

## **GUARANTEED ASSET PROTECTION WAIVERS**

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### **120-2-102-.01 Authority**

This regulation is adopted and promulgated by the Commissioner of Insurance pursuant to the authority set forth in O.C.G.A. Sec. 33-2-9 and O.C.G.A. Chapter 33-63.

### **120-2-102-.02 Purpose and Applicability**

The purpose of this regulation is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of O.C.G.A. Chapter 33-63 relating to guaranteed asset protection waivers.

### **120-2-102-.03 Definitions**

- (1) "Administrator" means a person, other than an insurer or creditor that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.
- (2) "Borrower" means a debtor, retail buyer, or lessee under a finance agreement.
- (3) "Creditor" means:
  - (a) The lender in a loan or credit transaction;
  - (b) The lessor in a lease transaction;
  - (c) Any retail installment seller that provides credit to any retail buyer of motor vehicles, provided that such entity complies with the provisions of this chapter;
  - (d) The seller in commercial retail installment transactions; or
  - (e) The assignees of any of the creditors listed in (a) through (d) of this section to whom the credit obligation is payable.
- (4) "Finance Agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.
- (5) "Free look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the guaranteed asset protection waiver without penalty, fees, or costs to the borrower. This period of time must not be shorter than 30 days.

(6) "Guaranteed asset protection waiver" means a contractual agreement wherein 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 uncovered theft of the motor vehicle, which agreement must be part of or a separate addendum to the finance agreement.

(7) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(8) "Motor vehicle" means self-propelled or towed vehicles designed for personal or commercial use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles all-terrain vehicles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers.

(9) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

(10) "Retail buyer" shall have the same meaning as provided in O.C.G.A. Section 10-1-31.

(11) "Retail installment seller" shall have the same meaning as provided in O.C.G.A. Section 10-1-31.

#### **120-2-102-.04                      Guaranteed Asset Protection Insurance Requirements**

A retail installment seller must insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. However, retail installment sellers that are lessors on motor vehicles are not required to insure obligations related to guaranteed asset protection waivers on such leased vehicles.

#### **120-2-102-.05                      General Requirements and Conditions**

(1) Guaranteed asset protection waivers may be offered, sold, or provided to borrowers in this state in compliance with this chapter.

(2) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and its implementing regulations, as they may be amended from time to time, must be separately stated and is not to be considered a finance charge or interest.

(4) The guaranteed asset protection waiver shall remain a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor.

(5) Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(6) Any creditor that offers a guaranteed asset protection waiver must report the sale of, and forward funds received on, all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy or other specified program documents.

(7) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator pursuant to the terms of a written agreement must be held by such creditor or administrator in a fiduciary capacity.

(8) Contractual liability or other insurance policies insuring guaranteed asset protection waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

(9) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(10) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless cancelled or terminated in compliance with the applicable insurance laws of this state.

(11) The cancellation or termination of a contractual liability or other insurance policy must not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premium has been received by the insurer.

### **120-2-102-.06 Required Disclosures**

Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language that is easy to read the following:

- (1) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;
- (2) The purchase price and the terms of the guaranteed asset protection waiver including without limitation the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver;
- (3) That the borrower may cancel the guaranteed asset protection waiver within a free look period, as specified in the waiver, and will be entitled to a full refund of the purchase price, provided no benefits have been made; or in the event benefits have been made, the borrower may receive a full or partial refund if the waiver so provides;
- (4) The procedure the borrower must follow, if any to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits;
- (5) Whether or not the guaranteed asset protection waiver is cancelable after the free look period and the conditions under which it may be canceled or terminated, including the procedures for requesting any refund due;
- (6) That in order to receive any refund due in the event of a borrower's cancellation of the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, must provide a written request to cancel to the creditor, administrator, or such other party within 90 days after the borrower's decision to cancel the waiver or the occurrence of the event terminating the finance agreement;

(7) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due in the event of cancellation of the guaranteed asset protection waiver or early termination of the finance agreement;

(8) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease may be conditioned upon the purchase of the guaranteed asset protection waiver.

#### **120-2-102-.07 Cancellation Conditions**

(1) Guaranteed asset protection waiver agreements may be cancelable or noncancelable after the free look period. Guaranteed asset protection waivers must provide that if a borrower cancels a waiver within the free look period, the borrower will be entitled to a full refund of the purchase price, provided no benefits have been paid; or in the event benefits have been paid, the borrower may receive a full or partial refund if the waiver so provides.

(2) In the event of a borrower's cancellation of the guaranteed asset protection waiver or early termination of the finance agreement, after the agreement has been in effect beyond the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor, administrator or other party within 90 days after the borrower's decision to cancel the waiver or the occurrence of the event terminating the finance agreement.

(3) If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in paragraph (1) herein.

(4) Any cancellation refund under paragraphs (1), (2), or (3) herein may be applied by the creditor as a reduction of the amount owed under the finance agreement unless the borrower can show that the finance agreement has been paid in full.

#### **120-2-102-.08 Exemptions**

Subsection (c) of O.C.G.A. Section 33-63-4 and O.C.G.A. Code Sections 33-63-6 and 33-63-9 shall not be applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

A retail installment seller shall not be required to insure a guaranteed asset protection waiver in connection with the sale of a motor vehicle if the retail installment seller does both of the following:

(1) Maintains, or has a parent company that maintains, a net worth or stockholders' equity of at least \$50 million, provided the parent company guarantees the obligations of the retail installment seller arising from guaranteed asset protection waivers underwritten pursuant to this subsection; and

(2) Files a copy of its Form 10-K or Form 20-F disclosure statements, or, if it does not file with the United States Securities and Exchange Commission, a copy of its audited financial statements reported on generally accepted accounting principles. If the retail installment seller's financial statements are consolidated with those of its parent company, then the retail installment seller may comply with the

provisions of this paragraph by filing the statements of its parent company. The statement shall be filed with the Commissioner at least 30 days prior to the retail installment seller's initial offering or delivering a guaranteed asset protection waiver, and thereafter the statement shall be filed with the Commissioner annually.

**120-2-102-.09 Penalties**

The Commissioner of Insurance may take action which is necessary or appropriate to enforce the provisions of this chapter and to protect guaranteed asset protection waiver holders in this state. After proper notice and opportunity for hearing the Commissioner may:

- (1) Order the creditor, administrator, or any other person not in compliance with this chapter to cease and desist from further guaranteed asset protection waiver related operations which are in violation of this chapter; and
- (2) Issue a penalty of not more than \$500.00 per violation and not more than \$10,000.00 in the aggregate for all violations of a similar nature. For purposes of this paragraph, violations are of a similar nature if the violations consist of the same or similar courses of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice occurred.

**120-2-102-.10 Severability**

If any provision of this regulation or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this regulation or the applicability of such provision to other persons or circumstances shall not be affected.