



April 2, 2020

Honorable Matthew P. Donovan  
Under Secretary for Personnel and Readiness  
U.S. Department of Defense  
4000 Defense Pentagon  
Washington, DC 20301-4000

Re: Partial Withdrawal of Guidance Question and Answer (Q&A#2) of 2017 Interpretive Rule for the Military Lending Act

Dear Secretary Donovan:

As consumer advocates deeply committed to the protection of our nation's servicemembers, the National Association of Consumer Advocates (NACA) supported the Department of Defense's previous recognition of the 2006 Military Lending Act (MLA)'s importance to military readiness and servicemember retention. The Department's rulemaking and guidance, including its December 2017 well-supported interpretation, provided concrete examples of loan features that should be considered in evaluating a product's inclusion under and compliance with the MLA, including its 36% rate cap on loan products. We were therefore surprised and disappointed with the Department's retreat from its rule interpretation on auto financing under the MLA.<sup>1</sup> This recent action only increases the likelihood of harm and additional financial distress on military consumers.

While the Department's retreat from this rulemaking maintains the regulatory definition regarding MLA coverage of consumer products, it now permits auto dealers and finance companies to argue disingenuously that certain costly, predatory products should not subject them to the coverage of the MLA and the strict 36% interest rate cap. This is particularly true for GAP insurance which is lucrative for dealers and often useless for consumers.

A large percentage of consumer complaints and concerns that consumer advocates hear from U.S. servicemembers relate to the purchase and financing of motor vehicles. These issues include inappropriately priced and exorbitant interest rates on loans with misleading cost-of-credit disclosures and the financing of high-cost and unnecessary add-on products such as the ubiquitous and unnecessary GAP insurance.

Automobile dealers and financiers relentlessly push GAP insurance – a type of supplemental coverage which purportedly covers the difference between the actual cash value of a car and the amount owed to a lender – on car buyers. GAP insurance typically is pre-printed on all automobile finance contracts

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<sup>1</sup> Department of Defense, *Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, Interpretive rule*, 85 Fed. Reg. 11842, Feb. 28, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-02-28/pdf/2020-04041.pdf>.

and rarely honestly discussed with consumers, making it risky for borrowers and profitable for dealers. If GAP insurance was sold in a transparent manner to customers, almost all would reject it.

GAP insurance can be risky and unnecessary. First, this product significantly raises the cost of a car loan and quashes its affordability, creating greater risk for military borrowers. Second, it is unnecessary for consumers who make a 20% down payment on their car purchase, a typical requirement of buy-here, pay here dealers. Finally, the product only covers factory-installed parts while failing to cover all of the depreciated value of the car, leaving the military car buyer with little protection. In fact, a military consumer who actively seeks GAP insurance coverage would benefit from separately purchasing a more affordable product from a non-affiliated insurance company than financing it as part of their car loan.

The Department's deletion of its rule interpretation that had accurately described GAP insurance as an example of a product "related to financing," has caused immediate harm to military consumers. Auto dealers and finance companies quickly declared that DoD's re-interpretation permitted them to sell GAP insurance to military members and avoid compliance with the MLA.<sup>2</sup> Of course, dealers and finance companies were not prohibited from selling this risky product to service members as long as it complied with MLA's interest rate cap. By departing from its more protective MLA interpretation, DoD has enabled dealers and finance companies to prey on vulnerable military consumers and invites them to violate the MLA without consequence.

While the auto finance industry may claim differently, the MLA's clear definition of "finance charges" does not limit access to a servicemember's ability to purchase and finance a car. Servicemembers and their families should and do have access to the fairly priced auto finance market. For soldiers and sailors with good credit histories, low interest rates from honest companies are plentiful. And for service members with less than perfect credit, numerous opportunities exist to obtain loans with interest rates far less than 36%.

The Department of Defense rightly noted in its regulation that certain lending practices pose risks for service members and their families, threaten military readiness, and affect servicemember retention. Unfortunately, this latest interpretation creates an opportunity for car dealers and auto finance companies to evade the MLA's 36% interest rate cap on loans for our nation's servicemembers. Instead, by reasserting its December 2017 rule interpretation, the DOD can clarify that it stands for the financial protection of our nation's military consumers.

Sincerely,

/s/

Ira Rheingold  
Executive Director  
National Association of Consumer Advocates

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<sup>2</sup> SubPrime, Auto Finance News, *UPDATED: NADA, NIADA & AFSA cheer DOD's decision involving Military Lending Act and GAP*, Feb. 27, 2020, <https://www.autoremarketing.com/subprime/nada-afsa-cheer-dod-decision-involving-military-lending-act-and-gap>.