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To: Whann Group Dealers
From: Keith Whann
Re: Vehicle Return Plans and the MLA
Date: February 19, 2018

The Military Lending Act (“MLA”) was passed by Congress in 2006 and provides specific protections for active-duty servicemembers and their dependents in consumer credit transactions. The MLA includes, among many other protections, a 36% cap on the military annual percentage rate in covered transactions, requires military-specific disclosures and prohibits creditors from requiring arbitration in the event of a dispute. When the MLA first took effect it only covered three narrow categories of consumer credit. Credit transactions involving the financing of a motor vehicle or personal property when the credit is secured by the vehicle or property were statutorily exempted.

When the Department of Defense (“DOD”) amended its Implementing Rule in July 2015, the MLA’s protections were expanded to other types of consumer credit, although the motor vehicle finance statutory exclusion remained. Shortly before the expanded Rule took effect on Oct. 3, 2016, the DOD issued a “narrow interpretation of the personal property financing exclusion.” It stated that financing items beyond the personal property being financed took the transaction outside the scope of the personal property exception to the MLA’s requirements. Given that the motor vehicle financing exclusion is identically worded, this raised the question of whether the DOD had a similar view of this exclusion.

The DOD issued an Interpretive Rule under the MLA on December 14, 2017 that amended the “Q&A” format interpretations the DOD issued in August 2016 regarding compliance with its July 2015 Final Rule implementing regulations of the MLA. The DOD stated therein “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.”

Question 2 and its corresponding answer read as follows:

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).

It has been asked whether an Insurian Vehicle Return Plan fits within the MLA's exceptions or it should be treated the same as GAP and credit insurance. As you can see from the above answer, 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. Simply put, with GAP and credit insurance, when a triggering event happens a monetary benefit is paid. Insurian VRP allows the purchaser to return the vehicle (the "object itself") upon the occurrence of certain enumerated events and, therefore, should properly fall within the exception for a credit transaction that finances the object itself, as well as any costs expressly related to that object. Should you have any questions, please feel free to contact me.