



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 31, 2019

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Re: Guarantee Asset Protection (GAP) insurance products offered by Consumer Discount Company Act Licensees

Dear Redacted,

This letter is in response to your December 6, 2018, correspondence to the Department of Banking and Securities ("Department") requesting approval to offer GAP insurance in your licensed Pennsylvania locations.

According to your letter and its enclosures, the GAP insurance product will only be offered to direct auto loan customers, and in the event of the total loss of a covered vehicle, Redacted waives the collection of the difference between the loan balance and the proceeds of the primary insurance, plus up to \$1,000 of the primary insurance deductible. The GAP benefit is limited to private-passenger motor vehicles that are not used for commercial purposes. To be eligible, a borrower must: (1) present evidence of insurance on the vehicle securing the loan, and (2) have a loan-to-value ratio (the amount of the loan divided by the total value of the asset securing the loan) higher than 100%.

Redacted obtained the GAP coverage through a Guaranteed Asset Protection Insurance Group Master Policy ("master policy") with Redacted. According to the master policy, Redacted can offer its borrowers a "certificate" that describes the GAP insurance at the inception of the loan and adds the borrower to the policy. The borrower's purchase of GAP insurance is voluntary and never made a condition of the extension of credit or granting of the loan. A borrower seeking the coverage may voluntarily sign the certificate that will serve as evidence of the borrower's consent to obtain GAP insurance coverage under the master policy.

Redacted charges Redacted a fee of \$610 each time a borrower is added to the master policy. The fee is then passed on to the borrower who can obtain a full refund if the policy is cancelled within 30 days. Redacted does not receive any commissions for the sale or purchase of the GAP policy.

Authorization for a company governed by the Consumer Discount Company Act (CDCA) to provide insurance in the manner described in your letter can be found in 7 P.S. § 6213(N).<sup>1</sup> Section N allows a CDCA licensee

[t]o collect from the consumer, in addition to the interest or discount and service charges permitted under this act, the premium actually paid for insurance required or obtained as security for, or by reason of, a loan made or contract purchased, provided insurance is obtained from an insurance company authorized by the laws of Pennsylvania to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of such insurance shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance.

7 P.S. § 6213(N). Please note, however, the statute prohibits a licensee from charging any amount in excess of the premium actually paid by the licensee for the insurance, meaning the actual cost borne by the licensee. The licensee must maintain proper records for each account which would include the actual receipt or other documentation demonstrating that the fee the consumer was charged was in fact the actual cost of the premium paid by the licensee without a mark-up. Since Redacted is merely collecting from the consumer a fee it incurred from for adding the consumer to the policy, Redacted's proposal does not run afoul of the CDCA.

For reasons discussed above, Redacted may offer a GAP insurance product at the cost incurred for such product by having its customers pay only the actual cost. Please note that the Department recommends you contact the Pennsylvania Insurance Department to ensure conformity of GAP agreements with Pennsylvania insurance laws. The Department's analysis is based upon the facts as stated in this letter, Redacted's December 6, 2018 correspondence, enclosures, and additional information provided to the Department during a phone conference held on January 28, 2018. Any change in the facts could result in an amendment or reversal of the Department's position. This letter states the Department's position regarding the issues discussed herein and may not be relied upon or construed as constituting legal advice.

If you have any questions regarding this matter, please do not hesitate to contact me

For the Commonwealth of Pennsylvania  
Department of Banking and Securities

Redacted  
Carlton M. Smith  
Assistant Counsel

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<sup>1</sup> Section 6213(N) is the controlling authority, not Section 6213(Q).