts in many states provides that consumers are entitled to a full refund of the purchase price or insurance premium if the consumer cancels during an initial "free look period." Significantly, while state law governing "free look period" requirements expressly contemplates refunds of the product purchase price or the insurance premium, state law generally does not impose any requirement to refund interest that may have accrued on the premium or product price. The idea that a creditor's failure to refund accrued finance charges upon a consumer's product cancellation might run afoul of federal or state standards for unfair or deceptive acts or practices would expand creditors' product refund obligations.

The recent regulatory focus on finance charges that may accrue on product fees is demonstrative of the high level of regulatory attention on voluntary protection products generally. Such increased regulatory scrutiny demands that creditors and product providers button up their product agreements, training materials and marketing disclosures to ensure that they clearly describe when consumers may be required to pay finance charges on product fees and when consumers may or may not be entitled to a refund of any accrued finance charges.

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