



January 18, 2018

Via E-Mail

Andrew H. Cohen
Director, Financial Readiness
Office of the Under Secretary of Defense (Personnel and Readiness)
Department of Defense
4000 Defense Pentagon
Washington, D.C. 20301-4000

Dear Director Cohen:

The National Automobile Dealers Association and the American Financial Services Association¹ write to formally request that the Department of Defense (DOD) immediately withdraw Question and Answer (Q&A) 2 from the DOD Interpretive Rule that was issued on December 14, 2017 under the caption “Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.”²

While we believe Q&A 2 interprets the Military Lending Act in a manner that (i) impermissibly narrows the scope of the statutory motor vehicle financing exclusion, and (ii) significantly undermines service member readiness by effectively foreclosing active duty service member and dependent access to the full range of protections provided by Guaranteed Automobile Protection (GAP) waiver coverage³ and other credit-related products, our present request is directed solely at the need to halt the market chaos and liability exposure that has been created by DOD’s Interpretive Rule. In particular, the Interpretive Rule –

- 1) articulates a new standard for determining the scope of the motor vehicle financing exclusion, for which industry was provided no notice or opportunity to comment;
- 2) takes effect immediately, with a retroactive application, for which industry had no time to react; and

¹ The National Automobile Dealers Association represents over 16,000 franchised dealers in all 50 states who (i) sell new and used cars and trucks; (ii) extend vehicle financing and leases to consumers that routinely are assigned to third-party finance sources; and (iii) engage in service, repair, and parts sales. Our members include approximately 1,800 franchised dealers who sell medium- and/or heavy-duty trucks and, collectively, our members employ over 1.2 million people nationwide. A significant portion of our members are small businesses as defined by the Small Business Administration.

Founded in 1916, the American Financial Services Association 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 82 Fed. Reg. 58,739 – 58,742 (Dec. 14, 2017).

³ GAP protects consumers from the unexpected (and often significant) liability that arises when a vehicle is totaled or destroyed and the payout from the insurance company for the fair market value of the vehicle is less than the amount owed on the vehicle.

- 3) expresses “preexisting interpretations of an existing regulation”⁴ which potentially and unfairly expose our members to massive liability for past transactions (those that have occurred since the Amended MLA Rule took effect October 3, 2016) in which covered members financed GAP waiver coverage or other credit-related products with the vehicle being purchased.

Not surprisingly, the effect the new DOD standard has had on the marketplace has been immediate. A number of our respective members have concluded that they cannot “simply comply” with the MLA when financing newly covered credit-related products with covered members because (1) 32 CFR section 232.8(f), when accompanied with DOD’s explanation of that provision in the Supplementary Information,⁵ appears to prevent them from taking a security interest in a financed vehicle sale and (2) extending unsecured financing for motor vehicle sales is not economically viable.⁶ Being effectively precluded from complying with the MLA, they are seeking to structure their transactions so as not to trigger application of the statute in the first instance by staying within DOD’s newly constricted motor vehicle financing exclusion.⁷ This is drying up the availability of these products to covered members (and in some cases all consumers⁸) overnight. In addition to the adverse effect this is having on service members’ ability to protect themselves from potential large and unexpected financial liability related to their motor vehicle financing commitment (which presents its own readiness concerns), it has created – and continues to create – massive turmoil in the marketplace among companies that provide, retail, and finance these products.

There clearly are a number of issues and consequences that should – and indeed must – be carefully analyzed before creating and giving effect to a newly announced standard of this magnitude. In the interest of sound and fair government and service member readiness, and in order to bring a halt to the significant and immediate liability exposure and market disruptions that have been created by this issuance, we ask that DOD immediately withdraw Q&A 2 until these matters can be sorted out.

We thank you in advance for your prompt attention to this urgent matter.

Sincerely,



Peter K. Welch
NADA President and CEO



Chris Stinebert
AFSA President and CEO

Cc: The Honorable Robert L. Wilkie, Jr.
Under Secretary of Defense (Personnel and Readiness)

Monica Trucco, Esq.
Director, Office of Legal Policy, OGC (Personnel and Readiness)

⁴ 82 Fed. Reg at 58,741.

⁵ See the “Vehicle Title Restriction” paragraph at 80 Fed. Reg. 43,560, 43, 590 (Jul. 22, 2015).

⁶ Even if this economic non-starter did not exist, it would be exceedingly difficult for smaller entities to erect an adequate MLA compliance mechanism and, were they to attempt to do so, they would need sufficient time to develop and implement it.

⁷ A further quandary is presented to our members who operate in states that require them to offer GAP coverage to consumers (which is another indicator of the widespread recognition of the value provided by this credit product). *See, e.g.,* La. R.S. 6:969.26.

⁸ Several states prohibit discrimination against service members in credit transactions or commercial transactions generally. *See, e.g.,* N.C. Stat. § 127B-11.