

UPDATED: Core F&I Product Could Put Some Auto Finance Deals Under Military Lending Act's Requirements

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UPDATED 12/21.17: *The article was updated to include a quote from the president of the Guaranteed Asset Protection Alliance.*

WASHINGTON, D.C. — Including credit-protection products like GAP in a servicemember's vehicle finance contract could subject it to a slew of restrictions and requirements under the Military Lending Act (MLA) — mandates the National Automobile Dealers Association is advising dealers to review with legal counsel.

On Dec. 14, the Department of Defense issued an interpretive rule under the MLA. It amended three of — and added one — to the "Q&A" format interpretations the DOD issued in August 2016 regarding compliance with its July 2015 final rule implementing regulations of the MLA — the first of which pertained to the MLA's motor vehicle finance exclusion.

"The DOD believes that dealers and other creditors who finance GAP or other credit insurance ... as part of a motor vehicle financing transaction with a servicemember or a dependent do not qualify for the motor vehicle financing exclusion to the MLA," the NADA wrote in its memo, in part, adding that the DOD's interpretation is inconsistent with the MLA.

Passed by Congress in 2006, the MLA provides specific protections for active-duty servicemembers and their dependents in consumer credit transactions, including a 36% cap on the military annual percentage rate in covered transactions. It also requires military-specific disclosures and prohibits creditors from requiring arbitration in the event of a dispute, among many other protections.

"The recently published MLA rule, with its retroactive effective date, contains provisions that may not be easily addressed by a dealer in the short term," said Rob Berger, an executive with Wise F&I and president of the Guaranteed Asset Protection Alliance (GAPA), a group of GAP providers, underwriters and finance sources that is managed by Tallahassee, Fla.-based law firm Meenan P.A. "These issues include matters such as whether or not their retail installment sales contract form contains the requisite disclosures and whether or not their DMS allows the APR to be calculated properly with the inclusion of the GAP fee which, notwithstanding the MLA, would otherwise be excluded from a typical APR calculation.

"With these and other concepts in mind, I understand that GAPA's counsel is currently working very closely with counterparts at the NADA and other associated trade organization(s) in order to quickly formulate a response or a plan for engagement with the DOD that would address these concerns and work toward a resolution that would best serve everyone's interests."

The MLA's final rule does allow creditors, including dealers, to conclusively check whether a credit applicant is or is not a servicemember or a dependent of a servicemember through a credit reporting agency or the DOD's own database.

When the MLA first took effect, by regulation it only covered three narrow categories of consumer credit. Credit transactions involving the financing of a motor vehicle or personal property when the credit is secured by the vehicle or property were statutorily exempted.

When the DOD amended its implementing rule in July 2015, the MLA's protections were expanded to other types of consumer credit, although the motor vehicle finance statutory exclusion remained.

However, shortly before the expanded rule took effect on Oct. 3, 2016, the DOD issued a "narrow interpretation of the personal property financing exclusion." It stated that financing items beyond the personal property being financed took

the transaction outside the scope of the personal property exception to the MLA's requirements, raising the question of whether the DOD had a similar view of the identically worded motor vehicle financing exclusion.

In last week's interpretive rule, the DOD said the answer to that question depends on what the credit beyond the purchase price is used to finance. It stated that vehicle financing transactions involving servicemembers or their dependents that finance items related to the vehicle fall within the exclusion to the MLA's duties, while vehicle finance transactions that finance credit-related products and services take the transaction outside of the exclusion. Examples of items qualifying for the exception are optional leather seats, negative equity, and a service contract. Examples of items that don't qualify included credit protection products like GAP, credit insurance, and cash-out financing.

"Because the DOD issued its interpretation without notice or an opportunity to comment, NADA and other industry trade associations did not have a chance to explain why they believe DOD's interpretation concerning credit-related products or services is inconsistent with the Military Lending Act, or how the DOD interpretation will harm military members and the dealers and auto lenders who serve them," the NADA stated in its memo, noting that the DOD's interpretation applies to all contracts dating back to Oct. 3, 2016. "NADA is working expeditiously with multiple federal agencies and members of Congress to address these issues."