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To: NIADA
From: Federal Advocates
Subject: August 2012 Monthly Report

Note: Congress is in recess until after Labor Day.

Political Action Committee Fund

This month a discussion was held by the Legislative Committee on the process and details regarding formation, implementation, and execution of a Federal PAC. More details to be forthcoming from the Association.

Auction Sales

To date, there have been no additional communications from the Congress on this issue. However, as previously reported, we believe that there is still interest from the Hill (specifically Senator Pryor and the House Energy and Commerce Committee) in exploring the impact of the current auction sale process on consumers and law enforcement. While legislation, if it comes to that, would not materialize this year, there may be efforts to pursue various issues that would involve the Association and other key stakeholders. For example, we continue to wait on a list of questions for NAAA from the Democratic staff of the House Energy and Commerce Committee and staff of Congressman Henry Waxman (D-CA).

Status UPDATE: unchanged from the July report.

Rental Cars (S.1445; S.3502; and, H.R. 6094)

Raechel and Jacqueline Houck died in a 2004 California accident when the Chrysler PT Cruiser they rented from Enterprise apparently began leaking steering fluid and caught fire before crashing into a truck. The rented car had been under a safety recall for the potential fire hazard and Enterprise was aware of that. As a result of the accident, four things have happened to date. First, the Houck family sued Enterprise, and after a lengthy

legal fight, the company admitted negligence and was required to pay $15 million in damages to the family. Secondly, S. 1445, the Raechel and Jacqueline Houck Safe Rental Act of 2011, was introduced on July 28, 2011, by Senator Schumer (D-NY) and cosponsored by Senators Feinstein and Boxer, both of California. The bill makes it unlawful for a rental company, unless the defect or noncompliance has already been remedied, to rent, lease, or sell a covered vehicle on or after the earlier of: (1) the receipt by the company of a Secretary of Transportation (DOT) ordered notification from the manufacturer that the vehicle or equipment is defective or is noncompliant with federal motor vehicle safety standards; or (2) when the vehicle or equipment manufacturer gives notice to owners, purchasers, and dealers that the vehicle or equipment contains a defect or is noncompliant. It requires a rental company that receives a notification of a vehicle or equipment defect or noncompliance during the vehicle rental or lease period to: (1) contact the renter or lessee and any authorized driver of the covered vehicle about the defect or noncompliance; and (2) offer to provide them, at no additional cost, with a comparable alternative vehicle until the defect or noncompliance has been remedied; treats violations of the requirements of this Act as unfair or deceptive acts or practices under the Federal Trade Commission Act and subjects persons who violate such requirements to certain penalties; and, requires the Administrator of the National Highway Traffic Safety Administration (NHTSA) to report to Congress on: (1) sales of motor vehicles to rental companies without standard safety features, and (2) sales by rental companies of covered vehicles known to include safety defects before they are recalled. Thirdly, Senator Boxer formally requested that Enterprise, Avis, Hertz, and Dollar Thrifty sign a pledge promising not to rent or sell cars under safety recall until those cars are fixed. To date, only Hertz has signed the pledge. While all three of the remaining companies support Federal legislation to ensure rental car safety, all maintain that their companies address safety recalls in a timely fashion, and that any legislation should also cover other businesses that transport passengers, like limousine and taxi companies. Accordingly, on August 2, Senator Boxer introduced S. 3502, the Rachel and Jacqueline Houck Safe Rental Car Act of 2012, with Senator Feinstein (D-CA) as cosponsor. The bill requires notification by car rental companies to renters of any defect or noncompliance regarding the rented vehicle at issue; imposes certain limitations on sales, leases or rentals by rental companies; holds rental companies to the same standard of responsibility as dealers with respect to various vehicle inspection, investigation and records requirements; and, authorizes the US DOT to study “the effectiveness of the amendments made by (the bill) and other related activities of rental companies.” Fourthly, on July 10, Congresswoman Lois Capps (D-CA23) introduced H.R. 6094, same title as the Senate bill, with three cosponsors. The bill was referred to the House Energy and Commerce Committee. It prohibits the rental of motor vehicles under a safety recall because of a defect related to motor vehicle safety or noncompliance with an applicable motor vehicle safety standard until the defect or noncompliance is remedied, and for other purposes.

Status Update: rental car company bill introduced by Senator Boxer.

MAP21/S.1449, the Motor Vehicle and Highway Safety Improvement Act

On July 6, the President signed the $105B transportation bill. The bill contains several provisions designed to increase transparency and accountability at NHTSA and in the auto industry. The bill adopts a modified S.1449 approach on establishing public accessibility to vehicle recall information and further modifies provisions addressing the set of communications with dealers that must be made available to the public. The bill strikes the provision regarding public availability of early warning reporting data. The bill also strikes a provision imposing new post-employment restrictions for vehicle safety officials at NHTSA, but retains language calling on the inspector general to report on the issue. The bill slightly modifies the whistleblower protection provision and calls on the Government Accountability Office to examine this and other such provisions. The bill slightly modifies the provision directing NHTSA to study crash data collection. And the bill makes slight modifications to NHTSA's authority to require additional recall notifications. All of the above are in lieu of S.1449, as passed by the Senate. The bill does NOT include any provisions regarding auction sales, rental cars, or recall requirements imposed on dealers. Most of the provisions of interest require the promulgation of regulations.

Federal Agency Regulatory Review

Last year the President issued Executive Orders 13563 and 13579, which called upon Federal agencies including independent agencies such as the FTC, to prepare plans for the periodic review of existing regulations in order to determine whether those regulations should be modified, streamlined, expanded, or repealed. On March 9, the FTC announced its updated 10-year regulatory review schedule. Other agencies of interest are EPA, DOT, and SBA. Working in conjunction with NADA and NIADA, the relevant regulations will be identified for possible comment.

Other Legislation of Interest

S.474, the Small Business Regulatory Freedom Act of 2011
Senator Olympia Snowe (R-ME) introduced S.474 on March 3, 2011. To date, it has 12 cosponsors. The bill was referred to the Committee on Homeland Security and Government Affairs.

The "Small Business Regulatory Freedom Act of 2011" amends the Regulatory Flexibility Act to revise the rulemaking process with respect to small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

It defines "economic impact" with respect to a proposed or final rule to mean: (1) any direct economic effect of a rule on small entities; and, (2) any indirect economic effect on such entities, including potential job creation or job loss.

It expands review of agency rulemaking to permit small entities to seek judicial review of initial regulatory flexibility analyses and to obtain an injunction of a proposed rule that is noncompliant with RFA requirements.

It requires each agency to establish a plan for the periodic review (every eight years) of: (1) rules that have a significant adverse economic impact on small entities; and, (2) any small entity compliance guide required to be published by an agency. It sets forth criteria for review of a rule, including the continued need for the rule, the complexity of the rule, and the impact of the rule on small entities. It terminates any rule if the issuing agency has failed to complete a required periodic review.

In addition, it expands to all agencies the procedures for gathering comments on rules that will have a significant economic impact on small entities. Requires each agency to review on a periodic basis its policies or programs for imposing regulatory penalties on small entities; imposes certain additional requirements on agencies prior to the issuance of a final rule.

Status UPDATE: unchanged from the July report.

S.330, the Consumer Recall Protection Act of 2011
Senator Charles Schumer (D-NY) introduced S. 330 on February 14, 2011. To date, it has no cosponsors. The bill was referred to the Committee on Commerce, Science, and Transportation.

The bill prohibits a person from selling to consumers any covered product that is subject to a recall. It defines a "covered product" to include a motor vehicle or replacement equipment, food, drugs, devices, cosmetics, a biological product, a consumer product, a meat or meat food product, a poultry or poultry product, and an egg or egg product. It defines "recall" with respect to a motor vehicle or replacement equipment when the Secretary of Transportation makes a determination that a motor vehicle contains a defect related to safety or does not comply with specified motor vehicle standards.

The bill exempts from such prohibition the sale of a covered product that was subject to a recall because of a defect in such product if: (1) such defect was remedied prior to such sale; and (2) the seller of such product notifies such consumer of such recall, defect, and remedy. It treats a violation of such prohibition as a violation of a rule defining an unfair or deceptive act or practice described under the Federal Trade Commission Act, and requires the Consumer Product Safety Commission (CPSC) to establish, maintain, and make available to the public a searchable list of covered products that are subject to a recall.

Status UPDATE: unchanged from the July report.

H.R.860 and S.110, "Promoting Charitable Donations of Qualified Vehicles Act of 2011"

Senator John Ensign (R-NV) introduced S. 110 on January 25, 2011. To date it has no cosponsors. It was referred to the Committee on Finance. Congressman John Larson (D-CT) introduced H.R. 860 (identical to S. 110) on March 1 with 183 (now 305) cosponsors. The bill was referred to the Committee on Ways and Means.

The bill amends the Internal Revenue Code with respect to the charitable tax deduction for contributions of qualified vehicles (i.e., motor vehicles, boats, or airplanes) to: (1) set forth revised acknowledgment requirements for vehicles valued at $2,500 or less and vehicles valued at more than $2,500; and (2) revise the penalty for submitting a fraudulent acknowledgment.

According to the Internal Revenue Service, as a result of Congress tightening the deductibility rules in 2005, the volume of used car donations reduced by approximately 67%. Specifically, under the 2005 rules, if the charity sells the automobile, the donor's deduction is limited to the gross proceeds from the sale. This impacts the donor in two ways – (1) proceeds are normally less than the private sale value of the car; and, (2) a donor claiming a deduction of $500 or more cannot claim the deduction until he or she received a written acknowledgement from the charity showing the gross sales proceeds. In addition, if the charity uses the automobile in its programs, the donor can deduct the private party sale value of the automobile, and only needs an acknowledgement from the charity of that use.

The major proposed changes in the legislation are as follows: (1) the charity won't have to sell the automobile before it provides written acknowledgement to the donor; (2) the gross proceeds from the sale of the automobile by the charity will have no bearing; (3) for any car where the donor seeks a deduction of $2,500 or less, the donor's deduction will be based on the value of the car determined by the charity under rules set by the Internal Revenue Service (the existing rule suggests that this would be private sale value); (4) for a car where the donor seeks a donation greater than $2,500, the deduction will be based on an appraisal provided by the charity; and, (5) the charity's use of the automobile will have no bearing (the advantage for donating to a charity that will use the automobile in its programs – rather than sell it – will reduce significantly. Under the proposed legislative changes, because charities will now be responsible for providing a statement of fair market value or an appraisal, they are more likely to use commercial dealers to handle their automobile donation programs.

Status UPDATE: eight additional cosponsors added on House bill since the July report.

H.R.1449, the Motor Vehicle Owners Right to Repair Act of 2011

Congressmen Edolphus Towns (D-NY) and Todd Platts (R-PA) introduced H.R.1449 on April 8, 2011. To date it has 33 (now 51) cosponsors. It was referred to the Committee on Energy and Commerce.

The “Right to Repair Act” protects motoring consumers from vehicle repair costs by requiring that car manufacturers: (1) provide to the vehicle owner and service provider all information necessary to diagnose, service, maintain, or repair the vehicle; (2) offer for sale to the vehicle owner and service providers any related tool or equipment; and, (3) provide the information that enables tool companies to manufacture tools with the same functional characteristics. The legislation further provides car companies with protections for their trade secrets, only requiring them to make available the same non-proprietary diagnostic and repair information they provide their franchised dealers. Lastly, the bill authorizes enforcement by the Federal Trade Commission and civil actions by the states.

Status UPDATE: unchanged form the July report.

H.R.527, the Regulatory Flexibility Improvements Act of 2011
Congressman Lamar Smith (R-TX), Chairman of the House Judiciary Committee, introduced H.R. 527 on February 8, 2011. To date it has 26 cosponsors. It was reported by the Judiciary Committee on July 7, 2011, and reported by the Small Business Committee on November 16, 2011. Passed the House on Dec. 1 by recorded vote of 263-159. Referred to the Senate Homeland Security and Governmental Affairs Committee.

In 1980, Congress passed the Regulatory Flexibility Act (RFA), which was aimed at relieving the stress of onerous regulation on small businesses. The RFA mandates that all Federal agencies examine the impact of their proposed rules on small businesses, and if those impacts are significant, the agency must consider less burdensome alternatives.

Generally, H.R. 527 would ensure that Federal agencies comply with the RFA and close loopholes used by agencies to avoid compliance with the RFA. This bill would also require a better assessment of the impacts that regulations will have on small businesses, forcing agencies to perform better periodic review of rules, and granting the Chief Counsel for Advocacy at the Small Business Administration greater powers for enforcement of the RFA.

Specifically, it amends the RFA to revise the definition of "rule" under such Act to exclude a rule of particular (and not general) applicability relating to rates, wages, and other financial indicators and to define "economic impact" with respect to a proposed or final rule as any direct economic effect on small entities from such rule and any indirect economic effect on small entities that is reasonably foreseeable and that results from such rule. Includes tribal organizations within the definition of "small governmental jurisdictions" for purposes of such Act.

It requires initial and final regulatory flexibility analyses to: (1) describe alternatives to a proposed rule that minimize any adverse significant economic impact or maximize the beneficial significant economic impact on small entities, and (2) include revisions or amendments to a land management plan developed by the Secretary of Agriculture or the Secretary of the Interior under specified Acts.

It expands elements of initial and final regulatory flexibility analyses under RFA to include estimates and descriptions of the cumulative economic impact of a proposed rule on a small entity. It repeals provisions allowing a waiver or delay of the completion of an initial regulatory flexibility analysis.

It requires each agency to publish in the Federal Register a plan for the periodic review of existing and new rules that have a significant impact on a substantial number of small entities to determine whether such rules should be continued, changed, or rescinded; provides for judicial review of an agency final rule for compliance with RFA requirements after the publication of such rule; and, grants federal courts of appeal jurisdiction to review all final rules issued in accordance with RFA.

Status UPDATE: unchanged from the July report.

H.R.229, the Michael Jon Newkirk Transportation Safety Enhancement Act of 2011
Congresswoman Sheila Jackson Lee (D-TX), Ranking Member of the House Subcommittee on Transportation Security of the House Committee on Homeland Security, introduced H.R. 229 on January 7, 2011. To date it has no cosponsors. It was referred to the Committee on Transportation and Infrastructure.

The legislation directs the Secretary of Transportation to withhold a graduated percentage of federal-aid highway funds of states for FY2014 and thereafter that do not enact or enforce a law that requires the annual inspection of registered motor vehicles so that they meet or exceed state motor vehicle standards (including the operability of vehicle seatbelts and speedometers).

The bill is named after Michael Jon Newkirk, an 18 year old who passed away after being involved in a head-on collision while a passenger in a friend’s truck. The police report states that he was not wearing a seatbelt. However, on a visit to see where her son died, his mother, Suzanne, discovered why: it was broken. Upon closer investigation, she learned that the only kinds of seatbelts that require checks are lap belts and automatic seatbelts. But three-point harness seatbelts – the kind in most new cars – aren’t specifically mentioned. Across the nation, nearly 20 states don’t do any safety inspections at all – a process that usually includes checking seatbelts. That’s when Suzanne began to work with Representative Lee to enact legislation to establish national inspection standards, including operable seatbelts, and require states to adhere to them.

Status UPDATE: unchanged from the July report.

H.R.164, the Damaged Vehicle Information Act
Congressman Cliff Stearns (R-FL), Chairman of the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations, introduced H.R. 164 on January 5, 2011. To date the bill has no cosponsors. The bill was referred to the Committee on Energy and Commerce.

The bill directs the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) to issue a regulation to require greater disclosure of information relating to the market value and safety of damaged motor vehicles. Specifically, it requires all persons who terminate a contract related to a motor vehicle due to flood or water damage, collision, fire damage, theft and recovery, or any other circumstance that adversely affects the fair market value of such motor vehicle, to disclose to the public, in a commercially reasonable, electronically accessible manner, the following: the vehicle identification number of the motor vehicle; the date of the termination of the contract; the odometer reading of the motor vehicle on the date of the termination of the contract; whether, as a result of the incident that resulted in the termination of the contract, one or more airbags in the motor vehicle were deployed; and, the cause of the termination of the contract, including whether such cause was flood or water damage, collision, fire damage, theft and recovery, or another cause. The proposed legislation also states that the private sector will be responsible to collect, aggregate and disclose to the public the fair market value and safety information with respect to the damaged vehicle and all such information shall be accessible by vehicle identification number.

In January 2009, The National Motor Vehicle Title Information System was implemented, providing a national database of vehicles compiled from state, salvage and insurer reporting. It requires insurance companies and salvage yards to report vehicles that are severely damaged or totaled, giving consumers access to such information as odometer readings and theft records. The implementation stemmed from a 2008 court case in which Public Citizen Inc. filed the suit to fight for a used car database that was established by Congress in 1992 in the Anti-Car Theft Act. However, the U.S. Department of Justice had never made the system available to the public.

Status UPDATE: unchanged from the July report.

H.R. 4471, the “Gasoline Regulations Act of 2012’
On May 17, the House Committee on Energy and Commerce reported H.R. 4471, the “Gasoline Regulations Act of 2012.” It has 15 (now 25) cosponsors.

The bill would establish a temporary interagency committee, chaired by the Secretary of Energy, to estimate the cumulative impacts of certain EPA rulemakings and actions on gasoline and diesel fuel prices, jobs, the economy, as well as other cumulative costs and cumulative benefits, and submit a final report to Congress within 210 days after enactment; defer until at least 6 months after submission of the final report the following new regulations: (i) Tier 3 motor vehicle emission and fuel standards; (ii) new or revised performance or emissions standards applicable to petroleum refineries; and (iii) new ozone standards; and, require EPA consider cost and feasibility in setting new ozone standards.

Status UPDATE: unchanged from the July report.

MacMurray Petersen & Shuster LLP

SHAUN K. PETERSEN
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To: **National Independent Automobile Dealers Association**

From: **Shaun K. Petersen**

Re: **August 2012 Regulatory Update**

Date: **September 4, 2012**

I. Consumer Financial Protection Bureau

A. Procedural Rules To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination

The CFPB has can assert jurisdiction over any financial entity that otherwise is not covered under the definition of a "larger market participant" if the CFPB has reasonable cause to believe that such an entity is posing a risk to the market. These proposed procedural rules have the potential to impact our members that are not otherwise defined as a larger market participant.

The procedural rules outline the process under which the CFPB would find an entity to be a risk and the process by which that entity is entitled to challenge the proposed determination before being subject to the CFPB's supervision. If the CFPB staff has "reasonable cause" to believe the entity is a risk, the Deputy Director will send a written notice to the entity explaining the why the Bureau believes that risk exists. They will then provide an opportunity for the entity to respond in writing and to participate in an informal telephone hearing between the CFPB staff and the Assistant Director. The response from the entity would include any written information the CFPB could and should consider. After this information hearing, the Assistant Director would submit a written, proposed order to the Director of the CFPB to bring the entity under the supervisory oversight of the CFPB. If the determination is made to supervise the entity, the CFPB will do so for a minimum of two years and can make a petition to be relieved of that obligation after that time, but only once annually.

We reviewed these proposed rules and found several concerns that we asked the CFPB to consider through comments submitted to them. Our first significant concern was the lack of clarity from the Bureau as to the type of conduct that the Bureau believes is "reasonable cause" to find an entity to be a risk. The proposed rule does not define "reasonable cause" or provide any framework of

conduct the Bureau believes would create the risk. We asked the CFPB to revise the rule to provide this definition. We also asked the CFPB to limit the risk to inappropriate or undisclosed financial risk to the consumer so that the scope of misconduct the Bureau would attempt to regulate is not overly broad.

Second, we raised concerns about the information that would be used to make this determination. Presumably, much of this information will be made on consumer complaints, but the rules do not specify the information the Bureau will use in making its risk determination. We asked the Bureau to address that short fall.

We also pointed out what we considered to be an unfair process notwithstanding the CFPB's attempt to keep it informal. The procedures proposed in this draft rule would not allow for the entity potentially subject to conduct discovery and examine the same material the CFPB reviewed in making its determination. The rule would not allow an entity to depose witnesses, review documents, ask interrogatories of either consumer complainants or CFPB staff as to what forms the basis of the "reasonable cause." We belief it is patently unfair to be placed at such a disadvantage when compared to the CFPB staff who has access to consumers or other information in making that determination. An entity should be provided the same level of access in order to properly defend itself.

We also asked the CFPB to consider allowing an entity the opportunity to rebut the Assistant Director's recommendation to the Director before the Director makes his final recommendation.

A copy of the comments submitted to CFPB in response to this rule is attached.

B. The CFPB has proposed a number of changes to Reg Z, in the mortgage arena. While this does not directly affect the automotive industry, it may be an indicator for proposed regulation in the near future.

1. The proposed mortgage regulation would require prompt crediting of payment to mortgage loan and prompt response time for payoff amount inquiry.

2. Reg Z already requires higher-price mortgage lenders to look at the consumer's ability to repay the loan before lending. The CFPB amended the regulation to expand its scope to any credit transaction secured by a dwelling. This Rule becomes effective January 21, 2013.

3. The CFPB is proposing changes to the definition of "finance charge" in a mortgage transaction by eliminating certain exclusions that were not otherwise considered when

calculating an APR. The CFPB has invited comments to the proposed changes to be submitted by November 6, 2012. We will analyze this proposed change for any potential impact it may have if something similar was adopted in the auto finance sector.

C. No significant enforcement action has been taken by the CFPB in the last two months which affects the retail automotive industry.

II. Federal Trade Commission

A. The FTC recently held a round table discussion about the issues facing consumers and businesses relating to online marketing and privacy, specifically on mobile devices and on social media websites. The round table was used as a fact finding tool for potential future legislation.

B. No significant enforcement action has been taken by the FTC in the last two months which affects the retail automotive industry.

III. Environmental Protection Agency

A. On August 28, President Obama finalized the fleet fuel standards at 54.5 MPG by 2025.

B. The EPA criminal charges against an individual in Alaska for abandoning hazardous waste without proper storage containers or disposal procedures. He pleaded guilty to all charges on August 17. Dealers who close and have any hazardous waste left at their dealership should be cognizant of this potential.

C. Criminal charges were also pressed against a Louisiana man for negligently disposing of and allowing discharge of hazardous waste to discharge into the public sewer (without being treated). He pleaded guilty to the charges.

IV. Internal Revenue Service

A. The IRS made interim changes to the application process for Individual Taxpayer Identification Numbers (ITIN). Applicants must present original, not notarized documents, to the IRS to receive their ITIN.

B. No significant enforcement actions have been taken recently by the IRS which would impact the retail automotive industry.

V. National Highway Traffic Safety Association

A. No significant regulatory or enforcement actions have been taken recently by NHTSA which would affect the retail automotive industry.

VI. National Motor Vehicle Title Information System

A. The NMVTIS Advisory Board meeting is scheduled to be held in Washington, DC on September 11.