

Headline: New Rule for Sales to Military Servicemembers

By Shaun Petersen

In mid-December, the Department of Defense issued a new interpretation of the Military Lending Act, impacting sales to members of the military and their dependents.

When Congress passed the Military Lending Act, it imposed a series of requirements for extending credit to members of the military and their dependents.

However, Congress also created several exemptions to those limitations, including one for the extension of credit that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the motor vehicle purchased.

Congress included a similar exemption related to credit extended for the purchase of personal property.

The new interpretation drastically alters the scope of what the industry previously understood the motor vehicle exemption to include.

Before, dealers and finance companies understood the motor vehicle exemption to include the extension of credit for all things included in a motor vehicle transaction, such as the purchase price of the car, taxes and other state fees, negative equity and voluntary protection products like service contracts, GAP, etc.

Now, DoD has turned that on its head.

At issue is whether financing above and beyond the actual purchase price of the vehicle takes the transaction out of the safety net of the exemption.

DoD's interpretation says it depends on what is being financed.

"Generally, financing costs related to the object securing the credit will not disqualify the transaction from the exceptions," it reads, "but financing credit-related costs will disqualify the transaction from the exceptions."

So what are "costs related to the object securing the credit"?

DoD provided some examples of costs that fit firmly within the exemption. Items such as negative trade equity, extended warranties or service contracts, and "optional leather seats within that vehicle."

What about "financing credit-related costs"?

DoD said financing items such as GAP, credit insurance and "additional 'cashout' financing" are not included within the exemption.

According to DoD, any dealer who finances those credit-related costs is subject to the Military Lending Act regarding transactions as far back as Oct. 3, 2016 – even though the new interpretation is just weeks old.

So what should you do?

Dealers selling and financing credit-related products such as GAP and credit insurance should determine whether customers are members of the military or dependents of military servicemembers prior to offering F&I products for sale.

Dealers can check by entering the customer's social security number and birthdate into DoD's MLA website at <https://mla.dmdc.osd.mil/mla/#/single-record>.

While other services might be available to provide that information, checking that website or subscribing to an MLA offering notated on a credit report from a credit reporting agency provides a safe harbor for determining covered persons.

If customers are covered by the rule and you decide to sell credit-related products, specific disclosures must be provided in writing and orally. In addition, the transaction is subject to the military APR rate cap of 36 percent and other contractual limitations will be imposed, including a ban on arbitration provisions.

One of the options many are considering to ensure compliance is simply not offering credit-related products to those covered by the rule. Many dealers, once they determine a consumer is covered by the MLA, are simply informing the covered customers that credit-related products are not offered for sale.

Regardless of which compliance option they choose, dealers should consult with their attorneys to determine which products are "credit-related" and thus potentially subject to the rule.

Your individual lawyer can provide you with specific legal advice tailored to your business.

In the meantime, rest assured NIADA is working with other interested industry partners, members of Congress and federal regulators to express our concerns with the new rule and the lack of process involved in issuing it.

DoD did not provide notice of the interpretation nor an opportunity for interested parties to comment before it was issued, precluding NIADA and other stakeholders from pointing out the harm that will come to both the military servicemembers and the industry.

One of our strategies in explaining our position is to illustrate the value of those credit-related products.

So if you as dealers are aware of any of your military customers who have directly benefited from GAP, credit insurance or other similar products, please contact me at (817) 640-3838 or shaun@niada.com.

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