GUARANTEED ASSET PROTECTION

As previously noted in an article that was placed in the Spring 2008 Plain Dealing Publication, the Department of Financial Institutions – Bureau of Consumer Affairs approved the sale of Guaranteed Asset Protection ("GAP") products in connection with credit sales and loans. Information regarding this approval ("2004 GAP approval") can be found on the Department of Financial Institutions' website at http://www.wdfi.org/fi/lfs/sf/default.htm. A dealership that is not familiar with the 2004 GAP approval letter should visit the website and carefully review each of the conditions under which the approval was given.

Dealerships should also be aware that 2017 Wisconsin Act 161 ("The ACT") was recently enacted and is effective 9/1/18. The ACT created Section 218.0148, Wis. Stats., which applies to the sale of GAP waivers on or after 9/1/18 in connection with vehicle credit sales, loans and consumer leases. A copy of The ACT can also be found at http://www.wdfi.org/fi/lfs/sf/default.htm.

The "2004 GAP approval" letter and Section 218.0148, Wis. Stats., have similar conditions placed on the creditor when GAP is offered and sold to borrowers in this state. They also have similar conditions in place relating to the refunding of the unearned GAP charge when the GAP waiver is cancelled or terminated.

However, Section 218.0148, Wis. Stats., does have some additional conditions and requirements that are not identified in the "2004 GAP approval" letter. For example, Section 218.0148(2)(f), Wis. Stats., states, in part, "A retail seller shall insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer." In addition, Section 218.0148(2)(g), Wis. Stats., states, "Any creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on, all guaranteed asset protection waivers to the designated party, if any, prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents." As there are other additional provisions, dealerships should become familiar with The ACT.

Regarding the conditions set forth in both Section 218.0148, Wis. Stats., and the "2004 GAP approval" letter in relationship to allowing the refund of the unearned GAP waiver charge when a waiver is cancelled or terminated, please be advised that the creditor shall make an appropriate refund or credit of the guaranteed asset protection waiver charge or shall cause to be made an appropriate refund or credit by instructing in writing the appropriate party to make the refund or credit. To comply, historically, most creditors (i.e. sales finance companies) would notify a dealership when the GAP waiver was cancelled because the related credit transaction was prepaid in full; instructing the dealership to make the refund to the customer. However, dealerships should now be aware that, recently, several creditors have changed their policies and they are now allowing the refunds directly to the customer when the transactions are prepaid. When doing so, the creditor will typically request reimbursement from the dealership for the amount of the refund in the form of a check or debit the dealership's reserve statement account for the amount of the refund. As a dealership is the entity/creditor that initially sold the GAP waiver, a dealership should have a complete understanding of each sales finance company's policy/procedures regarding refunds.

If a dealership is unaware of their policy, the dealership should take the initiative of contacting the company to verify their policy and act accordingly.

For accounts where the creditor allows the refund directly to the customer, a dealership should document that fact on the GAP logs that are maintained at the dealership. On the GAP logs, a dealership should still record the date of prepayment and the amount of the refund the creditor allowed, along with a note indicating that the refund was allowed by the creditor. Typically, the date of prepayment and the amount of the refund can be obtained from the month-end dealers reserve statements, paid notifications, and/or other reports/statements that are provided to the dealership by the creditor. The dealership should retain these documents for future reference.