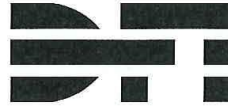




STATE OF INDIANA

DEPARTMENT OF FINANCIAL INSTITUTIONS



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April 2, 2018

To: Indiana Approved Guaranteed Asset/Auto Protection ("GAP") and Debt Cancellation ("DC") Administrators,  
Licensed/Registered Sellers of GAP, and Indiana chartered depository sellers of DC products  
Re: House Enrolled Act 1397  
From: Ryan Black, Deputy Director Consumer Credit Division

House Enrolled Act ("HEA") 1397, signed by the Governor on March 13, 2018, as Public Law 69, which becomes effective July 1, 2018, amends in part the Indiana Uniform Consumer Credit Code ("IUCCC") concerning permitted additional charges. The IUCCC is administered by the Department of Financial Institutions ("Department"). Due to the passage of this legislation, the historical approach regarding these products and the approval given to GAP and DC Administrators by the Department will be changing. This letter outlines, by product, the changes that will result. Whether you are a program administrator or a product seller, please be sure to carefully read this letter in its entirety. We would also encourage you to share this information with the entities with which you currently provide these products.

**CURRENT LAW IN EFFECT THROUGH JUNE 30, 2018**

There will be no renewal offered in June 2018 for the current GAP and/or DC approvals as has been done historically. For fiscal year 2017-2018, the Members of the Department approved elimination of the GAP and DC renewals and associated fees in anticipation of these legislative efforts.

All current policies and procedures will remain in effect through June 30. If a new entity wishes to enter the market prior to July 1, they must still submit an application and the associated fee. Further, if an entity currently approved wishes to amend or insert new forms prior to July 1, those also must still be submitted to the Department for review and approval.

As we receive forms or applications, we will engage in conversation with the Administrator regarding Public Law 69 and provide the option of withdrawing the application or request, or continuing to pursue approval. For those Administrators continuing to request approval, we will process such request accordingly; however, no guarantee will be provided regarding the time within which such approval will be processed.

**LAW IN EFFECT AS OF JULY 1, 2018**

**GAP Waivers**

Regarding Administrators:

- 1) Effective July 1, 2018, your classification by the Department as an approved GAP Administrator will cease to exist. You will not receive further notification regarding this termination.

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- 2) Beginning July 1, 2018, the Department will no longer approve GAP Waiver forms. New forms or amendments to forms should not be sent to the Department for review after this time. The Department will no longer offer a sample Indiana Endorsement.
- 3) Previously, all GAP Waiver agreements had to comply with the Standardized GAP Agreement provisions found in the Indiana GAP Application. Effective July 1, 2018, all new GAP Waiver agreements must comply with Ind. Code §24-4.5-2/3-202.
- 4) The maximum customer cost of a non-refundable GAP Waiver will be \$400 as reflected in the statute(s). This amount will no longer be tied to inflation and can only be adjusted through future legislative changes.
- 5) For GAP Waiver agreements entered into after June 30, 2018, there is no maximum consumer cost for refundable waivers. Any waiver sold after this date with a consumer cost in excess of \$400 must be refundable using a method that is no less favorable to the consumer than a pro-rata basis. As such, cancellation fees remain prohibited.
- 6) For GAP programs with a customer cost greater than \$400, a Rule of 78ths refund method is not permissible for agreements consummated after June 30, 2018.
- 7) Subsequent dealer letters (letters historically provided to the Department when a new dealer or seller has been signed up with an Administrator) are no longer required after June 30, 2018.

Regarding Sellers (e.g., auto dealers and lenders):

- 1) Sellers (primarily auto dealers and other creditors) will not need specific approval from the Department in order to sell GAP after June 30, 2018. Simply, a seller must strictly comply with Ind. Code §24-4.5-2/3-202 as applicable.
- 2) Further, you will not be required to confirm whether a GAP Administrator has been approved by the Department; however, a seller must ensure GAP programs sold strictly comply with Ind. Code §24-4.5-2/3-202 as applicable. Selling a product that does not strictly comply with Ind. Code §24-4.5-2/3-202 as applicable could result in full refunds to consumers.
- 3) The maximum customer cost of a non-refundable GAP Waiver will be \$400 as reflected in the statute(s). This amount will no longer be tied to inflation and can only be adjusted through future legislative changes.
- 4) For GAP Waiver agreements entered into after June 30, 2018, there is no maximum consumer cost for refundable waivers. Any waiver sold after this date with a consumer cost in excess of \$400 must be refundable using a method that is no less favorable to the consumer than a pro-rata basis. As such, cancellation fees remain prohibited.
- 5) For GAP programs with a customer cost greater than \$400, a Rule of 78ths refund method is not permissible for agreements consummated after June 30, 2018.
- 6) Credit sellers who are registrants under Chapter 2 of the IUCCC must continue to maintain an electronic database regarding sales and refunds of GAP Waivers.
- 7) Sellers of refundable GAP Waivers remain responsible for issuing timely refunds to consumers in the event of cancellation or prepayment in full. The Department will continue to review refunds as part of its examination process.

A GAP Waiver sold after June 30, 2018, that does not meet all of the conditions outlined in the IUCCC may be treated by the creditor as a prepaid finance charge and included in the total finance charge, provided maximum credit service/finance charges permitted by Ind. Code §24-4.5 are not exceeded. If a GAP Waiver does not meet the required conditions and is not treated by the creditor as a finance charge (to include appropriate disclosures under Federal Regulation Z), charges for such waivers will be treated during examinations as impermissible additional charges with full refunds due to consumers.

**Debt Cancellation**

Regarding Administrators:

- 1) Effective July 1, 2018, your classification by the Department as an approved DC Administrator will cease to exist. You will not receive further notification regarding this termination.
- 2) Previous application requirements will no longer be required after June 30, 2018, for DC to be an approved additional charge under the IUCCC. Rather, the DC product must fully comply with Ind. Code §24-4.5-3-202.
- 3) Any products or programs previously approved through specific request to the Department will no longer be considered in effect for new contracts entered into after June 30, 2018. Such programs will be subject to the newly effective statutory provisions.

Regarding Depository Institutions:

- 1) After June 30, 2018, you will not be required to confirm whether a DC Administrator has been approved by the Department.
- 2) Marketing practices will no longer be required to be submitted by the depository institution after June 30, 2018.
- 3) The institution should continue to ensure proper vendor due diligence and vendor management practices are maintained.

If you have any questions, please contact the Department.

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