No. 21-1697

In the United States Court of Appeals for the Fourth Circuit

JERRY DAVIDSON, individually and on behalf of others similarly situated,
Plaintiff-Appellant,

v.

UNITED AUTO CREDIT CORPORATION, a California corporation,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Virginia at Alexandria
Case No. 1:20-cv-01264-LMB-JFA (The Honorable Leonie M. Brinkema)

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INTRODUCTION

For years, unscrupulous lenders have congregated around military bases. Soldiers and sailors, they believe, are the ideal target for predatory lending: They are disproportionately young and financially inexperienced, but they still pay their debts—the military makes sure of that. So predatory lenders target them with sky-high interest rates, exploitative loan terms, useless credit products, and hidden fees, knowing they'll still pay their loans. But when a service member gets taken advantage of by a lender, that's not just a problem for the service member; it's a problem for the military itself. Not only does it undermine morale, but service members trapped by debt can also lose their security clearances, making them unable to do their jobs. During the Iraq War, thousands of troops could not serve overseas because their debt made them a risk to national security.

The Military Lending Act was enacted to solve this problem, to protect military readiness by protecting service members. It limits predatory lenders' ability to exploit service members' youth and honor by prohibiting the exorbitant interest rates, abusive loan terms, and hidden fees lenders use to profit off of our military. But ever since the Act was passed, unscrupulous lenders have been trying to find ways around it—coming up with ever more creative ways to structure their transactions in an effort to evade the law.

That is exactly what happened here. United Auto lent Sergeant Jerry Davidson hundreds of dollars to finance a dubious and likely overpriced credit product called GAP insurance, as well as interest and tacked-on fees. There's no question that this loan would ordinarily be subject to the Military Lending Act; and United Auto has conceded that it does not comply with the statute. Nevertheless, the district court held that because United Auto bundled this financing with financing for a vehicle, it is therefore exempt from the statute.

But that is not what the statute says. The Military Lending Act exempts loans that are "*for the express purpose* of financing the purchase" of a *car*, 10 U.S.C. § 987(i)(6) (emphasis added)—not loans for the purpose of financing a car and anything else the lender would like to include. On the district court's view, this limited exemption should be read to allow car lenders to profit off of service members by saddling them with all sorts of predatory financing—financing that would otherwise be prohibited by the Military Lending Act—so long as they include that financing in the same loan as financing for the vehicle itself.

But courts do not construe statutes as enabling their own circumvention unless "compelled by the language" of the statute to do so. *Sec. Exch. Comm'n v. Edwards*, 540 U.S. 389, 394–95 (2004). This is especially true in the context of financial regulation, where courts have long recognized the ease with which transactions can be cleverly recast and repackaged in an effort to evade the law.

Here, there is no statutory language that requires the Court to countenance such subterfuge. Nothing in the Military Lending Act mandates that lenders be permitted to evade the statute merely because they've combined an otherwise-illegal loan with financing for a car. The whole point of the statute is to *protect* service members from such deceptive practices. Indeed, the Department of Defense—the agency charged with implementing the statute—has advised lenders that they may *not* use creative loan-structuring to exempt themselves from the Military Lending Act's protections. And Congress and the Defense Department have amended the statute and its regulations specifically to prevent them from doing so.

This Court should not read into the statute an exemption that is not there, just so that unscrupulous lenders can circumvent the statute's protections. The district court's decision should be reversed.

JURISDICTIONAL STATEMENT

The district court had federal question jurisdiction under 28 U.S.C. § 1331 because this case arises under a federal statute, the Military Lending Act, JA27–35. This Court has appellate jurisdiction under 28 U.S.C. § 1291 because this appeal is from a final order dismissing all the plaintiffs' claims with prejudice, JA56. The district court entered judgment on May 19, 2021. JA56. The plaintiff timely filed a notice of appeal on June 18, 2021. JA58.

STATEMENT OF THE ISSUE

May lenders avoid the Military Lending Act by bundling financing that would otherwise be subject to the Act with financing that is otherwise exempt?

STATEMENT OF THE CASE

I. Statutory and regulatory background

A. Congress enacted the Military Lending Act to protect national security and military readiness by preventing lenders from exploiting service members.

In 2006, the Department of Defense asked Congress for its help. *See* U.S. Dep't of Def., *Rep. on Predatory Lending Pracs. Directed at Members of the Armed Forces and their Dependents* 46 (Aug. 2006), https://perma.cc/NAC5-D97H ("Def. Dep't Predatory Lending Report"). Unscrupulous lenders were preying on the military, intentionally targeting service members with predatory loans. *Id.* at 4. The Department explained that military bases are the perfect targets for predatory lending: They have a high concentration of people under the age of twenty-five, "typically without a lot of experience in managing finances," often on their own for the first time "without the guidance or assistance of family," and receiving "perhaps their first significant paycheck." *Id.* at 10. And while these young service members are more likely to fall prey to predatory lending, they are also more likely than the civilian population to actually pay their debts. *See id.* Not only are service members "paid regularly" and

unlikely to lose or quit their job, the military "explicitly" *requires* them to pay their debts. *Id.* They are, therefore, the ideal mark for predatory lenders.[1]

And after a thorough investigation, the Department found that this was precisely what was happening. *Id.* at 21–22. Lenders were concentrating around military bases, with the goal of "seek[ing] out young and financially inexperienced borrowers who," due to their service, nevertheless "have bank accounts and steady jobs." *Id.* at 21. The loans these companies issued often had high fees or interest rates; "pack[ed] excessive charges into the product" being sold; and were based on "access to assets"—a steady military income or a service member's vehicle—rather than the "ability of the borrower to repay the loan." *Id.* at 22. And the service members the lenders targeted often did "not realize the financial ramifications of using these products" or that there were other options available. *Id.* at 22.

The military was concerned that these loans—which ranged from "payday loans" to "unscrupulous automobile financing"—were leaving service members with "enormous debt, family problems, difficulty maintaining personal readiness and a tarnished career." *Id.* at 39. This was a problem not just for the service members themselves but also for the military and the country. Predatory lending, the Department emphasized, not only "harms the morale of troops and their families";

[1] Unless otherwise specified, all internal alterations, emphases, quotation marks, and citations are omitted from quotations throughout the brief.

it "undermines military readiness" and "adds to the cost of fielding an all volunteer fighting force." *Id.* at 53; *see also Soldiers as Consumers: Predatory and Unfair Business Practices Harming the Mil. Cmty: Hearing before the S. Comm. on Com., Sci., & Transp.*, 113th Cong. (2013) (statement of Hollister Petreaus, Assistant Director, Consumer Fin. Prot. Bureau) (quoting memo to Navy personnel from then-Admiral and Chief of Naval Operations Mike Mullen explaining that a "sailor's financial readiness directly impacts unit readiness and the Navy's ability to accomplish its mission").

A Navy study had found that "financial reasons" accounted for 80% of security-clearance revocations and denials, and that debt-related denials had jumped nearly 850% in just three years. *Id.* at 39. Overly indebted service members attempting to solve their financial problems were engaging in conduct that required disciplinary action, up to and including separation from the military. *Id.* at 42–43. And according to news reports during the Iraq War, "[t]housands of U.S. troops [were] being barred from overseas duty because they [were] so deep in debt they [were] considered security risks." *See* Associated Press, *Debt holds U.S. troops back from overseas duty*, NBC News (Oct. 19, 2006), https://perma.cc/VD3F-C9J5. Predatory lending was causing the military a real and "unacceptable loss of valuable talent and resources." Def. Dep't Predatory Lending Report, at 87.

The Department of Defense asked Congress to act. *See id.* at 50–53. While the military's own efforts to educate, counsel, and provide mutual aid to service members

were important, the Department explained, they were not enough. *Id.* at 46. It requested that Congress pass a statute that would, among other things, require lenders to give service members "unambiguous and uniform price disclosures" with "any extension of credit"; impose "a federal ceiling on the cost of credit to military borrowers"; prohibit lenders from using service members' vehicles as security for a loan; and forbid lenders from forcing service members to waive their legal rights, such as the right to go to court. *See id.* at 50–52. The Department recognized that implementing statutory safeguards would discourage lenders from issuing predatory loans. *See, e.g.*, *id.* at 6. But that was the point: that this kind of credit was not worth the harm it caused. *See id.*at 9. And service members themselves agreed. *See id.* at 43.

In a hearing to review the Defense Department's report, Senator after Senator, Republicans and Democrats alike—along with military leadership—spoke about the harm predatory lending was doing to service members, their families, morale, and military readiness. *See, e.g.*, *A Review of the Dep't of Def. Rep. on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 109th Cong. 1 (2006) (remarks of Senator Richard Shelby of Alabama); *id.* at 4 (remarks of Senator Elizabeth Dole of North Carolina) ("[B]latantly targeting our military personnel . . . weakens our military's operational readiness"); *id.* at 6 (remarks of Senator Jack Reed of Rhode Island)

("[T]arget[ing]" these practices "to exploit soldiers is absolutely reprehensible. We owe them a lot more than that.").

Based on this widespread recognition of the need to protect service members from predatory lending, the Military Lending Act was introduced and passed on a bipartisan basis, as an amendment to the National Defense Authorization Act for Fiscal Year 2007. National Defense Authorization Act for Fiscal Year 2007: Roll Vote No. 510, 109th Cong. (Sept. 29, 2006). President George W. Bush signed the statute into law in 2006—the same year the Defense Department had asked for Congress's help. President's Statement on H.R. 5122, 42 Weekly Comp. Pres. Doc. 1836 (October 17, 2006).

The statute tracks the Defense Department's request: It caps the interest rate lenders can charge to service members and their families; it requires clear disclosure of the cost of credit; it prohibits lenders from taking a service member's vehicle as security for a loan; and it forbids lenders from requiring service members to waive their legal rights as a condition of securing a loan. *See* 10 U.S.C. § 987.

B. To combat efforts to circumvent the statute, Congress amends the MLA, and the Defense Department amends its regulations.

Perhaps unsurprisingly, passage of the MLA did not end all efforts by lenders to target service members. And as the years went on, "evasion became common." Paul E. Kantwill & Christopher L. Peterson, *Am. Usury Law and the Mil. Lending Act*, 31

Loy. Consumer L. Rev. 500, 521 (2019). In 2013, the Defense Department testified before Congress that rather than comply with the MLA, unscrupulous lenders were "utilizing procedures or modifying" their loans in an effort to "fall outside" the statute and its regulations. *Preserving the Rights of Service members, Veterans, and their Fams. in the Fin. Marketplace: Hearing Before the S. Comm. on Veterans' Affs.*, 113th Cong. (2013) (statement of Colonel Paul Kantwill). A bipartisan group of state Attorneys General reported the same thing: Lenders were exploiting "loopholes" to try to "fashion abusive or predatory transactions that avoid the MLA's protections." Pam Bondi, et. al., Comment Letter on Limitations on Terms of Consumer Credit Extended to Service Members and Dependents (June 23, 2013), https://perma.cc/NSX5-JZAV. So too did the Consumer Financial Protection Bureau. *Soldiers as Consumers: Predatory and Unfair Business Practices Harming the Mil. Cmty: Hearing before the S. Comm. on Com, Sci. & Transp.*, 113th Cong. 15–40 (2013) (statement of Hollister Petreaus, Assistant Director, Consumer Financial Protection Bureau). As did lawmakers themselves. Senator Jack Reed, et. al., Comment Letter on Limitations on Terms of Consumer Credit Extended to Service Members and Dependents (Aug. 21, 2013), https://perma.cc/AC4J-ERA2.

And the lenders trying to skirt the law were not just small, fly-by-night companies. Well-established businesses like Wells Fargo tried to find their way around the MLA to target service members with the kinds of loans Congress

intended to prohibit. *See* Kantwill & Peterson, *Am. Usury Law and the Mil. Lending Act*, 31 Loy. Consumer L. Rev. at 524.

Neither Congress nor the Defense Department was willing to tolerate this gamesmanship by lenders seeking to exploit the youth, inexperience, and honor of service members. Congress therefore amended the MLA to expand its enforcement, both through private rights of action and through administrative agencies. *See* Nat'l Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 662, 126 Stat 1632. And the Defense Department amended its regulations, expanding the definition of "consumer credit" covered under the Act—which had previously been limited to particular kinds of transactions—to encompass almost any "credit offered or extended to a covered borrower primarily for personal, family, or household purposes." *See Limitations on Terms of Consumer Credit Extended to Service Members and Dependents*, 80 Fed. Reg. 43,560, 43,563 (July 22, 2015). "This comprehensive approach," the Department explained, was "essential to preventing future evasions" of the statute. *Id.* at 43,566.

Lenders opposed to the new definition threatened that closing the loopholes they had been exploiting would cut off service members' access to much-needed credit. *See, e.g.*, *id.* at 43,567. But the Defense Department was unswayed: Restricting lenders' ability to circumvent the MLA would not cut off access to credit; it would cut off access to *harmful* credit products. *See* 80 Fed. Reg. at 43,565–67.

And, in fact, the dire threats of predatory lenders were quickly proven to be baseless. Following enactment of the regulation, service members continued to have access to credit—just not the exploitative credit products that predatory lenders had for years targeted at the military. *See* Kantwill & Peterson, *Am. Usury Law and the Mil. Lending Act*, 31 Loy. Consumer L. Rev. at 531.

C. The Defense Department publishes interpretive guidance advising lenders that they may not evade the statute by exploiting its exemption for vehicle and personal property loans.

Even with this new regulation, lenders continue to try to evade the statute. Particularly relevant here, lenders have seized on the MLA's exemption for loans "procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured." 10 U.S.C. § 987(i)(6); *see also* 32 C.F.R. § 232.3(f)(2) (Defense Department regulations mirroring the statutory exemption). Absent this exemption, service members would have difficulty getting ordinary, non-predatory purchase-money car loans because the MLA prohibits lenders from securing a loan with a service member's vehicle. 10 U.S.C. § 987(e)(5).

Nothing in the purchase-money exemption states that lenders may use it to exempt other kinds of financing from the statute, simply by bundling that financing with a car or personal property loan. Nevertheless, lenders have attempted to do just that. Thus, for example, lenders who want to offer cash advance loans, free of the

strictures of the MLA, have tried to avoid the Act by offering "personal property" loans that exceed the value of the property being purchased—with the remainder of the financing being simply a cash loan. *See, e.g.*, Mil. Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 81 Fed. Reg. 58,840, 58,841 (Aug. 26, 2016). Or car lenders, like United Auto, offer "vehicle loans" that far exceed the purchase price of the vehicle, packing in financing for other credit products, interest, or fees—all of which would ordinarily be subject to the MLA, but the lender argues is exempt merely because they've also financed the purchase of a vehicle.

Responding to these efforts, the Department of Defense has issued interpretive guidance advising lenders that they cannot avoid the statute merely by creatively packaging their transactions. *Id.* In 2016, the Department published its "preexisting interpretation" of the regulation implementing the purchase-money exemption for personal property loans. *Id.* "To qualify for the purchase money exception from the definition of consumer credit," the Department explained, "a loan must finance *only* the acquisition of personal property." *Id.* (emphasis added). Where a lender "extends credit in an amount greater than the purchase price" of the property being financed, that credit is no longer "expressly intended to finance the purchase of personal property." *Id.* And, thus, it is not exempt from the MLA. *Id.*

In 2017, the Department amended this guidance—which initially discussed only personal property loans—to reflect its "preexisting interpretation" of the regulations as to both personal property and vehicle loans. Mil. Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 82 Fed. Reg. 58,739 (Dec. 14, 2017). The amended guidance explained that a loan that finances a vehicle purchase but "also finances a credit-related product or service" is not exempt from the MLA. *See id.*

The Department expressly singled out financing for Guaranteed Asset Protection coverage as an example of a credit product that, when impermissibly bundled with a car loan, would take the loan outside the scope of the MLA exemption. 82 Fed. Reg. at 58,740. GAP coverage is credit insurance that purports to protect car-buyers by covering any difference between what they owe on a car loan and what their car insurance pays if the car is stolen, damaged, or totaled. Consumer Fin. Prot. Bureau, *Office of Servicemember Affs. Ann. Rep.*, (Jan. 2019), https://perma.cc/47CW-P3AJ. But in reality, it is rife with "abusive practice[s]." *See* Consumer Fin. Prot. Bureau, *Supervisory Highlights*, Issue 19, Summer 2019, https://perma.cc/P7LM-C94J; *see also In re Liberty Chevrolet, Inc.*, 2020 WL 3072937, at *3 (May 27, 2020) (statement of Commissioner Rebecca Kelly Slaughter) ("The fundamental problem in the auto-dealing market is that auto dealers no longer make most of their money by selling cars. Instead, they make money by selling credit and

add-on products, such as guaranteed asset protection (GAP) . . . . Nearly all of these moneymaking strategies can be bad for consumers.").

GAP insurance is often sold to people who don't need it in the first place. *Id.* Car dealers often try to package it with a car loan, at prices up to four times what the same coverage would cost if purchased separately elsewhere—plus interest because the coverage is financed rather than purchased outright. *See* Steve Lehto, *Why You Should Never Buy Gap Insurance from a Car Dealer*, Jalopnik (Mar. 9, 2015), https://perma.cc/U38B-9LR4. And it's frequently targeted at service members, even though GAP coverage can "be voided" by taking the car "overseas, as servicemembers are often apt to do." Consumer Fin. Prot. Bureau, *Office of Servicemember Affs. Ann. Rep.* (Jan. 2019), at 17.

Despite being of dubious value to service members, GAP coverage—particularly when packaged with car loans so it can be sold at several times market rate—is an "easy profit-maker" for car lenders. Tom McParland, *Why Is The Dealer Pushing GAP Insurance Even When I'm Making A Big Down payment?*, Jalopnik (Dec. 29, 2020), https://perma.cc/GC9L-26GW. Therefore, after the Department of Defense issued its updated guidance identifying GAP coverage as an example of a credit product car lenders impermissibly package with auto loans, the finance industry wrote several letters to the Department reiterating its well-worn complaint that requiring them to abide by the MLA in this way would prevent service members

from having access to GAP coverage.[2] The basis of this complaint is not entirely clear, but it appears to be that if lenders cannot exempt loans for GAP coverage from the MLA by bundling them with car loans, they will be unable to use service members' vehicles to secure GAP financing; and, if they are unable to secure GAP financing with service members' cars, they will not offer it at all. *See* Welch & Stinebert, *supra* note 2. The industry lobbying groups did not explain how—even if that were true—it would prevent service members from accessing GAP coverage, when that coverage is widely available independently from, for example, car insurance companies, typically at much lower prices. *See, e.g.*, American Family Insurance, *Lease and Loan GAP Ins.* Coverage, https://perma.cc/TR94-64RG (last visited Dec. 27, 2021); Liberty Mutual, *Gap Ins. Coverage*, https://bit.ly/3Himu8w (last visited Dec. 27, 2021); Nationwide, *Gap Ins.*, https://perma.cc/VP3H-APN9 (last visited Dec. 27, 2021); Travelers, *Loan/Lease Gap Ins.*, https://perma.cc/Z8WS-JKHJ (last visited Dec. 27, 2021).

The Defense Department refused to adopt the lenders' arguments. Mil. Lending Act Limitations on Terms of Consumer Credit Extended to Service

[2] *See, e.g.*, Peter Welch & Chris Stinebert, Nat. Auto. Dealers Ass'n and the Am. Fin. Servs. Ass'n, Comment Letter on Enhancement of Prots. on Consumer Credit for Members of the Armed Forces and Their Dependents (Jan. 18, 2018), https://perma.cc/Z4VH-D7GE; Timothy Meenan & Matthew Nowels, Guaranteed Asset Prot. All., Letter on Petition to Withdraw "Question and Answer 2" of the Dep't of Def. Interpretive Rule (Feb. 12, 2018), https://perma.cc/49TG-V9R7.

Members and Dependents, 85 Fed. Reg. 11,842, 11,843 (Feb. 28, 2020) (explaining the Department "takes no position on any of the arguments or assertions advanced" by the finance industry). And while it agreed to rescind the *guidance* to study their purported concern, the Department did not rescind the "pre-existing *interpretation*" of its regulations that the guidance reflected. *Id.* at 11,842 (emphasis added). It also reinstated the 2016 version of its exemption guidance. *See id.*

To this day, therefore, the Department's public guidance makes clear that a loan that exceeds the "purchase price" of personal property is not a loan "expressly intended" to finance the purchase of that property—and, thus, is not exempt from the MLA. *Id.*

II. Factual Background

A. Sergeant Davidson takes out a United Auto loan.

United Auto Credit Corporation is one of the nation's largest subprime auto lenders. JA14. The company has repeatedly been investigated and sued for predatory lending and debt collection practices. For example, the company recently settled allegations by the Massachusetts Attorney General that it "facilitated the sale of defective vehicles and coerced consumers to sign agreements permitting the lender to repossess vehicles in violation of Massachusetts's consumer protection laws." Assurance of Discontinuance, *In re. United Auto Corp.* (May 24, 2021), https://perma.cc/6J5R-ZGBA. It's also been sued for misconduct "in financing . . .

and repossessing motor vehicles," *Cooper v. United Auto Credit Corp.*, 2009 WL 1010554, at *1 (D. Md. Apr. 14, 2009); violating state repossession law, *Garcia v. United Auto Credit Corp.*, 2008 WL 11417684 (S.D. Fla. June 11, 2008); illegal debt collection calls, *Camayd v. United Auto Credit Corp.*, 2018 WL 6620900, at *1 (S.D. Fla. Nov. 7, 2018); and even trying to collect money from a car-buyer who was sold a car without proper title—a car that United Auto took back, yet still tried to collect on, *Wright v. United Auto Credit Corp.*, 2015 WL 6445376, at *1 (E.D. Mo. Oct. 23, 2015).

Of course, United Auto does not advertise this track record. Instead, it promotes itself as a lender that was "[c]reated with the car buying public in mind." United Auto Credit, https://perma.cc/Z8W7-ENGG (last visited Dec. 30, 2021). Sergeant Jerry Davidson, like many service members, is a member of this car-buying public. And in October 2018, Sergeant Davidson—then an Aviation Operations Supervisor in the U.S. Army—needed a car. JA 14. So he visited a used car dealership near where he was stationed and purchased a 2011 GMC Acadia. JA 39–45. To pay for the purchase, he got a loan financed by United Auto. *Id.* But the loan was not limited to the money needed to buy the car. *See* JA 40–41. It included hundreds of dollars of extra financing for GAP coverage, pre-paid interest, and unexplained "fees." *Id.* This financing, too—not just the financing for the vehicle—was secured by Sergeant Davidson's car. JA 39–45.

B. This Lawsuit

It's undisputed that United Auto's loan contract does not comply with the MLA. Tr. 24, Dkt. 84 (United Auto's counsel agreeing that if the loan were covered by the MLA, the contract "would not be in full compliance").[3] The contract lists a lower interest rate than the true cost of the credit, as the statute and regulations require that cost to be calculated; it fails to provide the requisite disclosures; it gives United Auto a security interest in Sergeant Davidson's car; and it requires service members to give up their right to bring disputes in court. *See* JA23–35, 40–45.[4]

Sergeant Davidson, therefore, sued United Auto to enforce the core predatory lending protections that Congress and the Defense Department have provided to service members—and to prevent this from happening to others. In response, United Auto argued that it didn't matter whether its loan contract complies with the MLA because, according to United Auto, the contract is not even subject to the MLA. *See* Dkt. 66, at 7–9. The company argued that although the contract included financing not just for the purchase price of the car, but for credit products like GAP coverage, it nevertheless constituted credit "for the express purpose of financing" the car. *Id.* (quoting 10 U.S.C. § 987(i)(6)).

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[3] All cites to the docket are to the district court docket, Case No. 20-cv-01264.

[4] To be clear, United Auto conceded only that the loan does not comply with the Military Lending Act. It did not concede that it is noncompliant in all of the ways Sergeant Davidson alleges.

The district court adopted United Auto's argument. JA55. The court noted that the "parties agree that if the 2017" amended guidance from the Defense Department, which specifically discussed GAP coverage, "were currently in effect there would be no dispute over the Contract being governed by the MLA. It would be covered." JA54. Nevertheless, the court held that United Auto could avoid the MLA simply by packaging financing for GAP coverage (and prepaid interest and fees) with an auto loan, merely because the Department of Defense had withdrawn the 2017 amendment. *Id.* In the court's view, any holding to the contrary "would essentially contradict the [Department's] withdrawal of the guidance by effectively reinstating it." JA55.

The court did not explain how its conclusion could be reconciled with the fact that the 2017 amendment was not a new interpretation of the regulations, enacted for the first time by the amendment, but rather a statement of the Department's "pre-existing interpretation"—an interpretation the amendment's rescission did not purport to change. Instead, the district court held that because, in its view, GAP coverage and the other additional financing was "inextricably tied" to the "purchase of the vehicle," United Auto could exempt that financing from the statute by bundling it with an auto loan. *Id.*

SUMMARY OF ARGUMENT

I. It's well established—particularly in the context of financial regulation—that courts should not read into a statute "limitation[s] not compelled by the language" that would enable bad actors to circumvent the law. *Edwards*, 540 U.S. at 394–95. But that is precisely what the district court did. The text of the Military Lending Act explicitly limits the purchase-money exemption to financing that is "expressly for the purpose of"—that is, specifically and exclusively for—the purchase of a vehicle or personal property. Nevertheless, the district court held that financing for other purposes—GAP coverage, interest, and fees—is also exempt, so long as it is packaged with vehicle financing. The text of the statute does not permit, let alone require, that result. This Court should not adopt a reading of the Military Lending Act that would so easily enable unscrupulous lenders to evade it.

II. Interpreting the purchase-money exemption narrowly, in accordance with its language, also comports with the Department of Defense's interpretation of its regulations implementing the exemption. The Department has made clear that, in its view, a loan cannot possibly be "expressly intended" to finance the purchase of personal property if the loan exceeds the cost of that property. There is no reason vehicle loans should be any different: If they exceed the cost of the vehicle, they cannot be "expressly intended" to finance that vehicle's purchase. And although the Defense Department rescinded its guidance specifically discussing the vehicle

exemption—and GAP coverage in particular—it did so not because its interpretation had changed, but rather to consider whether its guidance caused a technical (and ultimately meritless) issue raised by lenders seeking to avoid it. The Defense Department's interpretation is precisely the same as the interpretation evident from the text and purpose of the statute: Loans that include financing for anything other than the purchase of a vehicle are not loans "for the express purpose of" financing that vehicle. They are, therefore, not exempt.

STANDARD OF REVIEW

This Court reviews a district court's interpretation of a statute, as well as its decision granting a motion to dismiss, de novo. *Bender v. Elmore & Throop, P.C.*, 963 F.3d 403, 406 (4th Cir. 2020). In doing so, the Court "must accept as true all of the factual allegations contained in the complaint and draw all reasonable inferences in favor of the plaintiff." *Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cty., Md.*, 684 F.3d 462, 467 (4th Cir. 2012). It "may consider documents attached to the complaint or the motion to dismiss so long as they are integral to the complaint and authentic." *Id.*

ARGUMENT

There is no dispute that if Sergeant Davidson had purchased a car and, separately, decided to purchase GAP coverage for that car, any loan he took out to finance that coverage would be subject to the Military Lending Act. *See* 32 C.F.R. § 232.3(f)(1) (defining "consumer credit" subject to the statute as "credit offered or

extended to a covered borrower primarily for personal, family, or household purposes"). Nor is there any dispute that a loan to finance the interest or fees on another loan—automobile or otherwise—is subject to the MLA. *See id.* Nevertheless, the district court held that these loans are exempt here, merely because United Auto packaged them together with financing to purchase Sergeant Davidson's vehicle. On this view, evading the MLA is simple: A lender need only add to any loan that would otherwise be subject to the statute financing for personal property or a vehicle—and suddenly the whole loan is exempt. And car lenders can inflate their profits at the expense of service members by piling on precisely the kinds of dubious credit products and fees Congress passed the MLA to protect service members from.

Nothing in the statute's text or purpose authorizes that result. This Court should reverse.

I. The Military Lending Act's text and purpose make clear that lenders may not circumvent the statute merely by bundling loans that are subject to the Act with loans that would otherwise be exempt.

The use of "artful devices" by unscrupulous actors trying to evade a statute they'd prefer not to obey is nothing new. *See, e.g.*, *Comm'r v. P. G. Lake, Inc.*, 356 U.S. 260, 265 (1958). But neither are opinions from this Court and the Supreme Court rejecting such gambits. Both this Court and the Supreme Court have repeatedly refused to read into statutes "limitation[s] not compelled by the language" that would "undermine" a statute's "purposes" by enabling bad actors to circumvent it. *Edwards*,

540 U.S. at 394–95; *see, e.g.*, *id.*; *Moskal v. United States*, 498 U.S. 103, 112 (1990); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 345–46 (1997); *Curtis v. Propel Prop. Tax Funding, LLC*, 915 F.3d 234, 245 (4th Cir. 2019); *Broughman v. Carver*, 624 F.3d 670, 677 (4th Cir. 2010).

Any other approach would render the "task of regulation impossible." *United States v. Smolar*, 557 F.2d 13, 20 (1st Cir. 1977). After all, those "bent on" wrongdoing "can always think of new devices" to evade the law—"devices" that an "unduly restrictive" reading of the statute would enable. *Id.* Courts, therefore, read statutes in a way that is both "sensible" and "fair" to ensure that they cannot be "cavalierly avoided by the use of artful devices," but rather are enforced in accordance with their purpose. *Id.*; *see also Womack v. Comm'r of IRS*, 510 F.3d 1295, 1301 (11th Cir. 2007) (holding that taxpayers could not "circumvent ordinary income tax treatment by packaging ordinary income payments and selling them to a third party"); *S.E.C. v. Infinity Grp. Co.*, 212 F.3d 180, 191 (3d Cir. 2000) ("We will not embroider a loophole into the fabric of the securities laws by limiting the definition of 'securities' in a manner that unduly circumscribes the protection Congress intended to extend to investors.").

This anti-circumvention principle is particularly important—and well established—in the context of financial regulation. Indeed, it can be traced back hundreds of years to cases, not much different than this one, in which lenders sought to avoid usury statutes that constrained their ability to target vulnerable consumers

with predatory loans. Courts recognized the "ingenuity" of unscrupulous lenders to devise endless "contrivances" in an attempt to evade usury laws. *Scott v. Lloyd*, 34 U.S. 418, 446–47 (1835). And they refused to read the statutes as countenancing such subterfuge. *See id.*; *Missouri, K. & T. Tr. Co. v. Krumseig*, 172 U.S. 351, 356 (1899). As the Supreme Court put it nearly two-hundred years ago, "[t]he principle in all courts acting under these laws has been, that if usury was found to have been taken, the wit of man would not evade the statute." *Thornton v. Bank of Washington*, 28 U.S. 36, 37 (1830). "There is no more familiar rule in the law than that the usury laws cannot be evaded by mere pretenses, shifts, or evasions." *Fowler v. Equitable Trust Co.*, 141 U.S. 384, 403 (1891).

This principle remains the same today. Recognizing the limitless manipulability of financial transactions, courts refuse to interpret statutes regulating such transactions in a way that would permit unscrupulous actors to circumvent them unless the text of the statute itself "compel[s]" them to do so. *See, e.g.*, *Edwards*, 540 U.S. at 394; 47 C.J.S. Interest & Usury § 201 (collecting cases).

1. Nothing in the Military Lending Act's language permits—let alone "compel[s]"—a court to enable lenders to evade the statute merely by packaging regulated loans with exempt ones. In holding otherwise, the district court relied on the statute's exemption for "a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of

financing the purchase and is secured by the car or personal property procured," 10 U.S.C. § 987(i)(6). JA51. But that exemption means what it says: It applies to loans that finance the purchase of a *vehicle* (or personal property)—not dubious credit products or interest and fees.

An express purpose is a purpose that is "precisely and specifically identified to the exclusion of anything else." The Concise Oxford American Dictionary 315 (Oxford Univ. Press 2006) (dictionary published the same year the MLA was enacted defining "express" when used in the phrase "for the express purpose of"); *see also* Merriam-Webster's Collegiate Dictionary 442 (2006) (defining "express" to mean "exact," "precise," or "specific"); Encarta Concise English Dictionary 504 (2001) (defining express as "definitely, and usually exclusively, intended or specified"); Collins Thesaurus 104 (2006) (listing synonyms for express as "specific, exclusive, particular, sole, special, singular, clear-cut, especial").

Thus, a loan "for the express purpose of financing the purchase" of a car is a loan that "precisely and specifically" finances the car, "to the exclusion" of anything else. Financing that exceeds the purchase price of the vehicle cannot possibly be "for the express purpose" of purchasing it. Nor can financing that specifically identifies other purposes. Such financing, therefore, is not exempt from the MLA.

This reading accords with how Congress ordinarily uses the phrase "for the express purpose of" in statutes governing financing: to specifically—and

exclusively—identify a permitted purpose or purposes for the use of funds. *See, e.g.*, Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277, § 903, 112 Stat. 2681 (1998) (authorizing National Fish and Wildlife Foundation to "accept, receive, solicit, hold, administer, and use any gift, devise, or bequest made to the Foundation for the express purpose of supporting whale conservation"); Thomas Paine National Historical Association U.S.A. Memorial Foundation, Pub. L. No. 102-407, § 3, 106 Stat. 1991 (1992) (authorizing construction of memorial to Thomas Paine and providing that if authority to establish memorial expires, "all unexpended funds . . . shall be transferred to the National Park Service for the express purpose of maintaining existing national memorials or returned to donors").

Indeed, Congress has long used this phrase in a wide variety of contexts to identify a specific, exclusive purpose. *See, e.g.*, Sugar Act of 1937, ch. 898, § 211(a), 46 Stat. 693 (excluding from sugar importation quota "[s]ugar or liquid sugar entered into the continental United States . . . for the express purpose of subsequently exporting the equivalent quantity of sugar or liquid sugar"); Act of Oct. 20, 1988, Pub. L. No. 100-515, § 7(a), 102 Stat. 2563 (authorizing Secretary of the Interior to enter an agreement with New Jersey to use specified property "for the express purpose of constructing, developing, and operating, without cost to the National Park Service, a marine sciences laboratory"—and requiring that if the property is not used for that

purpose, it "shall revert" back to the National Park Service); Tennessee River Basin Water Pollution Control Compact, Pub. L. No. 85-734, § 5, 72 Stat. 823 (1958) (states party to the Compact may only enter into supplementary agreements "for the express purpose of controlling and reducing pollution and coordinating pollution control activities and programs in waters common to two or more of the party States").[5]

On the district court's reading, the Military Lending Act is different from the numerous other statutes in which Congress has used the phrase "for the express purpose of" to identify a specific, exclusive purpose. According to the district court, a loan is exempt from the MLA, even if it has additional purposes besides the

[5] *See also* 42 U.S.C. § 294d (2020) (applicants for rural health grants must have "the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas"); Act of Dec. 29, 1979, Pub. L. No. 96-164, § 213(a), 93 Stat. 1259 (authorizing the "Waste Isolation Pilot Plant" as a "defense activity of the Department of Energy . . . for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes"); Ala. Code § 45-42-163 ("Any remaining amounts shall be distributed in equal amounts to the City of Athens and the Limestone County Commission for the express purpose of paying for the debts and expenses related to the Elm Industrial Park."); Cal. Gov't Code § 63089.80 ("To execute the direct loan and other debt instruments authorized pursuant to this chapter . . . the bank may loan trust funds to a corporation for the express purpose of lending those funds to an identified borrower."); Mont. Code Ann. § 20-9-508 ("The trustees of a district shall establish or credit the building fund whenever the district . . . receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district."); N.Y. Soc. Serv. Law § 131-i-2 (McKinney) ("Funds awarded by the department of labor to approved program sites shall be used for the express purposes of covering staffing and administration costs associated with administering the loan pool.").

permissible purpose identified in the statute—financing the purchase of a vehicle (or personal property)—so long as those additional purposes are not "unrelated." JA55. But that is not what the statute says. The Act does not exempt loans "for the express purpose of financing the purchase" of a vehicle *and any related purpose*; or loans for multiple related purposes, one of which must be the purchase of a vehicle. It exempts only loans "for the express purpose of financing" the vehicle itself. Congress could easily have written the statutory exemption to sweep more broadly, but it chose not to do so. This Court should not read the exemption more broadly than its words permit.

2. And even if the exemption *could* be read to encompass loans that finance dubious credit products—so long as they're somehow related to a vehicle or personal property—it's certainly not *necessary* to read it that way. This Court should not read the exemption in a way that would permit unscrupulous lenders to exploit it to circumvent the MLA, when nothing in its text commands that reading. *See Edwards*, 540 U.S. at 394–95; *Thornton*, 28 U.S. at 37; *supra* pages 23–24. If a statute "lends itself to more than one reasonable interpretation," courts' "obligation is to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and the general purposes that Congress manifested." *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 248 (4th Cir. 2004); *see also Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001) (statutory

exemption must be construed "with reference to the statutory context in which it is found and in a manner consistent with the [statute's] purpose").

The manifest purpose of the Military Lending Act is to safeguard military readiness and national security from the threat posed by soldiers and sailors trapped in debt. Its goal, therefore, is to shield service members from predatory lending—and prevent them from putting essential assets, like their car, at risk to secure such lending. *See supra* pages 4–8. Permitting lenders to sell service members dubious credit products financed at high interest rates, secured by a service member's vehicle, entirely free of the MLA's protections—simply because they also financed the purchase of a car—would undermine this purpose.

Indeed, as a representative of the Navy's Judge Advocate General's Corps testified to Congress, "automobile dealerships acting as loan brokers [can] do far more damage" than even "payday lenders"—by packing all sorts of ancillary products and "secondary loans" into a single financing contract that goes far beyond the price of the vehicle itself just "to add money to the contract." *Soldiers as Consumers: Predatory and Unfair Business Practices Harming the Mil. Cmty*, Hearing before the S. Comm. on Com., Sci., and Transp., 113th Cong. 37 (2013). "This process," he testified, "makes our sailors the equivalent of a money delivery system for the automobile industry." *Id.* at 38.

Nothing in the purchase-money exemption—or anywhere else in the MLA—suggests that Congress intended to enable this kind of predatory lending targeted at service members, merely because it's packaged alongside a car purchase. To the contrary, Congress expanded the MLA, and the Department of Defense expanded its regulations, precisely to *prevent* lenders from circumventing its protections through creatively packaged loans. *See supra* page 10. This Court should not choose to read the purchase-money exemption in a way "not compelled by" its text that would undermine this effort—and Congress's purpose in passing the MLA in the first place. *Edwards*, 540 U.S. 394–95; *see Moskal*, 498 U.S. 112 ("The Court acknowledged that Congress could have written the statute to produce this result, but rejected such a reading as inconsistent with Congress' broad purpose since it would permit a patient forger easily to evade the reach of federal law." (cleaned up)).

For hundreds of years, courts have rejected attempts, just like United Auto's, to evade laws prohibiting predatory lending. This Court should do the same.

II. Rejecting United Auto's attempt to circumvent the MLA accords with the Department of Defense's view that a loan cannot be "expressly intended to finance the purchase" of property if it exceeds the cost of the property being purchased.

A reading of the MLA that prevents lenders from evading the statute by bundling regulated loans with exempt ones not only best effectuates the statute's text and purpose, it accords with the interpretation of the Department of Defense—the agency tasked with implementing the Military Lending Act, *see* 10 U.S.C. § 987(h).

The Defense Department's regulations defining "consumer credit" for purposes of the MLA include exemptions designed to mirror the statutory exemptions contained in the MLA itself. *See* 72 Fed. Reg. 18,162 (2007) (explaining that the purpose of these exemptions was to "clearly exclude[]" the loans exempted by the MLA itself). Thus, the regulations exempt "[a]ny credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased" or "the purchase of personal property when the credit is secured by the property being purchased." 32 C.F.R. § 232.3(f)(2).

In 2016, the Defense Department published interpretive guidance explaining its view that a loan is not "expressly intended" for the purchase of personal property where the lender "extends credit in an amount greater than the purchase price." 81 Fed. Reg. at 58,841. "To qualify for the purchase money exception from the definition of consumer credit," the Department explained, "a loan must finance only the acquisition of personal property." *Id.* A loan that exceeds the financing necessary to do so "is not eligible for the exception . . . and must comply with the" statute. *Id.* The district court held that this guidance is irrelevant because it deals with personal property, not vehicles. JA55. But the language of the exemption is the same for vehicles as it is for personal property. It cannot be that a loan that exceeds the purchase price of personal property is not "expressly intended" to finance that property, whereas a loan that exceeds the purchase price of a vehicle is. *See Reno v.*

Bossier Par. Sch. Bd., 528 U.S. 320, 329 (2000) ("[W]e refuse to adopt a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying.").

The district court also emphasized that in 2017, the Department amended its guidance to address both personal property and vehicle loans, but in 2020, the Department rescinded that amendment and reinstated the previous 2016 version. JA54–55. But, if anything, the rescinded amendment further supports the conclusion that the loan here is subject to the MLA. That amendment stated the Department's "preexisting" view that a loan that finances GAP coverage, in addition to financing the purchase of a vehicle, is not a loan "expressly intended" to finance the purchase of the vehicle—and therefore, that loan is subject to the MLA. 82 Fed. Reg. at 58,740.

The Department did not rescind the 2017 amendment because it had decided to change that "preexisting" view. Rather, it rescinded the amendment to study a purported "technical" concern raised by lenders. *Id.* While their concern is not entirely clear, the lenders' complaint appeared to be this: Loans that combine financing for the purchase of a vehicle with financing for other things cannot be secured by the vehicle unless they are exempt from the MLA—because the MLA prohibits lenders from gaining leverage over service members by using their car as collateral for loans subject to the Act. *See supra* page 15. The lenders claimed that

service members would not be able to buy GAP coverage unless it could be secured by their vehicle. *See id.*

This claim is false: GAP insurance is widely available—at lower prices—through insurance companies, which, of course, do not take a security interest in the vehicle. *See supra* page 16. More importantly, in passing the MLA, Congress and the Department of Defense recognized that prohibiting predatory practices—such as using a service member's car as collateral for low-value credit products—could restrict the availability of loans marked by such practices. *See supra* page 7. But that was the point: to protect service members from loans that were not worth the harm they caused. If service members cannot get overpriced insurance of questionable value without having to offer their car as security, preventing them from making that trade-off is precisely what Congress was trying to achieve in passing the MLA.

United Auto does not dispute that, if the Defense Department's amended guidance singling out GAP coverage were still in place, its loan would not be exempt. JA54. But that amendment merely reflected the Department's "*preexisting* interpretation" of the exemption. 82 Fed. Reg. at 58,740 (emphasis added). The Department has never said it was rescinding this *interpretation*—merely the amended guidance explaining it. And in rescinding that amended guidance, the agency explicitly stated that it was *not* adopting the lenders' arguments; just agreeing to study them. 85 Fed. Reg. at 11,843. There is no indication that following its review, the

Department decided to change its interpretation in light of the lenders' meritless complaints.

In any case, the rescission of the 2017 guidance just reinstated the 2016 guidance, which makes clear the Department's view that a loan cannot be "expressly intended" to finance property if it exceeds the price of that property. *Id.* Vehicles are no different.

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In this case, text, history, purpose, and administrative guidance all point the same way: Lenders cannot circumvent the Military Lending Act merely by packaging regulated loans together with exempt ones. Permitting them to do so would conflict with the text of the statute and undermine its essential purpose. This Court should not countenance such maneuvers.

CONCLUSION

The district court's judgment should be reversed.

December 30, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 8,343 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font.

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2021, I electronically filed the foregoing brief of plaintiff-appellant with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

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No. 21-1697

In the United States Court of Appeals for the Fourth Circuit

JERRY DAVIDSON, individually and on behalf of others similarly situated,
Plaintiff-Appellant,

v.

UNITED AUTO CREDIT CORPORATION, a California corporation,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Virginia at Alexandria
Case No. 1:20-cv-01264-LMB-JFA (The Honorable Leonie M. Brinkema)

STATUTORY AND REGULATORY ADDENDUM

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10 U.S.C.A. § 987

§ 987. Terms of consumer credit extended to members and dependents: limitations

Effective: December 23, 2016
Currentness

(a) Interest.--A creditor who extends consumer credit to a covered member of the armed forces or a dependent of such a member shall not require the member or dependent to pay interest with respect to the extension of such credit, except as--

(1) agreed to under the terms of the credit agreement or promissory note;

(2) authorized by applicable State or Federal law; and

(3) not specifically prohibited by this section.

(b) Annual percentage rate.--A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

(c) Mandatory loan disclosures.--

(1) Information required.--With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered member or a dependent of a covered member, a creditor shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:

(A) A statement of the annual percentage rate of interest applicable to the extension of credit.

(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(C) A clear description of the payment obligations of the member or dependent, as applicable.

(2) Terms.--Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(d) Preemption.--

(1) Inconsistent laws.--Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such law, rule, or regulation is inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides protection to a covered member or a dependent of such a member in addition to the protection provided by this section.

(2) Different treatment under State law of members and dependents prohibited.--States shall not--

(A) authorize creditors to charge covered members and their dependents annual percentage rates of interest for any consumer credit or loans higher than the legal limit for residents of the State; or

(B) permit violation or waiver of any State consumer lending protections covering consumer credit for the benefit of residents of the State on the basis of nonresident or military status of a covered member or dependent of such a member, regardless of the member's or dependent's domicile or permanent home of record.

(e) Limitations.--It shall be unlawful for any creditor to extend consumer credit to a covered member or a dependent of such a member with respect to which--

(1) the creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent;

(2) the borrower is required to waive the borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.);

(3) the creditor requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;

(4) the creditor demands unreasonable notice from the borrower as a condition for legal action;

(5) the creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the borrower, or the title of a vehicle as security for the obligation;

(6) the creditor requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or

(7) the borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

(f) Penalties and remedies.--

(1) Misdemeanor.--A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies.--The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(3) Contract void.--Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

(4) Arbitration.--Notwithstanding section 2 of title 9, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

(5) Civil liability.--

(A) In general.--A person who violates this section with respect to any person is civilly liable to such person for--

(i) any actual damage sustained as a result, but not less than $500 for each violation;

(ii) appropriate punitive damages;

(iii) appropriate equitable or declaratory relief; and

(iv) any other relief provided by law.

(B) Costs of the action.--In any successful action to enforce the civil liability described in subparagraph (A), the person who violated this section is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(C) Effect of finding of bad faith and harassment.--In any successful action by a defendant under this section, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(D) Defenses.--A person may not be held liable for civil liability under this paragraph if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(E) Jurisdiction, venue, and statute of limitations.--An action for civil liability under this paragraph may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of--

(i) two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(ii) five years after the date on which the violation that is the basis for such liability occurs.

(6) Administrative enforcement.--The provisions of this section (other than paragraph (1) of this subsection) shall be enforced by the agencies specified in section 108 of the Truth in Lending Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.

(g) Servicemembers Civil Relief Act protections unaffected.--Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 3937).

(h) Regulations.--(1) The Secretary of Defense shall prescribe regulations to carry out this section.

(2) Such regulations shall establish the following:

(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit, to be expressed and disclosed to the borrower as a total amount and as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of "creditor" under paragraph (5) and "consumer credit" under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.

(3) In prescribing regulations under this subsection, and not less often than once every two years thereafter, the Secretary of Defense shall consult with the following:

(A) The Federal Trade Commission.

(B) The Board of Governors of the Federal Reserve System.

(C) The Office of the Comptroller of the Currency.

(D) The Federal Deposit Insurance Corporation.

(E) The Bureau of Consumer Financial Protection.

(F) The National Credit Union Administration.

(G) The Treasury Department.

(i) Definitions.--In this section:

(1) Covered member.--The term "covered member" means a member of the armed forces who is--

(A) on active duty under a call or order that does not specify a period of 30 days or less; or

(B) on active Guard and Reserve Duty.

(2) Dependent.--The term "dependent", with respect to a covered member, means a person described in subparagraph (A), (D), (E), or (I) of section 1072(2) of this title.

(3) Interest.--The term "interest" includes all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any extension of credit to a servicemember or the servicemember's dependent, as applicable, and any other charge or premium with respect to the extension of consumer credit.

(4) Annual percentage rate.--The term "annual percentage rate" has the same meaning as in section 107 of the Truth and Lending Act (15 U.S.C. 1606), as implemented by regulations of the Board of Governors of the Federal Reserve System. For purposes of this section, such term includes all fees and charges, including charges and fees for single premium credit insurance and other ancillary products sold in connection with the credit transaction, and such fees and charges shall be included in the calculation of the annual percentage rate.

(5) Creditor.--The term "creditor" means a person--

(A) who--

(i) is engaged in the business of extending consumer credit; and

(ii) meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.

(6) Consumer credit.--The term "consumer credit" has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.

CREDIT(S)

(Added Pub.L. 109-364, Div. A, Title VI, § 670(a), Oct. 17, 2006, 120 Stat. 2266; amended Pub.L. 112-239, Div. A, Title VI, §§ 661(a), (b), 662(a), (b), 663, Jan. 2, 2013, 126 Stat. 1785; Pub.L. 114-328, Div. A, Title X, § 1081(b)(2)(A), Dec. 23, 2016, 130 Stat. 2418.)

10 U.S.C.A. § 987, 10 USCA § 987
Current through P.L. 117-78.

End of Document

Code of Federal Regulations
Title 32. National Defense
Subtitle A. Department of Defense
Chapter I. Office of the Secretary of Defense
Subchapter M. Miscellaneous
Part 232. Limitations on Terms of Consumer Credit Extended to Service Members and Dependents (Refs & Annos)

32 C.F.R. § 232.3

§ 232.3 Definitions.

Effective: October 1, 2015
Currentness

As used in this part:

(a) Affiliate means any person that controls, is controlled by, or is under common control with another person.

(b) Billing cycle has the same meaning as "billing cycle" in Regulation Z.

(c) Bureau means the Consumer Financial Protection Bureau.

(d) Closed-end credit means consumer credit (but for the conditions applicable to consumer credit under this part) other than consumer credit that is "open-end credit" as that term is defined in Regulation Z.

(e) Consumer means a natural person.

(f)(1) Consumer credit means credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:

(i) Subject to a finance charge; or

(ii) Payable by a written agreement in more than four installments.

(2) Exceptions. Notwithstanding paragraph (f)(1) of this section, consumer credit does not mean:

(i) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit, or reverse mortgage;

(ii) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(iii) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(iv) Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) or otherwise is not subject to disclosure requirements under Regulation Z; and

(v) Any credit transaction or account for credit for which a creditor determines that a consumer is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in § 232.5(b).

(g)(1) Covered borrower means a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(3) of this section) of a covered member.

(2) The term “covered member” means a member of the armed forces who is serving on—

(i) Active duty pursuant to title 10, title 14, or title 32, United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(ii) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. 101(d)(6).

(3) The term “dependent” with respect to a covered member means a person described in subparagraph (A), (D), (E), or (I) of 10 U.S.C. 1072(2).

(4) Notwithstanding paragraph (g)(1) of this section, covered borrower does not mean a consumer who (though a covered borrower at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit) no longer is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(2) of this section) of a covered member.

(h) Credit means the right granted to a consumer by a creditor to defer payment of debt or to incur debt and defer its payment.

(i) Creditor, except as provided in § 232.8(a), (f), and (g), means a person who is:

(1) Engaged in the business of extending consumer credit; or

(2) An assignee of a person described in paragraph (i)(1) of this section with respect to any consumer credit extended.

(3) For the purposes of this definition, a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a "creditor" under Regulation Z with respect to extensions of consumer credit to covered borrowers.

(j) Department means the Department of Defense.

(k) Dwelling means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and manufactured home.

(l) Electronic fund transfer has the same meaning as in the regulation issued by the Bureau to implement the Electronic Fund Transfer Act, as amended from time to time (12 CFR part 1005).

(m) Federal credit union has the same meaning as "Federal credit union" in the Federal Credit Union Act (12 U.S.C. 1752(1)).

(n) Finance charge has the same meaning as "finance charge" in Regulation Z.

(o) Insured depository institution has the same meaning as "insured depository institution" in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(p) Military annual percentage rate (MAPR). The MAPR is the cost of the consumer credit expressed as an annual rate, and shall be calculated in accordance with § 232.4(c).

(q) Open-end credit means consumer credit that (but for the conditions applicable to consumer credit under this part) is "open-end credit" under Regulation Z.

(r) Person means a natural person or organization, including any corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(s) Regulation Z means any rules, or interpretations thereof, issued by the Bureau to implement the Truth in Lending Act, as amended from time to time, including any interpretation or approval issued by an official or employee duly authorized by

the Bureau to issue such interpretations or approvals. However, for any provision of this part requiring a creditor to comply with Regulation Z, a creditor who is subject to Regulation Z (12 CFR part 226) issued by the Board of Governors of the Federal Reserve System must continue to comply with 12 CFR part 226. Words that are not defined in this part have the same meanings given to them in Regulation Z (12 CFR part 1026) issued by the Bureau, as amended from time to time, including any interpretation thereof by the Bureau or an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations. Words that are not defined in this part or Regulation Z, or any interpretation thereof, have the meanings given to them by State or Federal law.

(t) Short-term, small amount loan means a closed-end loan that is—

(1) Subject to and made in accordance with a Federal law (other than 10 U.S.C. 987) that expressly limits the rate of interest that a Federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent; and

(2) Made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate Federal regulatory agency (or jointly by such agencies), that implements the Federal law described in paragraph (t)(1) of this section, provided further that such law or rule contains—

(i) A fixed numerical limit on the maximum maturity term, which term shall not exceed 9 months; and

(ii) A fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

SOURCE: 80 FR 43606, July 22, 2015, unless otherwise noted.

AUTHORITY: 10 U.S.C. 987.

Current through December 23, 2021; 86 FR 72873.

End of Document

81 FR 58840-01, 2016 WL 4474980(F.R.)
RULES and REGULATIONS
DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 232
[Docket ID: DOD-2013-OS-0133]
RIN 0790-ZA11

Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

Friday, August 26, 2016

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

***58840** ACTION: Interpretive rule.

SUMMARY: The Department of Defense (Department) is interpreting its regulation implementing the Military Lending Act (the MLA). The MLA as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on "consumer credit" extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). This interpretive rule provides guidance on certain questions the Department has received regarding compliance with the July 2015 Final Rule.

DATES: Effective Date: August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Marcus Beauregard, 571-372-5357.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In July, 2015, the Department of Defense (Department) issued a final rule [FN1] (the July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA) [FN2] primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as "consumer credit." [FN3] Moreover, among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a "covered borrower," modified the disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

1 80 FR 435560.

2 10 U.S.C. 987.

3 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. The Department is issuing this interpretive rule to inform the public of its views. The Department has chosen to provide this guidance in the form of a question and answer document to assist industry in complying with the July 2015 Final Rule. This

interpretive rule does not substantively change the regulation implementing the MLA, but rather merely states the Department's preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the Federal Register.

II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p); TILA refers to the Truth in Lending Act (codified at 15 U.S.C. 1601 et seq.); Regulation Z refers to the regulation, and interpretations thereof, issued by the Consumer Financial Protection Bureau (or the Board of Governors of the Federal Reserve System, as applicable) to implement TILA, as defined in 32 CFR 232.3(s); DMDC refers to the Defense Manpower Data Center.

1. What types of overdraft products are within the scope of 32 CFR 232.3(f) defining "consumer credit"?

Answer: The MLA regulation generally directs creditors to look to provisions of TILA and its implementing regulation, Regulation Z, in determining whether a product or service is considered "consumer credit" for purposes of the MLA.[FN4] Also, the supplementary information to the July 2015 Final Rule discusses coverage of overdraft products.

4 The Department notes that the Consumer Financial Protection Bureau may from time to time revise Regulation Z. See, e.g., 79 FR 77102 (Dec. 23, 2014) (proposing to revise the definition of finance charge with respect to charges imposed in connection with certain credit features offered in conjunction with prepaid card accounts). It is the Department's intention that this part should wherever possible be interpreted consistently with Regulation Z as it evolves in order to harmonize the two regulations and thereby minimize compliance burden.

The MLA regulation defines "consumer credit" as credit offered or extended to a covered borrower primarily for personal, family or household purposes that is either subject to a finance charge or payable by a written agreement in more than four installments, with some exceptions. The exceptions include: Residential mortgage transactions; purchase money credit for a vehicle or personal property that is secured by the purchased vehicle or personal property; certain transactions exempt from Regulation Z (not including transactions exempt under 12 CFR 1026.29); and credit extended to non-covered borrowers consistent with 32 CFR 232.5(b). Although coverage by the MLA and the MLA regulation is not completely identical to that of TILA and Regulation Z, the July 2015 Final Rule amends the definition of consumer credit under the MLA to be more consistent with how credit is defined under TILA. The supplementary information to the July 2015 Final Rule states:

As proposed, the Department is amending its regulation so that, in general, consumer credit covered under the MLA would be defined consistently with credit that for decades has been subject to TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.[FN5]

5 80 FR 43563 (footnotes omitted).

The MLA regulation also defines "closed-end credit" and "open-end credit" with express references to the definitions of the same terms in Regulation Z.

The supplementary information to the July 2015 Final Rule illustrates how to apply these standards specifically with respect to overdraft products and services.[FN6] It states that consistent with Regulation Z, an overdraft line of credit with a finance charge is a covered consumer credit product when: It is offered to a covered borrower; the credit extended by the creditor is primarily for personal, family, or household purposes; it is used to pay an item that overdraws an asset account and results in a fee or charge to the covered borrower; and, the extension of credit ***58841** for the item and the imposition of a fee were previously agreed upon in writing. The supplementary information further states that other types of overdraft products not pursuant to a written agreement typically are not covered consumer credit "because Regulation Z excludes from 'finance charge' any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing." [FN7]

6 80 FR 43579-43580.

7 80 FR 43580.

Thus, whether or not a particular overdraft product or service is "consumer credit" under the MLA regulation depends on whether the product or service meets each element of the definition of "consumer credit" and whether an exception applies.

2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?

Answer: No. Section 232.3(f)(1) defines "consumer credit" as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to paragraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional "cash-out" financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

3. Under 32 CFR 232.4(b), are creditors permitted to waive fees or periodic charges at the end of a billing cycle or earlier for open-end credit, in order to prevent a borrower from being assessed a military annual percentage rate (MAPR) in excess of 36 percent during that billing cycle?

Answer: Yes. Section 232.4(b) requires that a creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit. In an open-end credit account, a covered borrower's use of a line of credit might, under certain circumstances, give rise to the imposition of a combination of fees and/or periodic charges that would cause the MAPR to exceed the limit in § 232.4(b). A creditor can comply with § 232.4(b) by designing a combination of periodic rates and fees that cannot possibly result in an MAPR greater than 36 percent. Nevertheless, nothing in 32 CFR part 232 prohibits a creditor from complying by waiving fees or finance charges, either in whole or in part, in order to reduce the MAPR to 36 percent or below in a given billing cycle. Thus, a creditor could alternatively comply by not imposing charges in excess of 36 percent MAPR that would otherwise be permitted under the credit agreement.

82 FR 58739-01, 2017 WL 6368550(F.R.)
RULES and REGULATIONS
DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 232
[Docket ID: DOD-2017-OS-0038]
RIN 0790-ZA13

Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

Thursday, December 14, 2017

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

***58739** ACTION: Interpretive rule; amendment.

SUMMARY: The Department of Defense (Department) is amending its interpretive rule for the Military Lending Act (the MLA). The MLA, as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on "consumer credit" extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). On August 26, 2016, the Department issued the first set of interpretations of that regulation in the form of questions and answers; the present interpretive rule amends and adds to those questions and answers to provide guidance on certain questions the Department has received regarding compliance with the July 2015 Final Rule.
DATES: Effective Date: This interpretive rule is effective December 14, 2017.

FOR FURTHER INFORMATION CONTACT: Andrew Cohen, 703-692-5286.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In July 2015, the Department of Defense (Department) issued a final rule [FN1] (July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA) [FN2] primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as "consumer credit." [FN3] Among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a "covered borrower," modified the disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

1 80 FR 43560 (July 22, 2015).

2 10 U.S.C. 987.

3 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. The Department elected to inform the public of its views by issuing an interpretive rule in the form of questions and answers to

assist industry in complying with the July 2015 Final Rule. The Department issued the first set of such interpretations on August 26, 2016 (August 26, 2016 Interpretive Rule).[FN4] The present interpretive rule amends and adds to those questions and answers. This interpretive rule does not change the regulation implementing the MLA, but merely states the Department's preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the Federal Register.

4 81 FR 58840 (August 26, 2016).

II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR ***58740** part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p).

In order to provide further guidance to industry and the public on the Department's view of its existing regulation, the Department amends its guidance on three questions and provides one additional question and answer. The numbering of this document follows the numbering of the questions and answers provided in the August 26, 2016 Interpretive Rule.

2. Does credit that a creditor extends for the purpose of purchasing a motor vehicle or personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(ii) or (iii) where the creditor simultaneously extends credit in an amount greater than the purchase price of the motor vehicle or personal property?

Answer: The answer will depend on what the credit beyond the purchase price of the motor vehicle or personal property is used to finance. 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.

Section 232.3(f)(1) defines "consumer credit" as credit offered or extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to paragraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased and an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased.

A credit transaction that finances the object itself, as well as any costs expressly related to that object, is covered by the exceptions in § 232.3(f)(2)(ii) and (iii), provided it does not also finance any credit-related product or service. For example, a credit transaction that finances the purchase of a motor vehicle (and is secured by that vehicle), and also finances optional leather seats within that vehicle and an extended warranty for service of that vehicle is eligible for the exception under § 232.3(f)(2)(ii). Moreover, if a covered borrower trades in a motor vehicle with negative equity as part of the purchase of another motor vehicle, and the credit transaction to purchase the second vehicle includes financing to repay the credit on the trade-in vehicle, the entire credit transaction is eligible for the exception under § 232.3(f)(2)(ii) because the trade-in of the first motor vehicle is expressly related to the purchase of the second motor vehicle. Similarly, a credit transaction that finances the purchase of an appliance (and is secured by that appliance), and also finances the delivery and installation of that appliance, is eligible for the exception under § 232.3(f)(2)(iii).

In contrast, a credit transaction that also finances a credit-related product or service rather than a product or service expressly related to the motor vehicle or personal property is not eligible for the exceptions under § 232.3(f)(2)(ii) and (iii). For example, a credit transaction that includes financing for Guaranteed Auto Protection insurance or a credit insurance premium would not qualify for the exception under § 232.3(f)(2)(ii) or (iii). Similarly, a hybrid purchase money and cash advance credit transaction is not expressly intended to finance the purchase of a motor vehicle or personal property because the credit transaction provides additional financing that is unrelated to the purchase. Therefore, any credit transaction that provides purchase money secured financing of a motor vehicle or personal property along with additional "cashout" financing is not eligible for the exceptions under § 232.3(f)(2)(ii) and (iii) and must comply with the provisions set forth in the MLA regulation.

17. Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit the borrower from granting a security interest to a creditor in the covered borrower's checking, savings or other financial account?

Answer: No. The prohibition in § 232.8(e) does not prohibit covered borrowers from granting a security interest to a creditor in the covered borrower's checking, savings, or other financial account, provided that it is not otherwise prohibited by other applicable law and the creditor complies with all other provisions of the MLA regulation, including the limitation on the MAPR to 36 percent. As discussed in Question and Answer #16 of these Interpretations, § 232.8(e) prohibits a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower or using a post-dated check provided at or around the time credit is extended.

Section 232.8(e)(3) further clarifies that covered borrowers may convey security interests in checking, savings, or other financial accounts by describing a permissible security interest granted by covered borrowers. Borrowers may convey security interests for all types of consumer credit covered by the MLA regulation.

Creditors should also note, however, that 32 CFR 232.7(a) provides that the MLA does not preempt any State or Federal law, rule or regulation to the extent that such law, rule or regulation provides greater protection to covered borrowers than the protections provided by the MLA. For example, although the MLA regulation does not prohibit borrowers from conveying security interests in all types of consumer credit covered by the regulation, including credit card accounts, such accounts may also be subject to other laws, rules and regulations governing offsets and security interests. See, e.g., 12 CFR 1026.12(d).

18. Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit a creditor from exercising a statutory right, or a right arising out of a security interest a borrower grants to a creditor, to take a security interest in funds deposited within a covered borrower's account at any time?

Answer: No. In addition to the security interests granted by borrowers to creditors, as discussed in Question and Answer #17 of these Interpretations, above, under certain circumstances Federal or State statutes may grant creditors statutory liens on funds deposited within covered borrowers' asset accounts. Section 232.8(e) does not prohibit a creditor from exercising rights to take a security interest in funds deposited into a covered borrower's account at any time, including enforcing statutory liens, provided that it is not otherwise prohibited by other applicable law and the creditor complies with all other provisions of the MLA regulation, including the limitation on the MAPR to 36 percent. For example, under 12 U.S.C. 1757(11) Federal credit unions may "enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him."

***58741** As discussed in Question and Answer #16 of these Interpretations, § 232.8(e) serves to prohibit a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect

85 FR 11842-02, 2020 WL 951015(F.R.)
RULES and REGULATIONS
DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 232
[Docket ID: DOD-2013-OS-0133]
RIN 0790-ZA14

Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

Friday, February 28, 2020

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

***11842** ACTION: Interpretive rule.

SUMMARY: The Department of Defense (Department) is amending its interpretive rule for the Military Lending Act (the MLA). The MLA, as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on "consumer credit" extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). On August 26, 2016, the Department issued the first set of interpretations of that regulation in the form of questions and answers. On December 14, 2017, the Department issued a second set of interpretations of that regulation in the form of amended questions and answers. The Department is now withdrawing the amended question and answer number 2 (Q&A #2), published in the December 14, 2017 Interpretive Rule, which discussed when credit is extended for the purpose of purchasing a motor vehicle or personal property and the creditor simultaneously extends credit in an amount greater than the purchase price of the motor vehicle or personal property. In withdrawing this amended question and answer, the Department is reverting back to the original Q&A #2 published in the August 26, 2016 Interpretive Rule. This will allow the Department to conduct additional analysis on this matter. The Department is also adding a new question and answer to address questions about the use of Individual Taxpayer Identification Numbers to identify covered borrowers in the Department's database.
DATES: Effective Date: This interpretive rule is effective February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Cohen, 703-692-5286.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In July 2015, the Department of Defense (Department) issued a final rule [FN1] (July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA) [FN2] primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as "consumer credit." [FN3] Among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a "covered borrower," modified the ***11843** disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

1 80 FR 43560 (July 22, 2015).

2 10 U.S.C. 987.

3 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. In an effort to assist industry in complying with the July 2015 Final Rule, the Department elected to answer these requests through an interpretive rule in the form of questions and answers. The Department issued the first set of such interpretations on August 26, 2016 (August 26, 2016 Interpretive Rule).[FN4] The Department issued a second set of such interpretations on December 14, 2017 (December 14, 2017 Interpretive Rule).[FN5]

4 81 FR 58840 (August 26, 2016).

5 82 FR 58739 (December 14, 2017).

The present interpretive rule amends and adds to those questions and answers. Subsequent to the publication of the December 14, 2017 Interpretive Rule, the Department received several formal requests for the Department to withdraw the amended Q&A #2 from the December 14, 2017 Interpretive Rule.[FN6] One point raised in the requests for withdrawal was a concern that creditors' would be unable to technically comply with the MLA if the purchase included products not expressly related to the purchase of the vehicle as described in the amended Q&A #2 from the December 14, 2017 Interpretive Rule, because § 232.8(f) of the regulation would prohibit creditors from taking a security interest in the vehicle in those circumstances and creditors may not extend credit if they could not take a security interest in the vehicle being purchased. The Department finds merit in this concern and agrees additional analysis is warranted. In withdrawing the amended Q&A #2, published on December 14, 2017, because of unforeseen technical issues between the amended Q&A #2 and 32 CFR 232.8(f), the Department, absent of additional analysis, takes no position on any of the arguments or assertions advanced as a basis for withdrawing the amended Q&A #2 from the December 14, 2017 Interpretive Rule. In addition, the Department is adding Q&A #21 to its interpretations in response to inquiries regarding the use of an Individual Taxpayer Identification Number when an individual does not possess a Social Security Number to conclusively determine if an individual is covered borrower in the Department's MLA database for the purpose of safe harbor.

6 The Department received formal requests from the National Automobile Dealers Association/American Financial Services Association (January 18, 2018), American Bankers Association (January 19, 2018), Consumer Bankers Association (January 30, 2018), National Association of Federally-Insured Credit Unions/Defense Credit Union Council (January 31, 2018), National Independent Automobile Dealers Association (February 2, 2018), and the Guaranteed Asset Protection Alliance (February 12, 2018).

This amended interpretive rule does not change the regulation implementing the MLA, but merely states the Department's preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the Federal Register.

II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p).

In order to provide further guidance to industry and the public on the Department's view of its existing regulation, the Department is amending its guidance on one question and answer, and by adding one new question and answer.

The numbering of this document follows the numbering of the questions and answers provided in the August 26, 2016 and December 14, 2017 Interpretive Rules. The text of the amended and new questions and answers follows:

2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?

Answer: No. Section 232.3(f)(1) defines "consumer credit" as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to subparagraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional "cash-out" financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

21. Does a creditor qualify for the safe harbor set forth in 32 CFR 232.5(b)(2)(i)(A) if the creditor uses an Individual Taxpayer Identification Number (ITIN) to search the Department's database to conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of 32 CFR 232.5(b)?

Answer: Yes. The Department recognizes that while all members of the Armed Forces will have a Social Security Number (SSN), a limited population of dependents, who meet the definition of a covered borrower in 32 CFR 232.3(g), may not qualify for a SSN due to their citizenship status. An ITIN is a tax processing number issued by the Federal government in lieu of a SSN. ITINs are only available for certain nonresident and resident aliens, their spouses, and dependents who cannot obtain a SSN and can be used in searches of the Department's database.[FN7] Since all covered borrowers will have a SSN or ITIN, the Defense Manpower Data Center (DMDC) MLA database contains ITINs for covered borrowers who are not eligible to obtain an SSN. Therefore, for purposes of 32 CFR 232.5(b)(2)(i)(A), an ITIN is a "Social Security number."

7 Internal Revenue Service, "Taxpayer Identification Numbers (TIN)" (last updated May 2, 2018).

III. Regulatory Impact

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 ***11844** emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It has been determined that