

January 19, 2018

Mr. Robert Wilkie  
Under Secretary for Personnel and Readiness  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Re: Petition to repeal Question and Answer 2 of the Department of Defense's Interpretive Rule to the Military Lending Act Regulation pursuant to the Administrative Procedures Act (5 U.S.C. 553(e))

Recognizing that the financial health of servicemembers and their families is essential to military readiness, Congress passed the Military Lending Act (MLA) to protect servicemembers and their families from predatory lenders and the stress of unmanageable debt that impacts not only military performance, but also family quality of life. The American Bankers Association (ABA),<sup>1</sup> as previously conveyed, shares that goal.

The Department of Defense (DoD) on December 14, 2017 issued amendments to its August 2016 Interpretive Rule to the MLA Regulation which, in effect, restrict servicemembers and their spouses and dependents from obtaining Guaranteed Acceptance Protection insurance (GAP)<sup>2</sup> when they finance it with the loan used to purchase the vehicle.<sup>3</sup> The result is that when their car or truck is stolen or destroyed (e.g., by accident or by natural disaster, such as flood, hurricane, and mudslide), servicemembers, their spouses, and their dependents will not only have no vehicle, but may owe thousands of dollars on the outstanding loan. The financial hardship and stress to the family can be

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

<sup>2</sup> GAP covers the loan deficiency on a vehicle loan when the insurance paid due to a destroyed or stolen vehicle is insufficient to cover the loan balance. For example, in the event a car is totally destroyed, an insurance company might only pay \$24,000, based on the current value, though the outstanding debt is \$30,000. In such a case, GAP pays the \$6,000 deficiency that the borrower would otherwise owe. GAP is typically financed by the loan that is used to purchase the car and is only available at the time the loan is made.

<sup>3</sup> Under the MLA statute and regulation, purchase money loans, such as car loans, are exempt if they are used for the express purpose of financing the purchase of the property securing the credit (§232.3(f)(1)(ii) and (iii)). Question and Answer 2 of the Interpretive Rule, as amended in December 2017, provides that the exemption does not apply if the loan also finances credit insurance such as GAP. As a covered loan, such loans are subject to the prohibition in §232.8(f) that prohibits non-depository institutions from using a title to a vehicle as security for covered loans.

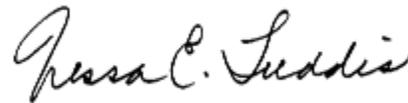
substantial. Indeed, recognizing the peace of mind and relief it provides, at least one state, Louisiana, requires that lenders offer GAP.

In addition to the negative financial impact on servicemembers and their families, the new interpretation in the amendments has created uncertainty and confusion in the market and potential substantial liability for automobile dealers and lenders who in good faith relied on the plain language of the statute and regulation. Moreover, because the amendments to the Interpretive Rule appear to be retroactive, vehicle financing loans made after the MLA Regulation effective date of October 3, 2016 may be void and subject to significant penalties and attorneys' fees.

ABA believes that DoD lacked important information about the value of GAP to military families when it issued the recent amendments. In light of the negative impact on military families and the compliance uncertainty and challenges, we are petitioning the DoD to repeal Question and Answer 2 only of the Interpretive Rule to allow DoD to review issues that have been raised since issuance and consider comments from industry and military family associations.

We are happy to provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Nessa E. Feddis". The signature is written in a cursive, flowing style.

Nessa Eileen Feddis