

September 22, 2016

Ms. Diana Banks
Deputy Assistant Secretary of Defense for Military Education
Office of the Under Secretary of Defense (Personnel and Readiness)
4000 Defense Pentagon
Washington, DC 20301-4000

Re: Interpretive Rule - Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents (Docket ID: DOD-2013-OS-0133, RIN 0790-ZA11)

Dear Ms. Banks:

The American Financial Services Association (“AFSA”)¹ is writing to you regarding a rule that the Department of Defense (“Department”) released on August 26 interpreting its 2015 regulation² implementing the Military Lending Act, or MLA (the “Interpretive Rule”). We are very grateful to the Department for issuing the guidance clarifying many important aspects of the 2015 rule. We appreciate the time and effort that it took the Department to issue this Interpretive Rule in advance of the October 3 compliance date.

There is one particular issue in the Interpretive Rule that we wish to bring to your attention. The Interpretive Rule states that the credit a creditor extends for the purpose of purchasing personal property, which secures the credit, does not fall within the exception to “consumer credit” under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price. Specifically, the answer to Question #2 in the interpretive rule states:

“A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional “cash-out” financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provision.”³

We are concerned about the potential impact the clarification might have on financial institutions, including vehicle finance companies, and their customers who are service members or dependents. The 2015 regulation exempts both: “Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle purchased,”⁴ and “Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased.”⁵

¹ Founded in 1916, the American Financial Services Association (“AFSA”) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² 32 CFR 232.3.

³ 81 FR 58841 (Aug. 26, 2016).

⁴ 81 FR 43607 (July 22, 2015).

⁵ *Ibid.*

The clarification removes this exemption for certain credit transactions secured by personal property, and because both exemptions use the same language, it could also potentially be interpreted as removing the exemption for certain credit transactions to finance the purchase of a vehicle. Often when purchasing a vehicle, a service member includes warranties, service contracts, and other ancillary products in the financing. Similarly, a service member may want to purchase and finance a product warranty when purchasing personal property, such as a laptop. The service member may also want to finance negative equity from a trade-in.⁶

Because of the language in the Interpretive Rule, it is unclear if financing a warranty, service contract, other ancillary product, or negative equity would bring an otherwise exempt transaction under the MLA. In other words, if the extension of credit includes an ancillary product related to the financing, is it included under the MLA because the financing is not “only” for the acquisition of the property?

To be clear, we do not believe that to qualify for the exception, the financing must *only* facilitate the acquisition of the vehicle or property. It could include financing warranties or other ancillary products. By the same token, we do not believe that financing negative equity as a convenience to the service member is the same as “cash-out” financing. We are concerned about the lack of clarity, though, because the MLA contains a private right of action with stiff penalties for violations.

We would like to meet with you to discuss this issue and a potential resolution. Again, we appreciate the Department’s willingness to work with us on the MLA. The many meetings and calls have been invaluable. Please call me at 202-466-8616 or email me at bhimpler@afsamail.org.

Gratefully,



Bill Himpler
Executive Vice President
American Financial Services Association

cc: *Colonel Paul Kantwill, USA, Retired*
Colonel Marcus Beauregard, USAF, Retired

⁶ Negative equity is when the consumer owes more on the vehicle than the trade-in value. For example, if the trade-in value of the vehicle is \$5,000, but the consumer still owes \$7,000, the consumer has \$2,000 of negative equity.