



**To:** National Independent Automobile Dealers Association  
**From:** Shaun K. Petersen  
**Re:** December 2013 Regulatory Update  
**Date:** January 1, 2014

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**I. Consumer Financial Protection Bureau**

a. Ally Financial Settles with CFPB Regarding Alleged Equal Credit Opportunity Act Violations

The CFPB and Department of Justice (DOJ) entered into an agreement with Ally Financial Inc. and Ally Bank (Ally) to resolve allegations that Ally 235,000 minority borrowers paid higher interest rates for their auto loans between April 2011 and December 2013 because of Ally's discriminatory pricing system. Ally purchased these installment contracts from dealers. Ally allowed dealers to charge a higher interest rate than its established buy rate. Ally would then compensate the dealer with all or some of the revenue from the dealer mark up. The CFPB and DOJ alleged that Ally violated the Equal Credit Opportunity Act by charging African-American, Hispanic, Asian, and Pacific Islander borrowers higher dealer markups for their auto loans than similarly-situated non-Hispanic white borrowers. The agencies believe discrimination resulted from the dealer markup and compensation policies and Ally's failure to implement an effective compliance program to monitor its loan portfolio for discrimination.

Ally was agreed to pay \$80 million in damages to refund consumers and to pay to hire a settlement administrator to distribute funds to victims. Ally also agreed to monitor dealer markups to prevent future discrimination or eliminate dealer markups altogether. Ally will implement a compliance program that will include dealer education, corrective action against dealers when there are dealer disparities, and portfolio-wide analysis of pricing data for disparities. Finally, Ally has agreed to pay a civil penalty of \$18 million.

A copy of the settlement agreement can be found here:

[http://files.consumerfinance.gov/f/201312\\_cfpb\\_consent-order\\_ally.pdf](http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ally.pdf)

b. CFPB Arbitration Roundtable

The CFPB held a roundtable discussion related to pre-dispute arbitration clauses in consumer financial product contracts. In addition, the CFPB released some preliminary results from its study of arbitration agreements as required by passage of the Dodd-Frank Act. The preliminary results of the study and the roundtable discussion focused on the CFPB's findings that large banks use arbitration agreements more often than community banks and credit unions. The discussion also considered the CFPB's conclusion that a low number of consumers actually filed arbitration agreements particularly those with small claims. Some of the conversation focused on how fair arbitration clauses are to consumers, specifically those which contain class action waivers. The CFPB stated that a future component of its arbitration study will be an attempt to examine the relative benefits of class action and arbitration.

A copy of the preliminary results from the study, which the CFPB states is subject to revision, can be found here: [http://files.consumerfinance.gov/f/201312\\_cfpb\\_arbitration-study-preliminary-results.pdf](http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf)

**II. Department of Justice**

See Consumer Financial Protection Bureau update

**III. Department of Labor**

a. **OSHA Complaints Now Accepted Online**

Whistleblowers can now file complaints with the Office of Safety and Health Administration online. Previously, workers could call in or mail in complaints. Workers who submit complaints will be covered by the 22 statutes which provide whistleblower provisions.

b. **OSHA Proposes Adjustments to HIPAA and the Affordable Care Act**

The proposed adjustments would provide employers and workers more options for their health care coverage while receiving the protections of the Affordable Care Act. The proposal would count employee assistance programs (EAPs) as excepted benefits if the benefits are free to employees and do not provide significant benefit in the nature of medical care. Examples of EAPs would include short-term substance abuse counseling, financial counseling and legal services. Additionally, the proposal exempts EAPs from the private insurance market reform. Further, EAP coverage would not make individuals ineligible for a premium tax credit for enrolling in qualified health plans through the Health Insurance Marketplace.

#### **IV. Environmental Protection Agency**

##### a. Annual Fuel Economy Guide Released by EPA and Department of Energy

The EPA and the Department of Energy (DOE) released the 2014 Fuel Economy Guide for consumers to compare fuel efficiency and greenhouse gas emissions on vehicles. The guide provides “Top Ten” lists allowing consumers to see the most efficient advanced technology vehicles as well as the most efficient gasoline and diesel powered vehicles. An online version of the guide is available through [www.fueleconomy.gov](http://www.fueleconomy.gov).

#### **V. Federal Trade Commission**

##### a. Two Professional Associations Settle with FTC Regarding Restrained Competition

The Music Teachers National Association and the California Association of Legal Support Professionals were both alleged to have restrained train among its members in violation of the Sherman Anti-Trust Act. The Music Teachers Association’s code of ethics restricted members from actively recruiting students from other members. The Legal Association prohibited undercutting prices when attracting a member firm’s client and speaking ‘disparagingly’ of another member.

##### b. First Enforcement Action of Risk-Based Pricing Rule Violations

The FTC and Time Warner Cable, Inc. agreed to settle allegations that Time Warner violated the Risk-Based Pricing Rule. This settlement is the first settlement that the FTC has brought against an entity alleging violations of the rule. The FTC states that Time Warner pulls credit reports of prospective customers to evaluate their credit qualifications for service. The FTC alleges that Time Warner requires consumers to pay a deposit or pre-pay the first month’s bill if there are negative annotations on the credit report. However, consumers without such notations on their credit reports are not required to make a deposit or pre-pay. The FTC states that Time Warner did not provide those consumers required to make a deposit or prepay with a risk based pricing notice. Time Warner agreed to pay a \$1.9 million civil penalty.

A copy of the settlement agreement can be found here:

<http://www.ftc.gov/sites/default/files/documents/cases/131219timewarnerstip.pdf>

#### **VI. Internal Revenue Service**

No Significant Updates

**VII. National Highway Traffic Safety Administration**

No Significant Updates

**VIII. National Motor Vehicle Title Information System**

No Significant Updates

**IX. Significant State Law/Regulatory Updates**

**a. Pending Legislation/Regulation**

**i. Kentucky:**

2013 KY Regulation Text 20542: The proposed rule would prohibit the use of name of a dealership which is so similar to the name of an existing dealership that it would confuse or mislead the public.

2013 KY Regulation Text 20544: The regulation would provide examples of what constitutes false or misleading advertisement.

**b. Passed Legislation/Regulations**

**i. Mississippi**

2013 MS Regulation Text 13951: Mississippi adopted new standards for determining what is unfair and deceptive advertising of motor vehicles.

**X. Significant Case Law Updates**

No Significant Updates



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To: NIADA  
From: Federal Advocates  
Subject: December Monthly Report

### **Commerce Committee Hearing**

On November 20, the Senate Committee on Commerce, Science and Transportation held a hearing on “Soldiers as Consumers: Predatory and Unfair Business Practices Hurting the Military Community. Among the witnesses was Holly K. Petraeus, Assistant Director, Office of Servicemember Affairs, Consumer Financial Protection Bureau. In her statement and testimony, as well as the statements and testimonies of other witnesses, the automobile industry was cited as partakers of certain predatory practices regarding servicemembers. Subsequent to the hearing, Federal Advocates was contacted by a Committee staffer with whom we have worked on other issues impacting the industry regarding the possibility of submitting a “statement for the record” addressing the various “good business practices” of the Association and individual members pertaining to the military community. That statement is attached.

### **Rental Cars Recall**

No additional legislative developments. On Tuesday, July 30, the Senate Commerce Committee reported S. 921, the rental car recall bill without amendment with the understanding that the Committee would continue working with the stakeholders. To review, NIADA sent opposition letters to key Members of the Committee raising various concerns about the bill and advocating for inclusion of the NIADA/NADA amendment. In addition, NIADA surveyed its membership to get a better assessment of member rental car operations and the bills impact. Also monitoring developments for NAAA. No House bill introduced to date. Last Congress, Congresswoman Capps (D-CA) introduced a companion bill.

### **Auction Sales**

We continue to report on this issue in recognition of its importance and the possibility of congressional action at some point. However, to date there have been no further developments either from the Hill or between the industry and law enforcement.

### **H.R. 2543, End Discriminatory State Taxes for Automobile Renters Act of 2013**

Introduced on June 27 by Congressman Cohen (D-TX) with 6 cosponsors. On September 13 the bill was referred to the Subcommittee on Regulatory Reform, Commercial and Antitrust Law of the Judiciary Committee. The bill prohibits states or local governments from levying or collecting a discriminatory tax (generally, a tax or tax assessment that is applicable to the rental of motor vehicles or motor vehicle businesses or property, but not to the majority of other rentals of tangible personal property within a state or locality) on the rental of motor vehicles, motor vehicle rental businesses, or motor vehicle rental property.

Status Update: Bill added to monitoring process since the last report.

### **S. 1584, Providing Replacement Automobiles for Certain Disabled Veterans and Members of the Armed Forces**

Introduced on October 28 by Senator Sanders (I-VT) with no cosponsors. Hearing held by the Committee on Veterans Affairs on October 30. The bill would increase the amount of government assistance from \$18,900 to \$30,000 for military members to acquire a replacement vehicle for vehicles destroyed in disasters, provided that the eligible member does not receive property insurance compensation for the loss..

Status Update: Bill added to monitoring process since the last report.

### **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 (with 73 cosponsors) 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 20 cosponsors (now 44), the bill was also referred to the Committee on Banking, Housing, and Urban Affairs.

Status Update: One additional sponsors added to S.635 since the last report.

### **S.1029, the Regulatory Accountability Act of 2013**

Introduced on May 23 by Senator Portman with 8 cosponsors (now 9) and referred to the Committee on Homeland Security and Governmental Affairs. The bill amends the Federal regulatory process by specifying issues agency must consider in a rulemaking; various notice requirements for major and high-impact rules; public comment and hearing procedures; judicial review; and, final rulemaking. Last Congress, the Senator introduced a similar bill – S.3468, the “Independent Agency Regulatory Analysis Act of 2012.”

Status Update: No change since the last report.

### **H.R. 1663, Promoting Automotive Repair, Trade and Sales Act of 2013 (PARTS Act)**

Introduced on April 23 by Congressman Issa (CA-49) on a bipartisan basis with 4 cosponsors and referred on June 14 to the Judiciary Subcommittee of jurisdiction. The bill makes it not an act of infringement, with respect to a design patent that claims a component part of a motor vehicle as originally manufactured, to: (1) make, test, or offer to sell within the United States, or import into the United States, any article of manufacture that is similar or the same in appearance to the component part claimed in such design patent if the purpose of such article is for the repair of a motor vehicle to restore its appearance to as originally manufactured; and (2) use or sell within the United States any such same or similar articles for such restorations more than 30 months after the claimed component part is first offered for public sale as part of a motor vehicle in any country. Defines "component part" as a component part of the exterior of a motor vehicle only (such as a hood, fender, tail light, side mirror, or quarter panel), excluding an inflatable restraint system or other component part located in the interior of a motor vehicle. Specifies that an offer to sell include any marketing of an article of manufacture to prospective purchasers or users and any pre-sale distribution. Applies this Act to any patent issued, or application filed, before, on, or after the effective date of this Act. Also on April 23 Senator Whitehouse (RI) introduced on a bipartisan basis the identical bill (S.780) with 2 cosponsors. The bill was referred the same day to the Judiciary Committee. NIADA reviewed the legislation and determined at this point not to lend its name in support. We will continue to monitor further developments.

Status Update: No change since the last report.

### **H.R.2414, the Black Box Privacy Protection Act**

On June 18, Congressman Capuano (MA-7) introduced H.R.2414, the Black Box Privacy protection Act with 10 (13) cosponsors. On July 15, the bill was referred to the Homeland Security Committee Subcommittee. The bill amends the Automobile Information Disclosure Act to require manufacturers of new automobiles to disclose on the information label affixed to the window of the automobile: (1) the presence and location of an event data recorder (commonly referred to as a "black box"), (2) the type of information recorded and how such information is recorded, and (3) that the recording

may be used in a law enforcement proceeding. Sets forth similar requirements for motorcycle manufacturers. Defines "event data recorder" as any device or means of technology installed in an automobile that records information such as automobile or motorcycle speed, seatbelt use, application of brakes, or other information pertinent to the operation of the automobile or motorcycle. Prohibits the manufacture, sale, offering for sale, or import into the United States of an automobile manufactured after 2015 (bearing a model year of 2016 or later) that is equipped with an event data recorder, unless the consumer can control the recording of information. Requires the event data recorder in an automobile or motorcycle, and any data recorded, be considered the property of the owner of the automobile or motorcycle. Makes the retrieval or downloading of recorded data by any other person unlawful, except: (1) with the owner's consent, (2) in response to a court order, or (3) by a dealer or automotive technician to service the vehicle. Requires certain violations to be treated as unfair or deceptive acts or practices under the Federal Trade Commission Act.

Status Update: No change since the last report.

## **Budget Deal**

FYI, the recent budget deal is summarized as follows:

1. The total deal is \$85 billion. About \$45 billion of that replaces sequestration cuts in 2014. About \$20 billion replaces sequestration cuts in 2015. About \$20 billion is deficit reduction atop sequestration.
2. The sequestration relief is evenly divided between defense spending and non-defense discretionary spending. The sequester's cuts to mandatory spending are unaffected.
3. The new policies in the deal are split between revenue through fees -- travelers will see higher prices on airline tickets and federal workers will have to contribute more to pensions -- and spending cuts.
4. Spending will be \$45 billion higher in 2014 than it would've been absent the deal.
5. The deal replaces about half of sequestration's cuts to defense and non-defense discretionary spending in 2014. It replaces about a fourth of them in 2015. That means most of sequestration will go into effect in both years.
6. The deal doesn't include any extension of unemployment insurance.
7. No changes to Medicare and Social Security; no new taxes and no entitlement reform..

For appropriated programs, the agreement sets spending limits for FY 2014 and 2015. Since it reduces the sequester cuts by half for FY 2014, and by 1/4 for 2015, this will result in at least a little more funding for non-defense discretionary programs - transportation, housing, education, etc. One analysis suggests the Transportation/Housing

bill, for example, will see a 2 percent cut from the 2013 funding level, instead of the scheduled 7 percent.

The deal restores "regular order" to the appropriations process, providing appropriators with the authority to adjust the funding levels within the new overall cap. Lastly, it all but guarantees no government shutdown over budget issues for two years.

We think a likely outcome is that TIGER will be funded in 2014 and 2015.

To review, the House passed the "budget deal" on a bipartisan basis. The final tally was 332-94.

-- **YEAS:** 169 Republicans; 163 Democrats.

-- **NAYS:** 62 Republicans; 32 Democrats.

-- **NOT VOTING:** 9.

The GOP opposition was led by Rep. Steve Scalise (R-La.), head of the Republican Study Committee, the chamber's conservative caucus. Scalise was joined by some of the most staunch conservatives: Reps. Justin Amash (R-Mich.), Tim Huelskamp (R-Kan.), Raul Labrador (R-Idaho), Mick Mulvaney (R-S.C.), Thomas Massie (R-Kan.) and Tom McClintock (R-Calif.).

Democratic opposition was led by Barbara Lee, a San Francisco liberal who was the first Democrat to cast a 'no' vote. She was joined by several other liberals, including Reps. Sander Levin (D-Mich.), Linda Sanchez (D-Calif.), Loretta Sanchez (D-Calif.) and Jan Schakowsky (D-Ill.), among others. There was a notable split in the Democratic leadership ranks as House Minority Whip Steny H. Hoyer (D-Md.) voted against the spending plan. Following the vote, the House adjourned for the year.

On December 18 the Senate passed the budget on a 64-36 vote, with nine Republicans joining all Democrats in voting yes. They were: Sens. Susan Collins of Maine, Orrin Hatch of Utah, John Hoeven of North Dakota, Saxby Chambliss and Johnny Isakson of Georgia, Ron Johnson of Wisconsin, John McCain of Arizona, Lisa Murkowski of Alaska, and Rob Portman of Ohio.



## NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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Mr. Chairman and Members of the Committee, my name is Steve Jordan, Executive Vice President of the National Independent Automobile Dealers Association (NIADA) with headquarters in Arlington, Texas. On behalf of the Association, I appreciate the opportunity to submit this statement for the record regarding the Committee's November 20<sup>th</sup> hearing on "Soldiers as Consumers: Predatory and Unfair Business Practices Harming the Military Community."

The National Independent Automobile Dealers Association represents more than 17,000 members who are connected to the automobile industry in some form or fashion, but primarily independent dealers who own dealerships across America that are not affiliated with a manufacturer.

They are businessmen and women who subscribe to a code of ethics that emphasizes honor, integrity and fair dealing. More than 40 percent of these dealers have been in business for more than 20 years, and almost 50 percent have five or fewer employees. They are the small car store that survives in the best of times and the worst of times because they are a part of their communities as fathers, mothers, Better Business Bureau members, Chamber of Commerce members, city councilmen, school board members, churchgoers, youth organization sponsors and coaches, and task force members who look for ways to make our cities and our towns better places to live.

If they are fortunate enough to have a military installation near their business, they strive to reach out and include the active personnel and the veterans who call our communities home. The military residents in turn volunteer for Special Olympics, literacy councils that provide free tutoring, school field days and Relay for Life, to name just a few.

NIADA's leadership is committed to these service members *and* the citizens within the communities they represent. Our mission states that as a not-for-profit organization we will "anticipate, recognize and respond to current and future issues and needs of the independent motor vehicle industry *and* the consumer." The NIADA Foundation's goal goes further by pledging "to improve the used motor vehicle industry by informing consumers, educating dealers and training individuals and companies associated with the industry."

NIADA stands ready to use our current resources, including our education and training staff, state association directors – many of whom are veterans – and our Automotive Consumer

Television Network, which is available to anyone via the Internet at <http://niadatv.com/autoconsumer/>, to address the needs of car-buying military personnel – active or retired.

In that regard we have produced a simple to understand video that explains the car-buying process for active service members or those returning to civilian life. The video, “Car Buying Tips for Military Service Members,” is available for viewing on Automotive Consumer Television, our Internet TV network providing industry information and education for consumers, as well as NIADA.TV and NIADA.com.

It is similar to the one NIADA produced several years ago targeting the teenager buying his/her first car.

Additional service member oriented plans include coordinating a speakers bureau with our state associations, tapping local dealers who will serve as resources to conduct safe car-buying seminars for local military installations, and providing NIADA education and training staff that will work with state associations in addressing proper military protocol at military installations.

In addition, I am enclosing some specific examples of the ways our members have been responsive and helpful to the military community, as follows:

From a dealer in North Carolina:

“We give all active military a \$500 discount on any vehicle in our inventory. In 21 years I don’t remember any negative situations with JAG. In fact, I have been involved in a couple of situations to try and help resolve problems soldiers were having with other businesses. We have supported various military charities, events, families and especially those serving overseas. We strictly adhere to the Servicemembers Civil Relief Act (SCRA). In fact, we have had several situations where service members have requested relief under the Act and were not covered according to the SCRA. However, we accommodated their requests even though we had no obligation to do so (that has included reducing their rate as well as the early termination of a lease). We welcome soldiers to bring in their SGT and/or 1st SGT when discussing the terms of their financing.”

From a dealer in California:

“There was a customer who went to Afghanistan. He wanted to sell his car, a Toyota RAV4, but he didn’t have time to do it. He left it here and told me what he wanted for it. I sold it a week or 10 days later and deposited the money into his account. He got back to me and said he got it and said thank you very much. Another guy who went to Afghanistan, he had bought a truck from me. When they go overseas, they have to park their cars somewhere on the base, and they have to pay a minimum of \$100 a month for a storage fee. He told me he didn’t want to pay \$100, so I said, ‘OK, leave it with us.’ So we kept it on our lot. Every other day we’d start the car to make sure it was running, we kept it charged up, we washed it. When he got back the car was running and in good shape.”

From Vets-Cars:

Vets-Cars, an association of auto dealers whose mission is to help veterans, military personnel and their families in the car-buying process. Vets-Cars includes about 200 dealers in 25 states, among them several NIADA members. “We ask the dealers to pledge to our code of conduct as to how they are going to treat military car buyers. Everything has to be transparent and up front. There’s a famous quote from Theodore Roosevelt: “ A man who’s willing to shed his blood for his country should be offered a fair and square deal afterward.” And that’s pretty much the bedrock of our association. And we monitor our dealers. We make sure they’re doing the right things. We have on our website what we call the “After Action Report” – a customer satisfaction survey. Our agreement with our dealers specifically states two or more unresolved issues with veteran or military buyers and we can’t have them in our program.”

From a dealer in Texas:

“Some of the things I do for the military – most of the time, their issues are with the down payment. So I’ll do a deferred down payment for them. Maybe I’ll let them put 50% down and hold the car and let them make payments on the down payment until they get what they need to take possession of the vehicle. I vouch for some of them with sub-prime credit lenders – I’ll let them take the vehicle and let the finance company know that I’ll back it up for the first couple of months. I have soldiers come to me for advice on purchasing a vehicle whether they’re buying it from me or not. I try to point them in the right direction. A lot of soldiers come to me for advice, since I’m a retired 1st Sgt. and I get a lot of recommendations. They come down here and talk to me. I tell them, first of all, buy something you want. Don’t buy something somebody’s pushing you into just to make a sale. They respect that. A lot of them purchase vehicles from me and some don’t, but I still advise them.”

From another dealer in California:

“There are a lot of individual cases. For example, a military guy came in to try to trade in a Jetta. The reason he wanted to trade it in was because it didn’t run. He had bought it from someone else. So we’re like, “Dude, you know we can’t do anything for you. But I’ll tell you what I will do. Why don’t you bring it to our shop and we’ll go ahead and fix your car for you and we won’t charge you.” There are a lot of things like that. It happens all the time. We stored a car for eight months for a soldier who couldn’t pay \$100 a month for storage – we kept his battery charged, kept his truck running. We’ve consigned cars for them and deposited the money in their account when they were in Afghanistan. We’ve sold their cars for them. We’re the poster child for supporting the military in the used car business.”

In closing, NIADA stands ready to assist all service members, including those returning to civilian life, and the Senate Commerce Committee any way we possibly can.

Thank you.