

GUARANTEED ASSET PROTECTION

As most motor vehicle dealerships are aware, the Department of Financial Institutions - Office of Consumer Affairs approved the sale of Guaranteed Asset Protection ("GAP") products in connection with credit sales. 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 should visit the website and carefully review each of the conditions under which the approval was given.

When reviewing the 2004 GAP approval, special attention should be given to the 4th and 5th condition. Upon termination of the GAP agreement, a refund of the unearned GAP premium must be allowed. If termination occurs within 30 days of the GAP purchase, the customer is entitled to a full refund of the GAP premium. If the termination occurs more than 30 days after the product is purchased, the customer is entitled to a refund that is calculated by a method that is no less favorable to the customer than the rule of 78's. In cases where the GAP terminates because the related credit transaction is paid in full, or the vehicle is repossessed or surrendered by the customer, the customer is not required to sign a form requesting the cancellation of the product.

It has come to the attention of the Department of Financial Institutions – Division of Banking ("division") that some dealerships are not allowing a refund of the unearned GAP premium when the GAP agreement terminates. Dealerships that are not allowing refunds must take action to rectify this situation. All transactions with GAP should be reviewed, and for any transaction where the GAP agreement was terminated on or after November 1, 2004, a refund of the unearned GAP premium must be allowed at this time.

All dealerships should maintain a log that identifies accounts where GAP has been written. The log should be in a format similar to the log that is currently being maintained for accounts with credit insurance. It is recommended that one log be maintained for both credit insurance and GAP. This can be accomplished by adding the GAP information (columns) to your existing credit insurance log. As an alternative, a separate log could be maintained for the GAP agreements. Sample log forms can be found at the website referenced above.

Any dealership that begins using a GAP log as a result of reading this article should also create a separate log for GAP agreements that were not previously recorded. This log should be kept in payoff date order. When an account with GAP prepays, all the appropriate columns of the log should be completed. When all accounts with GAP agreements originated prior to the date of this article have been paid in full, the dealership will be able to discontinue use of this additional log.

Dealerships should also be aware that although the lender (sales finance company, bank or credit union) that purchased the instalment sales contract from the dealership is responsible for notifying the dealership when an account prepays, the seller (dealership) of the GAP and credit insurance products is responsible for making the appropriate refund. This includes taking proactive steps to ensure your dealership is being advised of all prepaid accounts.

When contacting various lenders to advise them of the most effective method of notifying a dealership of prepaid accounts, the division advises lenders to provide dealerships with monthly reports that identify all the accounts that prepaid in a particular month. Although some lenders may continue to only provide dealerships with individual notices when a specific account prepays, in most cases, lenders have complied with the division's request of sending monthly reports.

A dealership should be familiar with the notification policy of each lender. Because dealerships have different types of financing programs with the lenders that conduct business with them, the dealership should not presume that a monthly reserve statement will identify all the accounts that have prepaid for a particular month. If it is the policy of a lender to provide monthly reports separate from the reserve statements, and your dealership has not received a report for a particular month, the dealership should have a procedure in place so that a representative of the dealership contacts the lender to question why the report was not received. Please be reminded that all prepaid notifications must be retained at the dealership for the division's review.

Please take steps to ensure that this article is shared with the representatives of the dealership's finance and insurance department to ensure that the concerns noted above are addressed accordingly.