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To: Mike Linn and Keith Whann
From: Sante Esposito
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Subject: November 2010 Monthly Report

"Wall Street/Consumer" Financial Services Reform Bill

On November 17, Keith Whann and Federal Advocates met with senior staff of the FTC as a follow-up to the September 21 meeting. A series of questions had been provided to NIADA for discussion at the November 17 session. At the meeting, Keith walked them through the process of buying a car and provided samples of "purchasing" documents. The FTC is in the process of formulating questions for public comment regarding various aspects of the auto industry as it relates to consumers. FTC staff was not forthcoming as to the timing of that effort, its scope, and its intended purpose. The results of the November 17 meeting were reported to NIADA's Legislative Committee by conference call on November 23. To review, on September 21, Keith Whann and Federal Advocates met with staff of the FTC regarding implementation of the above Bill and its impact on the auto industry. Following discussion of various issues, with Keith Whann leading the discussion and answering various questions as to how the auto industry works, including the auction practice itself, it was decided to schedule a half day session to allow for a more detailed discussion of issues (i.e., the November 17 session). To review further, on July 22, President Obama signed into law the so-called "Wall Street Reform Bill." As reported previously, the new law exempts some auto dealers from increased oversight with respect to dealer-assisted financing. To get to that result, advocacy activities included numerous meetings, strategy phone conference calls, letters, talking points, legislative alerts, etc. The law does grant increased powers to the FTC regarding dealer oversight. Also, it requires coordination with the Department of Defense to ensure that Service Members and their families are treated fairly by automobile dealers.

Senate Motor Vehicle Safety Act of 2010

NIADA is currently reviewing the above bill pending possible Senate Floor action in December (see attached article). To review, on June 9, 2010, the Senate Committee on Commerce, Science and Transportation marked up and order reported S.3302, the so-called "Toyota Bill." In earlier drafts of the Bill and just prior to markup, language was included (section 310) which would have specified that a dealer may not sell or lease a used passenger motor vehicle (both wholesale and retail sales) until the dealer first notifies the purchaser or lessee in writing of any recall notices. Working primarily with/through Senator Thune, his staff (Brenden Plack), and Committee staff (Alex Hoehn-Saric and Chris Herndon), and as a result of concern raised by Keith Whann and his proposed suggestion, language was included in the final reported version of the bill exempting wholesale transactions from the section's application. While an initial "victory," the remaining provision is still very troublesome and we continue to advocate on behalf of NIADA's interest pending further action on the Senate Bill and/or on a House companion bill. The latest Senate draft and the companion House bill (H.R. 5381) are currently being reviewed by NIADA.

Small Business Jobs and Credit Act of 2010

On September 23, the House passed the Senate-passed bill, which includes an increase in the amount that the Small Business Administration's Dealer Floor Plan Financing program can guarantee (see attached article on timing). This permits the SBA to guarantee bank and finance company loans up to $5million, which should help, the Committee believes, expand dealer access to floorplan lines of credit. We worked with Senator Landrieu's Committee and personal staff, in conjunction with others, on this. This bill may be the subject of subsequent meetings with the Hill and the SBA on how the program "really works."

White House Reform Request

On September 23 and September 29, Federal Advocates was contacted by the White House, which is still trying to organize/schedule a meeting to include "people who are working to setup the CFPB." This meeting is in response to a letter sent by NIADA to President Obama requesting "the opportunity to work with you to reform our industry in common-sense ways that achieve real safeguards for consumers, that promote accountability and transparency, and that work."

Department of Defense

Regarding the issue of "how to ensure that service members and their families are treated fairly by automobile dealers," Keith Whann and Federal Advocates also met on September 21 with Frank Emery, Office of Personal Finance, Family Policy Outreach Directorate, U.S. Department of Defense. Keith relayed a specific example of how he helped a service member at Fort Bragg with an automobile situation, working with the JAG and others. He also talked about his plan for a special program to "teach" dealers on how to deal fairly with service members and their families. DOT continues to remain interested in looking for opportunities where Keith could lend his expertise. Details to be finalized at a later date.

Democrats Revive Push for Auto-Safety Bill

By JOSH MITCHELL

U.S. Senate Democrats have revived talks to push for passage of an auto-safety bill designed to respond to concerns raised by the Toyota Motor Corp. recalls.

The Senate Commerce Committee passed the bill in June and a House panel passed a similar measure in May. But the bills stalled amid objections from industry officials that the proposals could increase costs and lead to more civil lawsuits.

Senate Commerce Committee staffers have been consulting with auto-industry lobbyists in recent weeks to resolve those concerns, and Sen. Jay Rockefeller (D., W.Va.), the panel's chairman, has indicated he might attempt to get the measure passed during the lame-duck session, according to industry lobbyists. A committee aide said the senator has made the bill a priority and is looking for ways to get the bill passed this year.
The industry has indicated it would support a scaled-back version of the proposed legislation.

"There is a push to get it done" this year, said Michael Stanton, president of the Association of International Automobile Manufacturers, a trade group representing Toyota, Honda Motor Co., Nissan Motors Co. and other major foreign car makers. "We're in negotiations with the committee."

The auto-safety proposal would have to vie with other, more-pressing matters facing the lame-duck Congress, including efforts to extend the Bush-era tax cuts and a measure to fund government operations.

The proposed legislation is aimed at dealing with issues raised by Toyota's recall of more than 8.5 million cars globally, starting in late 2009, for gas-pedal problems and other problems believed to have caused vehicles to suddenly accelerate.

The Rockefeller and Waxman bills would substantially boost fines for auto makers found to have misled safety regulators; require new technology in cars, such as "black boxes," which record crash data; and make public more vehicle-design information. The measures would also prohibit auto-safety regulators from immediately going to work as lobbyists after leaving the government.

Safety advocates have said those measures would force auto makers to be more forthright in reporting potential vehicle defects and would prevent crashes.

Auto makers have said the technology mandates are too prescriptive and have argued for the Transportation Department to show more flexibility in setting vehicle standards than the proposals now permit. They have also voiced concerns that proposed public-disclosure requirements could lead to the release of sensitive design information and prompt a flurry of consumer lawsuits.

Floorplan program set for spring

Neil Roland

Automotive News -- October 18, 2010 - 12:01 am ET

The federal government has suspended its floorplan financing program for small dealerships and now plans to have a new program offering larger loans operating in the spring, a Small Business Administration official said.

The new, federally backed loans will be accessible to most dealerships, said SBA spokesman Michael Stamler.

The limit on SBA-backed floorplan financing was raised to $5 million from $2 million by a law enacted last month. The change seeks to improve a 17-month SBA program that never got off the ground and was suspended Sept. 30, an internal agency document shows.

The SBA is setting up a lenders' conference next month to line up more participation in the program and seek suggestions for program regulations to be adopted in February.

Dealers should wait until at least late March or early April to apply for assistance, said Grady Hedgespeth, director of the SBA's Office of Financial Assistance.

"We're trying to move at lightning speed," he said.

The new program, pushed by President Barack Obama and congressional Democrats, seeks to provide more credit for dealerships and other small businesses while the economy is still struggling.

Under the program, dealers apply to banks for floorplan credit of as much as $5 million. The SBA guarantees repayment of 75 percent of the loan.

The new regulations will address nuts-and-bolts questions of how the financing will work, including questions about interest rates and repayment terms, Hedgespeth said.

In part, the standards will seek to cut federal red tape for large banks to increase their participation in the program, he said.

After the regulations are announced, lenders will need at least six more weeks to consider whether to participate and adjust their computer systems, Hedgespeth said.

About 5,700 more dealerships than before will be eligible for the program as a result of an SBA rule adopted this month, Stamler said. The rule allows dealers with 200 or fewer employees to qualify as small businesses.

The vast majority of all U.S. dealerships may be eligible for the federally backed loans, the SBA spokesman said.

Under the previous program, only dealerships with less than $29 million in average annual receipts were eligible. About half of the 18,000 dealerships in the United States would have qualified, the National Automobile Dealers Association estimated.

Only about 75 SBA-backed loans were extended for about $75 million between May 2009 and the end of September 2010.