

STANDARDS FOR GAP INSURANCE FORMS, RATES AND RULES

This checklist (product standards) has been provided as an aid to assist you in preparing your filing. **Please complete this checklist and attach it to the Supporting Documentation tab where indicated.** ORS 731.296, OAR 836-010-0011 (2) & (3).

This checklist includes relevant statutes, rules, bulletins, and other documented positions to enforce ORS 731.016. **The standards are Summaries and review of the entire statute or rule may be necessary.** After diligent consideration has been given to each item, mark either the “Yes”, “No”, or “Confirm” box; or provide the page and paragraph where the information may be found. Any line left blank may result in the delay or disapproval of the filing.

This checklist is NOT APPLICABLE to other credit products. For credit personal property, use Form 440-3625c. Also, the new standards for Collateral Protection/Residual Value/VSI are 440-5057.

Market: Personal lines

TOI (type of insurance) code: 28.2005 GAP [*may include borrower’s deductible, and/or may include other benefits. Explain in the cover letter.*]
 Dual coverage Lender coverage only

IMPORTANT LEGISLATIVE CHANGE: House Bill 2845, Chapter 523, Oregon Laws 2015 – Effective January 1, 2016, sunsets January 2, 2020.

A guaranteed asset protection (GAP) “waiver” is an agreement between a creditor and a borrower to waive the creditor’s right to collect all or part of an amount due from a borrower under certain circumstances. HB 2845 moves regulation of these waiver agreements from the Oregon Insurance Code to the Unlawful Trade Practices Act, adds consumer protections specific to GAP waivers, and establishes a sunset provision of January 2, 2020. **GAP “insurance” will continue to be regulated through existing statutory provisions.**

An example of the type of business that could issue a GAP “waiver” agreement would be an automobile dealer, such as Ford Motor Company, who carries their own paper on the loan or lease. If the seller is financing the vehicle sale (acting as the bank, not for a bank), this party is a lender and can use a waiver in their sales agreement. The vehicle purchaser would still need to carry a motor vehicle policy to cover their liability and to cover damage to the vehicle.

Filing guidelines for GAP “waiver” contractual liability reimbursement insurance policy (CLIP) products will be found in the Standards for Personal and Commercial Liability, checklist #440-3610.

Review requirement	Reference	Description of review standards requirements	Enter page & paragraph or check answer
GENERAL REQUIREMENTS (FOR ALL FILINGS)			
Requirements	OAR 836-010-0011 As required on SERFF or our website	<p>Filing requirements are located on SERFF or on our website at: http://dfr.oregon.gov/rates-forms/Pages/index.aspx. The correct information must be attached to the appropriate schedule items in order for your filing to be considered complete.</p> <p>The clean copy of the submitted form must be attached under the Form Schedule tab. Each form filed for approval must be attached to a separate Schedule Item under this tab.</p> <p>The form number should appear exactly as shown on the PDF document. We prefer the edition date be included with the form number under the Form Number column. Do not add the edition date to both the Form Number column and the Edition Date column. If you do, our secondary database will include both dates and the form number will be incorrect. When filing a Replacement form, the Action Specific Data column must be completed correctly by providing the Oregon assigned Filing (tracking) Number of the previous filing, and the Replaced form number with the edition date.</p> <p>Rates and rules should be submitted under the Rate and Rule tab. The Actuarial Memorandum should be submitted under the Supporting Documentation tab.</p> <p>Other filing requirements as listed below, or other documentation used to assist us in our review, should be submitted under the Supporting Documentation tab under the correct heading.</p> <ol style="list-style-type: none"> 1. A Filing Description under the General Information tab or a Cover letter or Filing Memorandum under the Supporting Documentation tab that explains the intent or purpose of the forms/rules/rates. 2. Third-party filer's letter of authorization if applicable. 3. Signed Certificate of Compliance, form 440-3894. 4. For form submissions, a comparison document (annotated, highlighted, red-lined, or side-by-side) must be provided for each previously approved form. Submit document/s under the Supporting Documentation tab. 5. Rates, rules, and actuarial memorandum with an overview of the contents of the filing and the reasons and procedures used to support the rate change. 6. The Actuarial Memorandum, expense exhibit, and any other rate justification should be submitted under the Supporting Documentation tab. 7. Attach the forms being filed for approval to the Form Schedule tab. 8. Statement of Variability (See the variability text below.) <p>The marketing program and the method of distribution and administration of service are described in the filing as are other forms of this product available in the same market.</p>	<p>Yes N/A <input type="checkbox"/> <input type="checkbox"/></p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p>Confirm <input type="checkbox"/></p>

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Filing exemptions	ORS 731.036(9)	NOT SUBJECT TO THE INSURANCE CODE: Sellers, lessors, lenders, and assignees of motor vehicles that lease or finance the purchase of motor vehicles and self-insure an agreement to waive, <i>FOR NO ADDITIONAL CHARGE</i> , the difference between the actual cash value of the motor vehicle at the date of loss and the amount owed under the agreement.	Confirm <input type="checkbox"/>
	HB 2845 (2015)	New Oregon Law (Effective January 1, 2016): These product standards do not apply to a GAP "waiver" agreement as described in HB 2845. A GAP (guaranteed asset protection) waiver is an agreement between a creditor and a borrower to waive the creditor's right to collect all or part of an amount due from a borrower under certain circumstances. The GAP waiver agreement is <u>not</u> required to be filed for approval. A GAP "insurance" product filing of forms, rules, and rates continues to be required.	Confirm <input type="checkbox"/>
	ORS 731.036(9) The National Bank Act	Bank and Credit Union GAP Exemption: Although debt cancellation and deficiency waiver contracts would generally fall within the definition of insurance, Federal-chartered banks and credit unions are governed by federal law (OCC and/or NCUA). Oregon allows reciprocity for State chartered banks and credit unions. The Department would not have authority over debt cancellation contracts or contract addendums offered directly to its borrower in the lenders role as a Federal or State chartered bank or credit union.	
Requirements	ORS 742.003(1), ORS 737.205	Included in this filing for review: 1. New policy or program. 2. Endorsements amending an existing program that include additional coverages in these standards. 3. Certificate of insurance, if group. 4. Rates and rules only.	Yes No <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	ORS 742.003	No policy has been issued or will be issued upon the forms in this filing until approved.	Yes No <input type="checkbox"/> <input type="checkbox"/>
	OAR 836-071-0274	Agents are not allowed to charge a service fee except as outlined in OAR 836-071-0274.	Yes No <input type="checkbox"/> <input type="checkbox"/>
Requirements Not Part of a Listed Category	ORS 744.053, ORS 744.052(3), OAR 836-071-0108(1)(g)	For a GAP product for which the vehicle purchaser/lessee pays a charge, agents are licensed under one of the following: 1. A Limited Class Insurance Producer 2. A Resident or Non-Resident Casualty Insurance Producer.	Yes N/A <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Review requirement	Reference	Description of review standards requirements	Enter page & paragraph or check answer	
Requirements Not Part of a Listed Category, continued	ORS 744.062(1)(g), ORS 744.063, OAR 836-071-0108(1)(g)	If the GAP insurance policy or certificate of insurance provides non-gap benefits other than the underlying insurance deductibles, then producers are required to hold a full Casualty Insurance Producer license. This includes auto dealer finance and insurance persons, or other employees or independent agents. A credit union employee or a bank employee selling GAP, or other debt cancellation coverage as part of their lending agreement or process, is not required to have an insurance producer's license. This is part of the OCC, NCUA, and Oregon exemption for these lenders.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	OAR 836-062-0005	For individually owned private-passenger vehicles, the agent obtains a signed receipt acknowledging that the purchaser has read and understands the required warning and retains all receipts for a period not less than six months after the termination of the coverage.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	OAR 836-062-0005, OAR 836-062 0010	For individually owned private-passenger-motor-vehicle-physical-damage-only policies, GAP, or for VSI, a notice of the limited nature of the coverage is filed under one of the following standards: 1. Uses exact wording and font stated in OAR 836-062-0005 displayed on the face of the policy or evidence of coverage. 2. Is attached with a sticker or stamp that contains the exact wording for the required warning. 3. Is submitted as an alternative-notice provision that substantially complies for approval.	Yes <input type="checkbox"/>	N/A <input type="checkbox"/>
	ORS 746.215(2)(b), ORS 746.195	A depository institution soliciting insurance for personal, family or household purposes shall disclose that insurance related to the credit agreement may be purchased from the insurer of the consumer's choice and will not affect the credit decision.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		A depository institution may not solicit the sale of insurance until they have agreed to make the loan and may not refuse to accept a written binder issued by an insurance producer as proof that insurance exists	Yes <input type="checkbox"/>	No <input type="checkbox"/>

FORMS				
Application	ORS 742.003(1)	Application is filed for approval as part of the entire contract as required under ORS 742.003(1) and does not conflict with laws relating to the coverage.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	ORS 742.013	A provision in the policy, or the application, makes it clear that statements made by the insured, in the absence of fraud, are representation and not warranties	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	ORS 742.013, Bulletin 2010-3	If the policy has fraud, concealment, misrepresentation language, then the application is required to include a fraud warning. If one is included, it is general in nature and does not state that the applicant is "guilty" of fraud, but that he or she "may be" guilty of fraud. Fraud or misstatement warnings that mention criminal or civil penalties must avoid definite statements of the criminal nature of an act, guilt, or possible penalties. A warning that specifies that knowingly providing false information "may be" a crime, which "may be" grounds for criminal or civil penalties is appropriate.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	ORS 746.620, ORS 746.630	Privacy - Policy practices and disclosure authorization are provided on the application and include the duration of validity. If authorization and these disclosures are secured on another form, state in the cover letter how they are provided.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

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Policy period	ORS 742.048	<u>Effective date and time</u> – The insurance commences on the date the debtor becomes obligated to the creditor. The policy states that coverage commences at 12:01 a.m. at the place where the policy is issued, on the policy's effective date.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Access to courts	ORS 742.061	<u>Attorney fees</u> – If a claim settlement is not made within six months and action is brought to court, should the plaintiff's recovery exceed the amount of payment made by the defendant, the court will set attorney fees to be paid as part of the costs of legal action and any appeal, unless the parties agree to binding arbitration.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Appraisal	ORS 742.232 Molodyh vs. Truck Insurance Exchange	Appraisal should contain one of the following: (1) mutual agreement of the parties at the time of the dispute, with the resulting decision binding on the parties; or (2) the process is mandatory but the resulting decision is not binding.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Arbitration	ORS 36.600-36.740	The policy provides for arbitration if claim settlement cannot be reached. The parties may elect arbitration by mutual agreement at the time of the dispute after the claimant has exhausted all internal appeals and can be binding by consent of the insured person. (<i>If the policy provides for arbitration when claim settlement cannot be reached and the policy owner elects arbitration, arbitration takes place under the laws of Oregon held in the insured's county or any other county in this state agreed upon.</i>)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Cancellation & non-renewal	ORS 742.023(1)(d),(f)	If the policy provides for renewing the coverage or cancellation, fair notice must be provided. The Division of Financial Regulation recognizes fair notice as at least 30 days' written notice, with the reason. Any deviation from the fair notice must be justified.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	ORS 746.120	Eligible benefits being paid under a claim cannot be terminated if the master policy is terminated.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Discrimination	ORS 746.230(1)(h)	The claims provision does not designate the creditor as the claims representative for the insurer in adjusting claims.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	ORS 106.300, ORS 106.340	A provision that recognizes a Domestic Partnership is included in the policy. Terms and provisions in the Insurance Code and in rules adopted under the Code that refer to or indicate the marital relationship, its dissolution and dependents in a marital relationship will apply in the same manner to domestic partnerships, to their dissolution and to dependents in the partnership.	Yes <input type="checkbox"/>	N/A <input type="checkbox"/>
Excess coverage	ORS 742.023	Policy describes the value of add-on coverages.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Fees, service charges	ORS 737.205, OAR 836-071-0269, OAR 836-071-0274	All charges to the policyholder are listed on the declarations page. Field add-ons are not permitted.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	ORS 742.023	If GAP is included in collateral protection, charges for the GAP coverage are identified to the debtor separately from any other coverage provided.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

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Fraud	ORS 742.013, Bulletin 2010-3	If there is fraud language it is general in nature and does not state that the applicant is “guilty” of fraud, but that he or she “may be” guilty of fraud. Fraud or misstatement warnings that mention criminal or civil penalties must avoid definite statements of the criminal nature of an act, guilt, or possible penalties. A warning that specifies that knowingly providing false information “may be” a crime, which “may be” grounds for criminal or civil penalties is appropriate. Fraud or misstatement warnings that mention denial of recovery as a possible consequence of an omission, concealment, misstatement or misrepresentation must disclose that in order to deny a claim on this basis, the insurer must demonstrate that the misinformation was material to the content of the contract, that the insurer relied upon this information, and that the misinformation was either provided fraudulently or was material to the risk or hazard assumed by the insurer. (ORS 742.013)	Yes <input type="checkbox"/>	N/A <input type="checkbox"/>
Legibility of forms	ORS 742.005(2)	The forms are clear and understandable in the presentation of premiums, labels, description of its contents, title, headings, backing, and other indication (including restrictions) in the provisions. The information is clear and understandable to the consumer and is not unintelligible, uncertain, ambiguous, abstruse, or likely to mislead.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Loss settlement	ORS 742.023	Policy payoff provisions are clearly explained.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	ORS 746.230, OAR 836-080-0225	The policy states that the insurer will furnish a claim form within 30 days after notice of claim or will accept the filing of proof-of-loss covering the occurrence, character, and extent of loss.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Loss valuation	ORS 742.023 Oregon case law <i>Rossier vs Union Automobile Ins. Co.</i> 134 Or.211, 291 P.498(1930), and <i>Dunmire Motor Co. vs. Oregon Mutual Fire Ins. Co.</i> 166 Or. 690, 114 P. 2d 1005 (1941)	<u>Diminution of value</u> -If the policy does not provide coverage for loss of market value or “diminution of value,” the term describing the limitation is specifically defined in the policy.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		The policy provides a separate exclusion stating there is no coverage for diminished value.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Premium payment, refund, or retention	ORS 742.005(2), ORS 742.023	The policy clearly defines the cancellation refund method. Refunds must be made within a reasonable time.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Primary coverage	ORS 742.023(1)(f)	Coverage includes a statement of the value of collateral and how determined.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Policy documentation	ORS 742.005, ORS 742.023	Within 30 days after receiving the individual policy or certificate of insurance, and if no claim has occurred, the debtor may cancel the coverage and have all paid premium refunded or credited back to their loan or lease.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Rebates	ORS 746.035, ORS 746.045	Inducements or rebates specified in the policy. If answer is other than “N/A,” details must be included in the rates and rules filing.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

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Variability	ORS 742.003, ORS 742.005, ORS 742.023	When variable items within any property and casualty form are [bracketed] or otherwise marked to denote variability, either a Statement of Variability (SOV) or Explanation of Variables (EOV) is attached as a separate Schedule Item under the Supporting Documentation tab. The SOV/EOV provides the form number of the document it applies to. The SOV/EOV provides any options for each variable item (E.G. in or out, limit or value range, deductible options, etc.). All variables affecting coverage or pricing of the product must be submitted as part of a form/rule/rate or rule/rate filing prior to use.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Titles & headings	ORS 742.005(2)	The forms are clearly titled and headings for benefits include references to any limitations and restrictions contained in the provision.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
RATE, RULE, RATING PLAN, CLASSIFICATION, AND TERRITORY FILING REQUIREMENTS					
Requirements	ORS 737.205	Copies of rates, rating plans, and rating systems are included in the filing.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
		Effective date is not earlier than the date the filing is received by the Division of Financial Regulation.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Fictitious group	ORS 737.600, OAR 836-042-0300 to OAR 836-042-0322	If filing a fictitious group for rate purposes, the group meets the requirements of ORS 737.600(2)(b) for mass-marketing plans.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Discrimination	ORS 746.015, OAR 836-081-0010	Rates, rating plans, and rating systems do not discriminate unfairly in the availability of insurance and the application of rates.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Loss ratio standards	ORS 737.310(3)(4)	Rate filing includes the appropriate rate formula upon which rates are based, including provision for an anticipated loss ratio of at least 50 percent.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Ratemaking generally	ORS 737.205, ORS 746.160 (3), ORS 746.240	Any GAP insurance policy issued either on an individual basis, or as a master policy with Certificates, may contain an endorsement to cover repossession, skip, conversion, confiscation, title misfiling, and/or mechanics' or other liens that do not arise from a covered loss occurrence. However, no charge shall be passed along to the debtor for these coverages. The rule and rate filing shows these charges separately, and indicates they will only be charged to the lender or lessor of the collateral insured under the GAP policy. The manual shows the charge for these coverages will not be passed on to the customer of the lender/lessor. Only the lender or lease company pays premium costs for repossession, skip/confiscation/conversion, liens, and title misfiling.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
	ORS 737.205 OAR 836-071-0269 OAR 836-071-0274	Rates are filed as they are actually charged to the consumer, to include all expenses and fees. Field add-ons to the rates are not permitted.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
	ORS 737.310	If filing commission levels higher than 20 percent, details are provided that explain which company-administration functions have been transferred to agent to cause an increase in commissions. The commission should not exceed 35 percent.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Fees, service charges	ORS 737.310, OAR 836-010-0021	Cost-accounting justification on initial filings and subsequent changes.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

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Loss valuation	ORS 737.310, OAR 836-010-0021	Premium data	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Loss and LAE data	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Expected loss ratio	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Investment income	ORS 737.310, OAR 836-010-0021	1. Cash flow method OR 2. Alternative method showing amount of investment income earned on loss, LAE, and unearned premium reserve to earned premium.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Rebates	ORS 746.035, ORS 746.045	Are inducements or rebates specified in the policy? (If "yes," explain in the cover letter and identify the location in the rule.)	Yes <input type="checkbox"/> No <input type="checkbox"/>
Underwriting profit & contingencies	ORS 737.310, OAR 836-010-0021	1. Oregon data for commission and brokerage.	Yes <input type="checkbox"/> No <input type="checkbox"/>
		2. Countrywide data for general and other acquisition expenses as reported in the <i>Insurance Expense Exhibit</i> .	Yes <input type="checkbox"/> No <input type="checkbox"/>
		3. Oregon data for taxes, licenses, and fees.	Yes <input type="checkbox"/> No <input type="checkbox"/>
		4. Expense trend.	Yes <input type="checkbox"/> No <input type="checkbox"/>
		5. Historic experience.	Yes <input type="checkbox"/> No <input type="checkbox"/>
Schedule Rating	ORS 737.205	Schedule rating plans (IRPM) identify the credit or debit criteria and the minimum and maximum modification for each. Rating plans must be filed prior to use.	Yes <input type="checkbox"/> No <input type="checkbox"/>