



New Rule Prompts Liability Concerns for Dealers Who Sell to Military

NADA is urging all dealers who sell to members of the military to immediately review new DOD interpretation of federal law and consult with legal counsel

A Department of Defense (DOD) interpretation of the Military Lending Act (MLA) issued today could have severe implications for all dealers who sell or have sold vehicles to members of U.S. armed forces.

According to the new interpretation of the MLA, if, as part of a vehicle financing transaction with a military consumer or his or her dependent, a creditor (i) extends financing for a credit-related product or service (such as GAP insurance or credit insurance), or (ii) provides cash out financing, the creditor must comply with the full range of duties and restrictions imposed by the MLA. The interpretation is in effect today and applies to all transactions since October 3, 2016.

As a result, it is essential that dealers immediately consult with their legal counsel to determine -

- (i) whether to continue offering such products to military consumers and their dependents, and
- (ii) if the dealer intends to continue offering such products, the actions dealers must immediately implement to comply with the MLA requirements.

Because DOD issued its interpretation without notice or an opportunity to comment, NADA and other industry trade associations did not have a chance to explain (i) why they believe DOD's interpretation concerning credit-related products or services is inconsistent with the Military Lending Act, or (ii) how the DOD Interpretation will harm military members and the dealers and auto lenders who serve them. NADA is working expeditiously with multiple federal agencies and members of Congress to address these issues.

We have provided below more detailed information on the topic for dealers to share with their legal counsel.

What Prompted This Alert and Next Steps?

- The [MLA](#) imposes a series of duties and restrictions on creditors who extend credit to certain military members (generally active duty personnel) and their dependents.
- There are several exemptions to these requirements, including for any credit transaction that is expressly intended to finance the purchase of (i) a motor vehicle when the credit is secured by the motor vehicle being purchased, or (ii) other personal property when the credit is secured by the personal property being purchased.
- When the MLA originally took effect in 2007, it only covered three narrow categories of consumer credit. In 2015, DOD issued a regulation which took effect October 3, 2016 that greatly expanded the types of consumer credit covered by the MLA (generally expanding coverage to any type of credit covered by the Truth In Lending Act). However, the exceptions for motor vehicle financing and other personal property financing mentioned above that were created by Congress remained.
- Shortly before the 2016 amendment took effect, DOD issued a narrow interpretation of the personal property financing exclusion which generally 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. This raised the question of whether DOD took a similar narrow view of the identically worded motor vehicle financing exclusion. (NADA issued an all member communication on the topic on September 29, 2016.) Today's interpretation addresses that issue.
- In today's Interpretation, DOD states that whether extending credit in an amount greater than the purchase price of the motor vehicle being financed takes the transaction outside of the motor vehicle financing exclusion depends on what the credit beyond the purchase price is used to finance. It states: "Generally, financing costs related to the object securing the credit will not disqualify the transaction from the exceptions, but financing credit-related costs will disqualify the transaction from the exceptions."
 - Examples of items in the first category that DOD recognizes as qualifying for the exception to the MLA requirements include financing for "optional leather seats within that vehicle and an extended warranty for service of that vehicle" as well as financing negative trade equity.
 - Examples of items in the second category that DOD recognizes as taking the transaction outside of the exception to the MLA requirements include financing "Guaranteed Auto Protection insurance or a credit insurance premium" as well as "additional 'cashout' financing."

- Consequently, DOD believes that dealers and other creditors who finance GAP or other credit insurance – or who provide cash-out financing – as part of a motor vehicle financing transaction with a service member or a dependent do not qualify for the motor vehicle financing exclusion to the Military Lending Act. DOD’s Interpretation applies to all contracts entered into since the date of the amended rule (October 3, 2016).
- Next Steps – In order to determine appropriate next steps, dealers will require guidance from their legal counsel. To assist with this process, we suggest -
 - 1) Reviewing –
 - a. the requirements of the [Amended MLA Rule](#) that took effect October 3, 2016;
 - b. Question and Answer 2 in [DOD’s first set of Interpretive Guidance](#); and
 - c. Question and Answer 2 in [DOD’s second set of Interpretive Guidance](#);
 - 2) Knowing which consumers are covered by the rule (see the definition of a “covered borrower” at 32 CFR § 232.3 and the safe harbor for determining whether a consumer is a covered borrower at 32 CFR § 232.5(b));
 - 3) Knowing what the rule requires and prohibits (see 32 CFR §§ 232.4, 232.6, and 232.8);
 - 4) Knowing the penalties for non-compliance (see 32 CFR § 232.9); and
 - 5) Knowing what additional state law considerations may apply.
- NADA will disseminate additional information on this topic as it becomes available.

The foregoing is offered for informational purposes only and is not intended as legal advice.