

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

GAP INSURANCE FILING COMPLIANCE QUESTIONNAIRE

COMPANY	Co. File No.
Company Contact:	Phone Number:
E-Mail Address:	

Instructions: All applicable items must be answered. Responses in the shaded area indicate non-compliance with Sections 107, 1101, 1113 and 3427 of the Insurance Law. Failure to complete all items, or responses in the shaded area, will result in this filing being returned without further review.

All policy forms require the Department’s prior approval pursuant to Section 2307 of the Insurance Law.

I. Background

When a vehicle is purchased under a loan agreement, or leased under a leasing agreement, there are usually “early termination” provisions contained in these contracts, which require the borrower/lessee to pay a defined amount of money in order to satisfy their obligations under that contract in the event there is a total loss to the vehicle.

Most such contracts also require that physical damage insurance be maintained on the vehicle, naming the lender/lessor as the loss payee. In many cases, usually in the earlier part of the contract, this amount is substantially greater than the Actual Cash Value (ACV) settlement that will be paid by the first-party insurer under comprehensive or collision coverage. This is due to the fact that the vehicle’s value depreciates faster than the loan balance, as well as other charges and/or penalties built into the “early termination” provisions. The difference between the ACV settlement and the amount owed by the borrower or lessee is called the “gap amount”.

The “gap amount” may be covered by insurance in one of two ways:

- (1) Motor Vehicle Lessor/Creditor Gap [§1113(a)(26)(A)] (2) Motor Vehicle Lessor/Debtor Gap [§1113(a)(26)(B)]

II. All GAP Policies

- | | | | |
|--|------------------------------|------------------------------------|-----------------------------|
| a. Company is licensed to write gap insurance [§1113(a)(26)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| b. Cancellation provisions must comply with §3427. | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| c. The amount covered by the insuring agreement must comply with the definition of the “gap amount” set forth in [§107(a)(52)] of the Insurance Law. | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| d. Does the gap policy cover the amount of the lessee/borrower’s physical damage deductible? [OGC Opinion Aug 30, 2001] | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| e. Is it made clear that the trigger for gap coverage is a total loss of the covered vehicle? | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| f. Does the coverage territory include U.S. Territories & Possessions and Canada? (Note: this is not required but is present in approved filings) | YES <input type="checkbox"/> | | NO <input type="checkbox"/> |
| g. Is there an “automatic termination” provision for cancellation? (Note: a policy provision that coverage for a specific vehicle terminates when the insured’s interest on the vehicle expires IS permissible). | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| h. The definition of “actual cash value”, and the method used to determine it (such as NADA or Redbook value) in the absence of payment by a primary physical damage insurance carrier, must be specific (if the coverage is not being provided as part of that primary physical damage policy). | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |

III. Lessor/Lender Gap Policies: (Motor Vehicle Lessor/Creditor Gap [§1113(a)(26)(A)])

- | | | | |
|--|------------------------------|------------------------------------|--|
| a. Does the gap waiver form to be used in conjunction with the issuance of the policy comply with [§1101(b)(3)] of the Insurance Law, in that it waives “any and all” obligations for payment of the gap amount? Although a gap waiver is not a policy form subject to approval under §2307(b), it should be submitted for review. | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
|--|------------------------------|------------------------------------|--|

NOTE: All citations in Brackets are to the applicable Sections of New York Insurance Law (unless otherwise noted).

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|--|---|--|------------------------------------|
| <p>b. The policy should include a provision requiring the creditor (insured) to inform the insurer of the dollar amount customers (borrowers/lessees) are charged for individual gap waivers (usually this is part of the monthly premium reporting requirements).</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>c. Are there provisions in the gap policy relating to or requiring actions by the borrower/lessee (such as to provide any paperwork or proof not required in the lease/loan agreement, or to require inspection of the vehicle), who has no direct relationship with the gap insurer?</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>d. Does the policy address the situation where the ownership of a lease or loan is transferred or assigned to another dealer or lending institution? (note that this does NOT create an illegal group insurance situation, per [§3427(k)])</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>e. Is coverage continued on waivers issued and in effect at the time of cancellation [§1101(b)(3)]?</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>f. Is there a provision that purports to “void” the <u>entire policy</u> due to misrepresentation/fraud? (Note: there may be a provision to refer to coverage being void with respect to the particular vehicle [lease/loan contract] involved in any instance of misrepresentation/fraud.)</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>g. Is the premium for a particular covered loan/lease contract refunded if coverage is “voided” for that waiver?</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>h. Is there a “subrogation” provision? This would be inapplicable, as gap coverage is specifically based on a waiver of any such liability by the borrower/lessee; in addition, no policy other than a gap policy should cover this amount.</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| IV. Consumer Gap Policies: Motor Vehicle Lessee/Debtor Gap [§1113(a)(26)(B)] | | | |
| <p>a. The gap coverage must be in effect for the full length of the lease/loan contract. [§3427(c)(4)] and [§3427(e)(4)]</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>b. If the proposed rate is on an annual basis, notice should be provided to the policyholder that the need for gap coverage may terminate at an earlier point than the end of the financing contract, as at some point the outstanding balance may fall below the actual cash value of the vehicle.</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| <p>c. There should be clear notice that no coverage is provided (or necessary) if a gap waiver agreement has already been purchased from the dealer or lending institution leasing or financing the vehicle.</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |
| V. Other Items - Arbitration | | | |
| <p>a. Is there a provision requiring that disputes between the company and insured be resolved through arbitration?</p> | <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> | | <p>NO <input type="checkbox"/></p> |

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