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April 30, 2013

To: NIADA
From: Federal Advocates
Subject: April 30 Monthly Report

Rental Cars Recall

The Boxer-Schumer Rental Cars Recall bill has still not been introduced. The word still is that Schumer will take the lead in the Senate but if he doesn't introduce the bill soon, Boxer will. Reports are that it will be the same bill that Boxer-Schumer drafted at the end of the last Congress. It will not address concerns raised by various stakeholders. Hearings are expected after introduction. Manufacturers and dealers are expected to testify. It is still not clear the extent to which the Senate is serious about moving ahead on this issue. In the House, Congresswoman Capps, a Democrat, is also expected to introduce an identical bill. She is a member of the House Committee on Energy and Commerce that would have jurisdiction over the bill. No House bill to date. NIADA has been coordinating its strategy on this issue with NADA. A joint amendment has been prepared basically exempting both new and used car dealers with rental car operations. Also, we have been working with various Republican members on the House Energy and Commerce Committee to express our opposition to the bill.

Auction Sales

To review, we will continue to report on this issue even if there are no additional monthly developments. We do so in recognition of its importance and the possibility of congressional action at some point. However, to date there have been no further developments from the Hill. Also, no further developments between the industry and law enforcement. Last month, Senator Rockefeller, Chair of the Senate Commerce Committee that has jurisdiction over this issue, announced his legislative priorities for this year. He did not mention auto consumer or the auction sale issue.

H.R. 749, Eliminate Privacy Notice Confusion Act

This was H.R. 5817 that was introduced by Congresswoman Luetkemeyer last Congress and passed the House. He reintroduced it in the new Congress on February 15 and the bill passed the House on March 12 without amendment. On March 13, it was referred to the Senate Committee on Banking, Housing, and Urban Affairs. The bill amends the Gramm-Leach-Bliley Act to exempt from its annual privacy policy notice requirement any financial institution which: (1) provides nonpublic personal information only in accordance with specified requirements, and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from those disclosed in the most recent disclosure sent to consumers. On March 21, Senator Brown (D-OH) introduced companion bill S.635, the Privacy Notice Modernization Act of 2013. With 11 cosponsors, the bill was also referred to the Committee on Banking, Housing, and Urban Affairs.

Status Update: H.R. 749 passed the House and Senate companion bill introduced.



To: National Independent Automobile Dealers Association

From: Shaun K. Petersen

Re: April 2013 Regulatory Update

Date: May 1, 2013

I. Consumer Financial Protection Bureau

A. Rule on Administration of Civil Penalty Fund (CPF)

The CFPB issued a final rule and proposed revisions to the rule governing the Bureau's CPF. The Dodd-Frank Act established the CPF for the CFPB to deposit civil penalties collected in enforcement actions. The penalties collected are to be used for payments to the victims of activities for which the penalty was imposed. The CFPB can use the funds for education and financial literacy programs in certain circumstances. The fund cannot be used for general operating expenses.

The CFPB has taken the position that the rule is "interpretative and procedural and relates to benefits" thus it becomes effective upon filing in the Federal Register. However, the CFPB went on to state that the "the Bureau believes public input on the Final Rule would be valuable...." Comments are due within 60 days of publishing the rule in the Federal Register.

B. Office of Financial Institutions and Business Liaison

The CFPB announced the creation of a new office to enhance communication and collaboration between bank and nonbank trade associations, businesses, and financial institutions. Dan Smith has been named the Assistant Director of this new office. Mr. Smith previously served as the Director for Industry and State Relations at Freddie Mac.

C. Supreme Court review

Although the CFPB is not a party to the case, the government has sought review by the Supreme Court of the decision in *Noel Canning v. NLRB*, in which the DC Circuit Court of Appeals declared the Obama appointments of members to the National Labor Relations Board to be unconstitutional because the Senate was still in session. This is significant because Richard Cordray was appointed Director of the CFPB at the same time as the NLRB members were

appointed. If the Supreme Court affirms the *Canning* decision, it could have impact on Mr. Cordray's appointment.

II. Federal Trade Commission

No significant updates.

III. Internal Revenue Service

- a. The IRS has extended the tax filing deadline for any residents of Suffolk County, Mass. by three months in light of the Boston Marathon bombing. Residence will automatically receive the extension. Any tax payer outside of Suffolk County who's tax preparer lives in Suffolk may also qualify for an extension. Those tax payers must contact the IRS at 1-866-562-5277 to obtain an extension.
- b. Tax payers in the South and Midwest who were affected by severe storm near the April 15th filing deadline may qualify for late payment penalty relief, if they can show reasonable cause why they were unable to file their taxes by the 15th. Tax payers in the affected areas who receive penalty notices should contact the IRS.

IV. Environmental Protection Agency

No significant updates

V. Department of Labor

No significant updates

VI. National Highway Traffic Safety Administration

No significant updates

VII. National Motor Vehicle Title Information System

No significant updates

VIII. Department of Justice

- a. The Department of Justice brought charges against an individual in North Carolina for odometer tampering. The DOJ claims the defendant bought vehicles through online advertisements and replace the odometers with other, low mileage, odometers. One of the vehicles subject to the investigation is claimed to have been "rolled back" over 100,000 miles.

IX. Significant State Law/Regulatory Updates

A. Pending Legislation

- a. Ohio: HB 128
 - i. The house bill amends portions of the salvage motor vehicle laws, specifically allowing salvage vehicles to persons other than motor vehicle salvage dealers.
- b. California: AB 501
 - i. The bill changes the definition of a tire broker to exclude a vehicle dealer or other retailer primarily engaged in the retail sale, service and installation of tires.
- c. California: AB 964
 - i. The bill prohibits dealers from advertising a vehicle as certified if there is an open safety recall. The bill would also require dealers to provide a written disclosure document informing the consumer if any of 9 specific facts exist. The bill would also require dealers to conduct a vehicle inspection and provide an inspection report of the components inspected.
- d. California: SB 686
 - i. This bill prohibits dealers from selling, renting, loaning, or leasing for term of less than four months if the vehicle is subject to an open safety recall.

B. Case Law Updates:

- a. California: *Vazquez v. Greene Motors*, 2013 Cal. App. LEXIS 243

The California court upheld a preprinted arbitration provision in a sales contract. The consumer claimed that he had not read nor was he aware of the arbitration provision, thus making the provision unconscionable. The Court rejected this claim, highlighting the fact that there was a provision, in all caps, above his signature that alerted him to the arbitration provision along with the fact that pre-printed arbitration provisions are standard in the industry.