



## ARKANSAS INSURANCE DEPARTMENT

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TO: ALL LICENSED INSURANCE COMPANIES, HOSPITAL AND MEDICAL SERVICE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, RATE SERVICE OR ADVISORY ORGANIZATIONS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

**SUBJECT: Changes in Regulation Z, Federal Truth in Lending Act: Facilitating Lender's Solicitation & Sale of Guaranteed Asset Protection ("GAP") Contracts or Loan Addendums to Debtors**

The Insurance Department has now completed its review of various pending inquiries on how the Arkansas Insurance Department will view two-party loan addendum contracts or GAP contracts between a lender and debtor, in the context of an extension of credit, i.e., execution of a finance note or loan offered to a debtor to buy or lease a car or other personal property on time using installment payments.

The Department has considered the prior cases of Douglas v. Dynamic Enterprises, Inc., 869 S.W.2d 14 (1994), an Arkansas State Court case commonly called the "Carmart" case; as well as the earlier 1990 opinion of the Eighth Circuit Court of Appeals in the First National Bank of Eastern Arkansas v. Ron Taylor, Commissioner of the Insurance Department for the State of Arkansas, 907 F.2d 775 (8th Cir., 1990), on two-party debt cancellation contracts of national banks as governed by regulations issued by the Office of the U.S. Comptroller of the Currency.

While neither of these Arkansas cases is exactly on point with the current inquiries on loan addendums offered by car dealers or lenders to Arkansas car buyers, they are persuasive.

The Department has interpreted the Arkansas Insurance Code in reviewing the GAP contract; and our decision is that the Department does not regulate the two-party loan addendum contracts or GAP products as insurance. These GAP contracts are those between the car lender (or dealer) and car buyer.

By GAP contracts, we mean only those two-party contracts, supplementing the finance or lease note for sale or lease of the vehicle or other personal property, and which provide that for valuable consideration, the lender agrees to waive or hold harmless the buyer or lessor for any loan balance remaining due on the note after application of physical damage insurance proceeds following a total loss of the financed vehicle.

Our decision of non-regulation also encompasses loan addendums offered to supplement two-party contracts between the Arkansas dealer and buyer/debtor for sale or lease of a car or other personal property (appliances, etc), and to supplement those with installment payments ending with a “balloon” note.

CAVEAT: If the loan addendum contract is offered by a third-party, such as an insurer or third party administrator and in which the insurer or TPA is the obligee on the GAP contract (not the dealer or lender), then our answer is very different. Those are insurance products we will regulate fully under the Arkansas Insurance Code. We will continue to regulate the sale of vehicle service contracts as described and defined under Arkansas law, albeit in the limited fashion current law describes; see Ark. Code Ann. §§ 4-90-501, et seq.

We will continue to regulate as insurance or third-party indemnification contracts, the offer of a dealer or lender to pay an insured’s deductible on the physical damage insurance policy in the event of a total loss to the financed property. We will continue to regulate the sale of credit and physical damage insurance or other types of traditional insurance offered to the public by third party indemnifiers in connection with the sale of cars or other products offered by Arkansas dealers or lenders.

Please contact the Legal Division at 501-371-2820 with any questions.

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MIKE PICKENS  
INSURANCE COMMISSIONER