

Arkansas Insurance Department

Mike Beebe
Governor



Julie Benafield Bowman
Commissioner

BULLETIN NO.: 7-2007

DATE: November 30, 2007

TO: ALL LICENSED INSURERS, FRATERNAL BENEFIT SOCIETIES, HOSPITAL AND MEDICAL SERVICE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, ARKANSAS BANK COMMISSIONER, ARKANSAS ATTORNEY GENERAL, ARKANSAS BANKERS ASSOCIATION, ARKANSAS AUTOMOBILE DEALERS ASSOCIATION, ARKANSAS SECURITIES COMMISSIONER, ARKANSAS CREDIT UNION LEAGUE, INSURANCE TRADE ASSOCIATIONS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: LENDERS' SOLICITATION AND SALE TO ARKANSAS DEBTORS OF DEBT CANCELLATION AGREEMENTS ("DCAs")

This Bulletin is issued pursuant to Sections 22 and 23 of Act 496 of 2007 ("Act 496"). These sections are codified as Ark. Code Ann. § 4-90-701 et seq. and Ark. Code Ann. § 23-60-102(1)(D).

This Bulletin supersedes Bulletin 7-2003. This Bulletin withdraws the Commissioner's prior interpretation regarding debt cancellation agreements, as set forth in Bulletin 7-2003.

Products Regulated by Ark. Code Ann. § 4-90-701 et seq. Under Act 496, it is now permissible for lenders to issue debt cancellation agreements sold in connection with a loan on a motor vehicle that cancel all or part of the borrower's obligation under the loan upon the occurrence of a specified event other than death or disability of the borrower. Such sales are subject to the Arkansas Deceptive Trade Practices Act and are under the jurisdiction and enforcement authority of the Arkansas Attorney General. Act 496 does not apply to debt cancellation agreements exempted pursuant to state or federal law. Accordingly, state and federal banks, state and federal credit unions, federal savings banks, thrifts, savings and loan associations, and other financial institutions may continue to issue debt cancellation agreements in connection with applicable state and federal laws pertaining to such financial institutions.

Products Prohibited by Ark. Code Ann. § 4-90-701 et seq. and Ark. Code Ann. § 23-60-102(1). The exemption under Ark. Code Ann. § 4-90-701, does not include a contractual agreement dealing with a loan on a motor vehicle under which the non-financial institution lender agrees to cancel all or part of a borrower's obligation under the loan upon the occurrence of the death or disability of the borrower. State and federal banks, credit unions, thrifts and other financial institutions may continue to issue debt cancellation agreements that include benefits that result from the death or disability of the borrower. Auto dealers, vendors, non-financial institutions, and other lenders, may not enter into debt cancellation agreements that provide a benefit upon the death or disability of the borrower. A non-financial institution lender may assign a loan to a state or federal bank, federal or state credit union, federal savings bank, thrift, savings and loan association or other financial institution and the financial institution, may then issue a debt cancellation agreement to the borrower.

Debt Cancellation Agreements Issued in Connection with Loans not related to Motor Vehicles. Ark. Code Ann. § 4-90-701 et seq. applies only to DCAs made in connection with loans for motor vehicles. The definition of

“insurance” found in Ark Code Ann.§ 23-60-102(1)(D), applies to any debt cancellation agreement made in connection with any loan other than a loan on a motor vehicle, and is subject to the continuing regulation of the Insurance Commissioner. The Department will review any debt cancellation agreement or any similar agreement to determine if the applicable provisions of the insurance code provisions apply. The Department does not intend to regulate as insurance or otherwise, debt cancellation agreements sold in connection with any type of loan when sold by state or federal banks, state or federal credit unions, federal savings banks, thrifts, savings and loan associations or other financial institutions.

Credit Life and Credit Disability Insurance. The Commissioner would emphasize to all consumers, producers and insurers that credit life and credit disability insurance is fully regulated by the Department. Credit life and Credit disability insurance may only be sold by properly licensed insurance producers and the policies may only be issued by properly licensed insurance companies. Credit life and credit disability insurance provide benefits when the borrower dies or is disabled. Credit life and credit disability insurance may be purchased to provide benefits to the borrower for any loan including loans for motor vehicles.

Guaranteed Asset Protection/Guaranteed Automobile Protection (“GAP”) Waiver Agreements. Pursuant to Ark. Code Ann. § 4-90-701, GAP waiver agreements modifying a loan term dealing with motor vehicles are not considered debt cancellation agreements. The Insurance Commissioner addressed GAP contracts in Bulletin 6-98. In that Bulletin, the Commissioner stated his position that GAP contracts were not insurance products and therefore not regulated by the Department. This Bulletin does not alter or change the Department’s position as stated in Bulletin 6-98.

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

This Bulletin is intended to and shall rescind Bulletin 7-2003, “Lender’s Solicitation & Sale to Arkansas Debtors of Debt Cancellation or Debt Suspensions Agreements (DCAS)” dated August 21, 2003.

(signed by Julie Benafield Bowman)

(November 30, 2007)

Julie Benafield Bowman
Insurance Commissioner
State of Arkansas

DATE