



STATE OF INDIANA

DEPARTMENT OF FINANCIAL INSTITUTIONS



30 South Meridian Street, Suite 300
Indianapolis, Indiana 46204-2759
Telephone: (317) 232-3955
FAX: (317) 232-7655
WEB: SITE <http://www.in.gov/dfi>

RE: GUARANTEED AUTO PROTECTION (GAP) – PROGRAM APPROVAL APPLICATION

A fee of \$1,000 must accompany each application for a GAP program approval. A renewal fee of \$500 plus \$10.00 per approved dealer, up to a maximum of \$2,000, will be due annually.

Charges for Guaranteed Auto Protection (GAP) are not specifically authorized additional charges under the Indiana Uniform Consumer Credit Code, IC 24-4.5-2/3-202. All GAP programs offered to Indiana consumers must first be approved by the Indiana Department of Financial Institutions as provided for under IC 24-4.5-2-202(1)(c) and IC 24-4.5-3-202(1)(e). This statute reads in part as follows: "... With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits."

Enclosed is a copy of the document entitled "Questions and Information Concerning GAP Agreements." All questions must be answered and all documents requested must be provided to this office with your application.

Your GAP program application is to be submitted jointly by a third-party GAP administrator and an initial creditor (dealer). Creditors (dealers) who subsequently desire to offer the program must also complete a letter requesting approval to offer an approved GAP program. The initial creditor (dealer) letter and the subsequent creditor (dealer) letters must be submitted to the department on the dealership's letterhead. Sample copies of these letters are enclosed.

Please contact this department if you have any questions concerning GAP program approvals.

CONSUMER CREDIT DIVISION
mtarpey@dfi.in.gov



APPLICATION FOR GUARANTEED AUTO PROTECTION (GAP) PROGRAM

State Form 51819 (R/5-06)
Approved by State Board of Accounts, 2006

State of Indiana
DEPARTMENT OF FINANCIAL INSTITUTIONS
30 South Meridian Street, Suite 300
Indianapolis, IN 46204

DATE RECEIVED _____
LIC ID # _____ DF1 ID # _____
INVOICE # _____ CHECK # _____
AMT. PD _____ BAL. DUE _____

ATTACH APPLICATION FEE CHECK HERE

GAP ADMINISTRATOR INFORMATION

Name

Address (*Number and Street*)

City, State, Zip Code

Contact Person

Telephone Number

Fax Number

CONTRACTUAL LIABILITY INFORMATION

ATTACH A COPY OF THE INDIANA DEPARTMENT OF INSURANCE FILE STAMPED COPY OF CONTRACTUAL LIABILITY POLICY.

Name

Address (*Number and Street*)

City, State, Zip Code

Telephone Number

Fax Number

ACKNOWLEDGMENT

The applicant executed this application on _____ and acknowledges that all statements made herein and supporting schedules, to the best of my/our knowledge and belief, are true and is a true and complete statement in accordance with the law.

Signature of Applicant

Title

By:

Print or Type in Name of Signature

E-Mail Address

QUESTIONS AND INFORMATION CONCERNING GAP AGREEMENTS

Answer all questions and include all information requested as applicable in your application for a GAP program approval.

1. What is the cost of the GAP program to the dealer?
2. What is the maximum fee a dealer can charge a consumer for the GAP program? A maximum charge must be identified for each approved program.
3. What is the maximum amount of coverage that you will provide under the GAP agreement? Is this related to the manufacturer's suggested retail price (MSRP) or an NADA value? Give full details.
4. List all states your GAP program is offered in, giving the applicable state regulatory department(s), contact person, and telephone number. Include the date you began offering your program and terms of your GAP agreement.
5. Attach any supporting documentation that you can produce in regard to loss ratios on debt cancellation agreements. Information from your contractual liability policy issuers is preferred; however, information from trade associations, magazines, newspapers, internal studies, etc. are all acceptable.
6. The Indiana Uniform Consumer Credit Code, Section IC 24-4.5-2-202(1)(c), requires the "seller" must submit a written explanation of the charge to the Department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

Have you obtained specific approval from an initial dealer in regard to your representation of them with the department? The dealer would be the "seller" on a retail contract. This could be done using a form letter.

Note: If you are a financial institution asking for approval on direct loans and retail contracts, this should be detailed as outlined in IC 24-4.5-3-202(1)(e).

7. If you are a financial institution, are you requesting approval on retail installment sales contracts that are assigned only to you? Would the dealer not be offering your GAP product except in instances where the retail contract is being assigned to you?
8. Is the GAP agreement clearly offered as an optional program to the consumer? This should be highlighted on the face of the document and the consumer should sign the agreement acknowledging their desire for the coverage at the cost specified. The disclosure required by federal Truth-in-Lending, Regulation Z, Section 226.4(d)(3) must be made.
9. How will you market your program to Indiana dealers? Why will dealers choose your program versus other programs?
10. Provide a copy of the GAP agreement between the consumer and the GAP provider, plus a copy of the agreement between the Indiana dealer and the GAP provider.

QUESTIONS AND INFORMATION CONCERNING GAP AGREEMENTS

11. If charges have been made for a program not approved, how many of these agreements have been written in Indiana? What steps have you taken to notify current dealers and/or financial institutions to discontinue writing new GAP agreements until such time as the product has been approved by the department?
12. GAP agreements that were written prior to approval of the department must be refunded in a manner satisfactory to the department. Failure to refund these accounts could create potential liability for the dealer who wrote the contract and the financial institution that took assignment.
13. Attach a list of dealers in Indiana who are set-up to provide this product on retail contracts. If you also work directly with financial institutions on direct loan agreements, please provide the names and addresses of these institutions.
14. The name(s) used to market the program must be reflected on the customer GAP agreement at the top of the agreement. If the GAP provider markets the program under various trade names, all such names must have been previously identified in writing to the DFI. List all trade names here.
15. Attach any additional information that you believe would support your request for approval.

A GAP program that does not meet all of the conditions for approval as an additional charge can be treated as part of the finance charge (prepaid). Proper disclosure must be made on the retail contract/loan agreement. The applicable IUCCC maximum rates under IC 24-4.5-2-201 and 3-508 cannot be exceeded at the time the sale/loan is made or if the account is prepaid.

Approval of the program as originally submitted is subject to review at a future date as deemed necessary by the department. No changes can be made to an existing program without written approval from the department. **There is an annual renewal due June 1 of each year.**

STANDARDIZED GAP AGREEMENTS:

For this department to more effectively administer the statutes which govern the sale of GAP, we are advising all GAP administrators that customer GAP agreements used in Indiana must include the following standardized information:

1. Agreements must be numbered in a sequential order. The number should be in the top right corner;
2. Agreements must reflect a form number and a revision date in the bottom left/right corner;
3. Agreements must reflect the name of the DFI approved plan administrator, their address, and a toll free telephone number for consumers to use to report claims or ask questions. This should be located at the bottom of the front page of the customer GAP agreement. The same information should also be separately included for the claims administrator if different than the plan administrator. The information for the separate claims administrator can be on the front or reverse side of the customer GAP agreement;
4. Agreements must provide space for the disclosure of the MSRP/NADA value;
5. Agreements must reflect the name of the financial institution that took assignment of the covered contract;
6. Agreements must reflect the name and address of the consumer;
7. Agreements must reflect the name of the dealership or financial institution selling the agreement;
8. The amount of the GAP fee to be paid by the consumer must be on the GAP form;
9. The GAP form must clearly inform the consumer that the GAP fee and coverage are Optional, for the cost to be excluded from the finance charge;
10. Agreements must include a provision which excludes the sale of the GAP product in instances where the amount financed, less the cost of the GAP, the cost of credit insurance, and the cost of warranties, is less than 80% of the MSRP for a new vehicle or the NADA average retail value for a used vehicle. This information should also be included in the agreement between the dealer and the GAP administrator;
11. Agreements must include a sentence that advises the customer "...you may be able to obtain GAP coverage from your primary insurance carrier".
12. Agreements must uniformly define the term "Actual Cash Value" as the value established by the primary insurance carrier. If there is no primary insurance coverage in place at the time of a claim, then the applicable NADA value or equivalent must be used. There can be no subrogation against the customer. Related defined terms such as "payable loss" and "constructive total loss" must be consistent with the above definition of ACV and no subrogation against the customer;
13. Agreements must clearly define the term "Unpaid Net Balance" in a manner in which a consumer can reasonably be expected to understand. The definition should make it clear that the unpaid net balance is computed after the application of all consumer credit insurance refunds;

14. Agreements must include terminology which refers the consumer to the Department of Financial Institutions for additional information or complaints. The department's name, address and toll-free telephone number must be reflected on the front side of the customer GAP agreement;
15. Agreements must include specific instructions that may be used by the consumer to cancel the GAP agreement and get a refund of the unearned GAP fee prior to prepayment in full. Upon prepayment in full of the credit agreement the GAP coverage is automatically terminated. The consumer is entitled to a refund of the unearned GAP fee as outlined in the customer GAP agreement. The dealer or financial institution is responsible for making the refund to the consumer. The consumer is not required to ask for a refund;
16. Agreements must include a warning that if the original unpaid net balance exceeds the MSRP or NADA value for used vehicles by the maximum percentage agreed upon, the GAP program may not cover the entire amount owing at the time of a loss;
17. The name(s) used to market the program must be reflected on the customer GAP agreement at the top of the agreement. If the GAP provider markets the programs under various trade names, then all such names must have been previously identified in writing to the DFI. The DFI has had problems with various names being used to market programs that have not been documented with the DFI.
18. GAP agreements used in Indiana must include, at a minimum, coverage of a \$500.00 deductible.
19. GAP agreements must include, at a minimum, a 30-day free look period.
20. GAP cancellation fees are not authorized in Indiana and cannot be part of the GAP agreement.
21. Some GAP administrators offer a GAP product known as GAP Plus. It is the position of this office that administrators may include additional benefits at any time, but additional fees are not authorized.
22. Any new or revised customer GAP agreements must be submitted to the DFI for approval prior to using them. No changes are permitted that increase the maximum customer cost for the program as approved by DFI. There can be no decrease in benefits. Reasons for the changes in the form, as well as a sample of the proposed new form, must be submitted. All proposed changes must be identified on the form by red-line, highlight, or other edit identification means.
23. We have recently had several inquiries regarding GAP fee refunds. In most instances, the refunds are made by the dealer that sold the GAP program initially. In some instances, the refunds are being made by the plan administrator. It is the position of the DFI that regardless of who makes the refunds, appropriate records must be maintained, and be available for review during examinations, in the offices of the dealer that sold the product.

Although the DFI will continue, at this time, to look to the individual dealer for records relating to refunds, GAP administrators must be prepared to provide records regarding claims and/or refunds, as requested by the DFI. This requirement is part of the GAP administrator approval by the DFI.

LENDER/DEALER LETTERHEAD

Date

Mr. Mark B. Tarpey
Department of Financial Institutions
30 South Meridian Street, Suite 300
Indianapolis, Indiana 46204

RE: *Your GAP Program Administrator's Name here*
Administered Guaranteed Auto Protection Agreement

Dear Mr. Tarpey:

The undersigned consumer credit lender/seller (as applicable) wishes to enter into loans/retail installment contracts in the State of Indiana which may include a Guaranteed Auto Protection Agreement Addendum *your GAP Program name here* administered by *Administrator's name here*. We understand that pursuant to the provision IC 24-4.5-2/3-202, a request to the Department of Financial Institutions is required before charges for this product may be imposed in connection with a consumer credit loan/sale.

We understand that as agent for various creditors, approval must be granted by the Department of Financial Institutions to enter into GAP contracts on the form presented **by your GAP Program Administrator's name here** and for a charge not to exceed **program maximum fee here**. *List other agreement provisions here*. A contractual liability policy approved by the Indiana Department of Insurance is provided by **enter name of insurer here**.

For all of the reasons submitted to the Department by *your GAP Program Administrator's name here*, we hereby request approval.

Courteously,

LENDER/DEALER NAME
ADDRESS
CITY, ZIP
Telephone Number

BY: _____ (Signed by Lender/Dealer Representative)

(Sample of **originating** lender/dealer letter)

LENDER/DEALER LETTERHEAD

Date

Department of Financial Institutions
30 South Meridian Street, Suite 300
Indianapolis, Indiana 46204

RE: *Your GAP Program Administrator's Name here*
Administered Guaranteed Auto Protection Agreement

To Whom It May Concern:

The undersigned consumer credit lender/seller wishes to enter into loans/retail installment contracts (as applicable) in the State of Indiana which may include a Guaranteed Auto Protection Agreement Addendum administered by *your GAP Program Administrator's name here*. We understand that pursuant to the provision IC 24-4.5-2/3-202, a request to the Department of Financial Institutions is required before charges for this product may be imposed in connection with a consumer credit sale.

We understand that as agent for various creditors, approval must be granted by the Department of Financial Institutions to enter into GAP contracts on the form presented by *your GAP Program Administrator's name here* and for a charge not to exceed *program maximum fee here*.

For all of the above reasons submitted to the Department by *your GAP Program Administrator's name here*, we hereby request approval to be included in the authorization granted by the Department on *date approval for program was granted*. It is our understanding that this request will constitute such approval, however, the approval will thereafter be ineffective if we are notified by the staff of the Department of Financial Institutions that our approval is not acceptable within twenty (20) days of receipt of this request.

Courteously,

LENDER/DEALER NAME
ADDRESS
CITY, ZIP
TELEPHONE NUMBER

BY: _____ (Signed by Lender/Dealer Representative)

Print Name of Signature _____

(Sample **subsequent** lender/dealer letter)