



February 12, 2018

The Honorable Robert L. Wilkie  
Under Secretary for Personnel and Readiness  
U.S. Department of Defense  
4000 Defense Pentagon  
Washington, DC 20301-4000

**Re: Petition to Withdraw “Question and Answer 2” of the Department of Defense’s Interpretive Rule, as amended, Entitled “Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents” (82 Fed. Reg. 58,739 *et seq.*)**

Dear Under Secretary Wilkie:


The Guaranteed Asset Protection Alliance (GAPA) is a trade association comprised of companies experienced in offering guaranteed asset protection products throughout the country. Our members include insurance companies, lenders, and administrative services companies who, together, bring valuable products to market in a responsible and competitive way. On behalf of our members, GAPA respectfully requests the Department of Defense’s (DOD) immediate withdrawal of “Question and Answer 2” of the Interpretive Rule (Q&A 2) published in the Federal Register on December 14, 2017, entitled “Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents,” 82 Fed. Reg. 58,739 *et seq.* Q&A 2 created a significant new standard without any notice or opportunity to comment, and has had the immediate, practical effect of denying active duty Service members and their dependents access to guaranteed asset protection products.

Like other consumers, Service members and their families have chosen to purchase guaranteed asset protection products, such as GAP waiver, to ensure the stability of household finances in the event a family vehicle should be destroyed. GAP waiver, which waives the deficiency that results when the Service member’s auto insurance proceeds are insufficient to cover the outstanding note obligation, is offered as part of the credit transaction that is expressly intended to finance the purchase of the Service member’s motor vehicle. A Service member’s ability to purchase GAP waiver as part of a motor vehicle retail installment contract thus furthers the Military Lending Act’s underlying goal of promoting military readiness among those who serve in the nation’s armed forces and their dependents.

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Q&A 2 has the practical effect of eliminating the availability of GAP waiver to Service members because it expressly states that inclusion of GAP waiver on a retail installment contract causes the contract to fall within the scope of the MLA, which some have interpreted as prohibiting dealers from taking a security interest in a vehicle. Put simply, under the MLA, as interpreted by Q&A 2, a dealer may not engage in conventional vehicle financing with a Service member or his family if the Service member wants to purchase GAP waiver. Since the issuance of Q&A 2, a number of dealers and finance companies have stopped offering GAP waiver to Service members altogether. GAP waiver and products that offer similar value are not widely available or easily attained outside of the transaction to finance the purchase of the vehicle, limiting the ability of Service members to protect against large and unexpected financial liability when they suffer a total loss of a motor vehicle. In turn, those Service members and their families could have to contend with the financial and emotional difficulties of securing a new motor vehicle while still paying off an existing loan – a result GAPA believes is contrary to Congress’s intent when it passed the Military Lending Act. In addition, because Q&A 2 is styled as an “interpretive rule,” its application is retroactive, calling into question the status of the thousands of GAP waiver policies issued over the last three years and opening the door to liability that could not have been predicted or mitigated.

In light of the confusion and uncertainty Q&A 2 has created among those that offer, administer, underwrite, and finance voluntary protection products like GAP waiver, who did not have an opportunity to comment on the significant new standard, as well as the immediate, negative impact that it is having on active duty Service members and their families, we urge the DOD to immediately withdraw Q&A 2.

Sincerely,  


Timothy J. Meenan  
Executive Director & General Counsel  
Guaranteed Asset Protection Alliance



Matthew A. Nowels  
Assistant Executive Director & Assistant  
General Counsel  
Guaranteed Asset Protection Alliance