

**INTERPRETIVE LETTER 94-013 (JULY 27, 1994)**

**State bank may offer guaranteed asset protection plans to car loan customers because such plans are similar to debt cancellation agreements that have been determined to be incidental and germane to the business of banking.**

This is in reply to your letter dated \*, concerning the Guaranteed Asset Protection Plan ("GAPP"), in which you asked the Commissioner of Banks and Trust Companies ("Agency") whether the Illinois bank subsidiaries of \* ("Bancorp") may offer GAPP. For the reasons described below, this Agency concludes that Illinois state-chartered banks may offer GAPP.

As described in your letter, GAPP is a method by which a car loan customer ("Borrower") may avoid a deficiency liability to the bank when the financed car is lost, stolen or destroyed. If the Borrower had enrolled in GAPP, the bank would not hold the Borrower liable for the amount of the loan that was left unpaid after insurance proceeds had been applied to the debt.

A Borrower can enroll in GAPP by paying the required fee to the lending bank at the time the car purchase is originally financed and executing a "Special Loss Protection Notice" that explains the terms and conditions of GAPP coverage. GAPP is not an automobile insurance policy nor is it a credit life or credit accident and health insurance policy. The Borrower does not receive an insurance policy pursuant to GAPP and does not deal with an insurance agent or company. Rather, GAPP is a contractual agreement between a Borrower and the lending bank relating to a car loan and redistributing the risk of loss that is otherwise involved if the car is lost, stolen or destroyed.

This Agency recently determined that Illinois state-chartered banks may enter into debt cancellation agreements with their loan customers. Commissioner's Interpretive Letter 94-011 (June 15, 1994). Debt cancellation agreements provide that, in exchange for a fee paid by the borrower, the borrower will not be liable for an outstanding loan balance in the event of the borrower's death, disability or loss of employment. The Agency concluded that pursuant to Section 3 of the Illinois Banking Act ("Act"), 205 ILCS 5/3 (1992), such agreements were incidental and germane to a state bank's powers to make loans and engage in a general banking business. We also determined that debt cancellation agreements were permissible for state banks pursuant to Section 5(11) of the Act, 205 ILCS 5/5(11)(1992), since national banks are authorized by the Office of the Comptroller ("OCC") to enter into such agreements. 12 C.F.R. 7.7495; OCC Interpretive Letter No. 640 (January 7, 1994), reprinted in [1993-94 Transfer Binder] Fed. Banking L. Rep. (CCH) &83,527.

We do not find a legal or logical distinction between GAPP and debt cancellation agreements. GAPP is a logical extension of debt cancellation agreements in the context of car loans, where the debt would be cancelled if the car securing the loan is stolen, lost or

destroyed rather than debt cancellation due to the borrower's death, disability or loss of employment. Therefore, pursuant to Section 3 of the Act, we conclude that the GAPP program is incidental and germane to a state bank's authority to make car loans and to engage in a general banking business.

Notwithstanding our conclusion that GAPP is permissible under Section 3 of the Act, there are two additional issues which you should consider. First, you asked whether GAPP could be offered by five Illinois bank subsidiaries of Bancorp. Three of the five Illinois banks that you named are national banks. Because national banks are governed by federal law and the OCC's regulations and interpretations, we express no opinion about the authority for national banks in Illinois to offer GAPP.

Second, the Federal Deposit Insurance Corporation ("FDIC") has issued a regulation concerning permissible equity investments and activities of state-chartered banks. 12 C.F.R. 362. That regulation generally prohibits a state bank from engaging in an activity that is not permitted for national banks. In the absence of a determination by the OCC regarding the authority for national banks to offer GAPP, you may want to contact the FDIC to find out what effect, if any, 12 C.F.R. 362 has on your state banks' authority to offer GAPP.