

*Inf. Adv. # 70*



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## Department of Justice

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Dear

We have received requests from a number of companies to promulgate rules to allow a "GAP" fee as an additional charge under Iowa Code § 537.2501(1)(h). Since that time we have contacted representatives of the Iowa Division of Banking and the Iowa Division of Insurance concerning the "GAP" product. We have also contacted various representatives of other Uniform Consumer Credit Code states to get their views of the product. We also requested additional information concerning the product from two of the companies that requested permission to allow the "GAP" fee as a permissible additional charge. We decline to promulgate rules allowing a "GAP" fee as an additional charge for the reasons set out below.

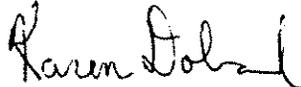
There appears to be much confusion about whether the "GAP" product is insurance. Two of the companies stated that it was their opinion that "GAP" was not insurance. It appears however that some states have come to a different conclusion. Two of the companies indicated that an insurance policy is purchased by the dealer/lender to cover the "GAP" contracts that are sold to consumers. One of the companies states that "insurance is provided by the insurer to the lender as a hedge against losses incurred by the lender as a result of the lender entering a "GAP" agreement with the consumer." The fact that there is an insurance policy underlying the "GAP" product clouds the issue considerably. We believe however, that a decision as to whether or not "GAP" is "insurance" properly belongs with the Iowa Division of Insurance.

For our purposes, you will note that Iowa Code § 537.1301 (19)(a)(3) states in the definition of "finance charge" that it includes a "Premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss." The "GAP" product appears to consist of the creditor passing on the cost of a product the creditor purchases to protect itself against the "consumer's default or other credit loss." As such, it is not clear that this is a charge properly excluded from the finance charge.

In addition, Iowa Code § 537.2501(1)(h) indicates that proposed additional charges should be "of value to the consumer" and specifies that charges should be "reasonable in relation to the benefits." At this point, we have not received any statistical information regarding how many consumers would benefit from this type of product. Also the prices charged for a "Gap" product seem to vary greatly. We do not have the information necessary to determine whether the prices charged are reasonable in relation to the benefits received by the consumer.

In sum, there appears to be disagreement over whether "GAP" is in fact insurance. It also appears that "GAP" may be required by the ICCC to be included as part of the finance charge. In addition, we have received limited information concerning the "value" of "GAP" to Iowa consumers and have not been able to determine that the charges for "GAP" are reasonable in relation to the benefits. We therefore decline to promulgate rules allowing fees for "GAP" as a permissible additional charge under Iowa Code 537.2501(1)(h).

Sincerely,



KAREN DOLAND  
Assistant Attorney General

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