

Arkansas Insurance Department

Mike Beebe
Governor



Julie Benafield Bowman
Commissioner

BULLETIN NO. 2 - 2008

TO: ALL LICENSED INSURANCE COMPANIES, RATE SERVICE OR ADVISORY ORGANIZATIONS, ARKANSAS AUTOMOBILE DEALERS ASSOCIATION, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: GUARANTEED ASSET PROTECTION AND GUARANTEED AUTOMOBILE PROTECTION (“GAP”) CONTRACTS, WAIVER AGREEMENTS, OR LOAN ADDENDUMS

DATE: FEBRUARY 19, 2008

The Arkansas Insurance Department (“Department”) is issuing this Bulletin on guaranteed asset protection/guaranteed automobile protection (“GAP”) contracts, waiver agreements, or loan addendums to clarify the Department’s prior position as stated in Arkansas Insurance Department Bulletin 6-98. The Department does not consider two-party loan addendum contracts or GAP contracts between a lender and a 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 an automobile or other personal property on time using installment payments, to be insurance products.

This Bulletin supersedes Bulletin 6-98 and withdraws the Commissioner’s prior interpretation, as set forth in that Bulletin, that a lender cannot pay an insured’s deductible on physical damage insurance coverage when calculating the benefits under a GAP product.

By GAP contracts, the Department means only those two-party contracts, supplementing the finance or lease note for the sale or lease of a motor vehicle or other personal property, 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 a total loss of the financed motor vehicle or other personal property.

The Department’s decision to exclude these transactions from regulation by the Department also encompasses loan addendums offered to supplement two-party contracts between the dealer/merchant and the buyer/debtor for the sale or lease of a motor vehicle or other personal property.

If the loan agreement contract is offered by a third party, such as an insurer, and the insurer or other party is the obligee on the GAP contract (not the dealer or lender), the GAP contract is considered insurance and will be fully regulated by the Department. The Department will continue to regulate the sale of vehicle service contracts as described in Ark. Code Ann. §§ 4-90-501, et seq.

The Department has changed its position in regard to the waiver of payment of the insured's deductible under physical damage insurance coverage. The Department will no longer consider a dealer's or lender's offer to waive, cancel, or pay the debtor's insurance deductible as an insurance product. The Department has learned that most, if not all, other states do not consider the contract provision whereby the lender pays the deductible to be an insurance product. It also appears that in most cases the premium charged to Arkansas consumers is the same charged consumers in other states. In reality, this means that Arkansas consumers are paying for a benefit but not being allowed to receive the benefit.

The Department 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 motor vehicles or other products offered by dealers or lenders.

This Bulletin is intended to and shall rescind Bulletin 6-98.

Questions concerning this Bulletin should be directed to the Arkansas Insurance Department Legal Division at 501-371-2820 or by e-mail to legal.division@arkansas.gov.

(signed by Julie Benafield Bowman)

JULIE BENAFIELD BOWMAN
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