

# RISK Alert

ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.



Alert Type

Awareness

Watch

Warning

## Rise in Litigation for Failing to Refund Unearned GAP Premiums

There has been a recent increase in class action litigation directed toward indirect loans that were originated by automobile dealers on retail installment sales contracts (RISC). The allegations accuse creditors of failing to process refunds when a Guaranteed Asset Protection (GAP) Waiver terminates early, which may include:

- Loan payoff prior to maturity, including sale or trade of vehicle
- Repossession and disposition of vehicle
- Customer cancellation of the GAP Waiver

### Details

The GAP Waiver is an addendum to the RISC originated by the dealer or a direct loan originated by the credit union. It is a debt cancellation lending product that provides that if a member's vehicle suffers a "total loss" and the member's property damage insurance is insufficient to pay off the remaining loan balance, then the creditor will waive up to the difference (known as the GAP).

There are various laws that apply to GAP Waivers offered by dealers on RISCs and credit unions on loans. Some state laws require a dealer or credit union to offer a GAP Waiver that is refundable after the "free look" period.

To determine the refund obligation under your GAP Waivers, review the GAP Waivers associated with your indirect (RISC) and direct loans. If a GAP Waiver is refundable after the free look period, it generally means that a partial refund is due to the member if the GAP Waiver terminates early. The GAP Waiver also should state when a partial refund is due (e.g. early payoff or repossession) and how that refund should be computed and provided to the member.

### Typical Class Action Allegations

The typical scenario presented in the class actions is that a consumer entered into a finance agreement at an auto dealership and purchased a GAP Waiver, which is an addendum to the RISC. The cost of the GAP Waiver is typically listed as a separate line item on the RISC and included in the total amount financed. The RISCs are then sold and assigned to a credit union.

The aggrieved class is defined as consumers who paid off their finance agreements prior to the original maturity date and did not receive a refund of the unearned GAP fees. The basic allegations are based on a breach of contract. In some cases, plaintiffs' attorneys include violation of state consumer protection laws as an additional claim for relief which may permit recovery of plaintiffs' attorneys' fees.

**Date:** November 17, 2020

**Risk Category:** Lending; Collections; GAP; Litigation; Indirect Lending

**States:** All

### Share with:

- Branch Operations
- Executive Management
- IT
- Plastic Cards Department
- Risk Manager



### Facing risk challenges?

[Schedule](#) a free personalized discussion with a Risk Consultant to learn more about managing risk.

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Remedies sought in the class actions generally include:

- An award to plaintiffs of all appropriate relief, including actual damages, restitution, and disgorgement of the unearned GAP fees,
- Cost of litigation, including expert fees,
- Pre- and post-judgment interest,
- Attorneys' fees as permitted by law, and
- Any additional relief the Court may deem proper.

## Risk Mitigation

The current state of class action litigation is in addition to intensified regulatory scrutiny. The CFPB stated in their 2019 Supervisory Highlights Report that they identified several unfair, deceptive, or abusive acts or practices related to refunds for add-on products such as GAP.

To mitigate the risk of potential litigation, credit unions should consider:

- Review and follow the terms required in the GAP Waiver.
- If a refund is required, establish a refund procedure to identify loans that terminated early and ensure your credit union complies with the terms of the GAP Waiver.
- Ensure agreements with dealers clearly state which party is obligated to provide any GAP refund or to reimburse the credit union if it provides the refund.
- For direct loans, if a refund is required, work with your GAP provider to understand all state specific nuances and requirements applicable to your GAP refund process.

## Risk Prevention Resources

Access CUNA Mutual Group's [Protection Resource Center](#) at [cunamutual.com](#) for exclusive risk and compliance resources to assist with your loss control efforts. The Protection Resource Center requires a User ID and password.

- [UDAAP Risk Overview](#)

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