

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Bulletin 2018-18-CF

In the matter of:

Creditor Obligations Under the
Guaranteed Asset Protection Waiver Act

Issued and entered
This 14th day of September 2018
by Patrick M. McPharlin
Director

This bulletin clarifies a creditor's obligations under a guaranteed asset protection (GAP) waiver agreement and reminds installment sellers and retail sellers who enter into GAP waiver agreements that they are liable for any payments made under those agreements, regardless of whether a non-creditor third party (e.g., a claim administrator or finance company, among others) is involved.

A guaranteed asset protection ("GAP") waiver agreement is one between a creditor and customer which provides that the creditor will forgive all or part of the remaining financial obligation in the event of a covered loss. GAP waiver agreements thus protect the borrower (i.e., the customer) from unexpected monetary loss. Michigan's Guaranteed Asset Protection Waiver Act, MCL 492.21, *et seq.* ("the Act"), requires the creditor involved in a GAP waiver agreement to satisfy a GAP claim when it comes due.

The Act defines a "guaranteed asset protection waiver" as:

A contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

MCL 492.23(g).

The Act defines a "creditor" as:

A person that extends credit to a borrower in connection with the purchase of a motor vehicle; an assignee of that person; a lessor of a motor vehicle; or an assignee of that lessor. The term includes, but is not limited to, any of the following:

- (i) An installment seller that extends credit to an installment buyer and any assignee to which that credit obligation is payable.
- (ii) An installment seller that leases a motor vehicle to an installment buyer and any assignee to which the lease payments are payable.

- (iii) A sales finance company that extends credit to an installment buyer and any assignee to which that credit obligation is payable.
- (iv) A retail seller that extends credit to a retail buyer and any assignee to which that credit obligation is payable.
- (v) A retail seller that leases a motor vehicle to a retail buyer and any assignee to which the lease payments are payable.

MCL 492.23(d).

Under the plain language of the Act, the party identified as the "creditor" in the GAP waiver agreement, or otherwise defined as the "creditor" pursuant to MCL 492.23(d), is the party obligated to satisfy a claim under a GAP waiver agreement. In some cases, a third-party (e.g., a finance company, waiver company, or insurer) is involved in the GAP waiver agreement. The involvement of a non-creditor third party, however, does not change the creditor's obligations under the Act.

The Act generally requires installment sellers or retail sellers to insure their GAP waiver obligations under a contractual liability or other insurance policy issued by an insurer. See MCL 492.25(1)(e). The "creditor" installment or retail seller should then be able to recover any payments it makes under the agreement.

The Director has authority under MCL 492.31 to take any action necessary or appropriate to enforce the Act and to protect GAP waiver holders, including but not limited to assessing administrative fines for violations of the Act.

Any questions regarding this bulletin should be directed to:

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/s/

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