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July 31, 2013

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

### **Rental Cars Recall**

On Tuesday, July 30, the Senate Commerce Committee marked up and reported S. 921, the rental car recall bill, without amendment but with the understanding that the Committee would continue working with the affected stakeholders. For the record, 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. Discussions are ongoing with the Committee regarding the issues/concerns raised in the letter. For its part, NIADA is surveying its membership to get a better assessment of member rental car operations and the bills impact. Following its May 21 hearing, the Senate Subcommittee on Consumer Protection, Product Safety and Insurance sent additional questions for the record to various hearing witnesses. On behalf of NIADA, a meeting was held with staff of Senator Boxer's personal office. Reaffirmed NIADA's position in opposition to the bill in its current form and advocated for inclusion of the NIADA/NADA amendment and/or no further action on the bill given the voluntary compliance of the major rental car companies to not rent, lease or sell a vehicle subject to recall. Also monitoring developments for NAAA. No House bill introduced to date. Last Congress, Congresswoman Capps (D-CA) introduced a companion 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.

## **CFPB Director**

On July 16, the Senate, by a vote of 66 to 34 confirmed Richard Cordray as the first permanent director of the Consumer Financial Protection Board after his nomination for a five-year term had languished for months. His approval, a decisive victory for frustrated Democrats who pushed to establish the agency in the aftermath of the financial crisis, will expand the powers of the new watchdog agency, allowing it to move forward with plans to regulate a variety of consumer lending programs.

## **CFPB Auto Lending**

A group of House Republicans sent a letter to the Consumer Finance Protection Bureau asking to see the information it used to develop its March guidance to auto lenders. The letter calls it “highly concerning” that the agency hasn’t given the public a chance to comment and hasn’t addressed the effect of the directive on consumer financing and choice.

The letter, signed by 27 members of the Financial Services Committee, follows a similar request by House Democrats. The Republicans asked for detailed information on the Bureau’s “disparate impact methodology,” including “the metric used to determine whether pricing disparities exist (e.g., basis points, the dollar amount of the finance charge, etc.),” and the point at which the Bureau determined that a pricing disparity violated the Equal Credit Opportunity Act. In question is CFPB’s contention that auto dealers discriminate against minorities on car loans.

The letter says the signers are especially interested in any studies or analysis on “the impact on the auto financing marketplace, such as higher costs for consumers seeking auto credit or the possibility that lower-income car buyers may be pushed out of the credit market entirely.”

The letter expresses concern that “a loss to consumers would occur if the CFPB uses its supervisory and/or enforcement authority to weaken the intense competition that results from the ability to negotiate with the dealer to obtain financing terms that are more competitive than the best terms the consumers can secure from any other source.”

## **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 26), the bill was also referred to the Committee on Banking, Housing, and Urban Affairs.

Status Update: Six 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: One additional sponsor added since the last report.



**To: National Independent Automobile Dealers Association**

**From: Shaun K. Petersen**

**Re: July 2013 Regulatory Update**

**Date: August 1, 2013**

**I. Consumer Financial Protection Bureau**

a. Richard Cordray was appointed as the Director of the CFPB on July 16, 2013.

b. Debt Collection Bulletins

The CFPB released two bulletins directed at debt collectors and their practices. The first bulletin informs creditors, third party collectors, and servicers that they will be held responsible for unfair, deceptive, or abusive acts in collecting debt. Whereas, the Fair Debt Collection Practices Act governs conduct of third debt collectors primarily, the CFPB insinuates that they will hold original creditors collecting their own debt responsible for unfair, deceptive, or abusive acts or practices in collecting their own debt.

The second bulletin deals with misrepresentations collectors may make in interacting with consumers in debt collecting, such as misrepresenting the impact payment of a debt might have on a consumer's credit report, credit score, or credit terms.

In conjunction with the bulletins, the CFPB also created form letters for consumers to send to debt collectors to help gain more information, dispute the debt, restrict how the consumer is contacted, cease contact all together or inform the collector that the consumer has hired an attorney. The CFPB did not clearly delineate that these letters are specifically for interaction with third party debt

collectors subject to the FDCPA. Therefore, BHPH dealers and related finance companies may see these letters from time to time.

A copy of the bulletins and model letters can be found here.

<http://www.consumerfinance.gov/pressreleases/the-cfpb-puts-companies-on-notice-about-harmful-debt-collection-practices/>

c. Rulemaking Agenda

This month, the CFPB released its rulemaking agenda for the next twelve months. Notable items on the agenda are a change to the privacy notice requirement and a change to the nonbank persons covered by the Bureau's authority.

Under the current privacy notice requirement, creditors are required to deliver annual privacy notices to its customers. The proposed rule change would only require such notices when a change to the privacy policy occurred.

The purposed rule for nonbank entities does not provide specifics.

**II. Department of Justice**

No significant updates.

**III. Department of Labor**

No significant updates

**IV. Environmental Protection Agency**

No significant updates

**V. Federal Trade Commission**

No significant updates

**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**

Maine

H.B. 539 will be carried over to the next session. This bill would require manufacturers to make available an independent garages diagnostic information and equipment at no more than fair market value and in way that does not unfairly favor franchise dealers or authorized repair facilities.

New York

A.B. 6522 was recently sent to the Senate Committee on Rules. This bill would requires motor vehicle dealers to search for recalls prior to selling a used motor vehicle; requires the dealer to either make the required repairs or to notify the purchaser, in writing, of the recall.

**b. Passed Legislation**

North Dakota

H.B. 1125 passed in July. This bill relates to notarized certificates for vehicle registration; requires a certificate showing the date of application, the make, registered weight, and year model of the motor vehicle and the manufacturer's number of the motor vehicle; provides that showing that such notary public, or authorized agent of a vehicle dealer, personally mailed the application with the remittance fee, is prima facie evidence of compliance with motor vehicle law.

Texas

H.B. 2874 relates to the designation by the State Department of Motor Vehicles of the registration year for vehicles sold by a dealer; provides that the Department shall use the date of sale of the vehicle in designating the registration year for a vehicle for which registration is applied. This bill was signed into law by the governor in July.

## **X. Significant Case Law Updates**

### California

Vargas v. SAI Monrovia B, Inc., 216 Cal. App. 4th 1269 (2nd App. Dist.)

The consumer's complaint arises out of the purchase of a Mini Cooper. During the closing, the F & I manager handed the consumer stacks of papers to sign and pointed out the correct location to sign, but did not discuss the terms of the contract, specifically the arbitration provision included on the back of the Reynolds and Reynolds installment contract. Upon bringing suit, the dealer attempted to compel arbitration, the consumer contested, claiming it was unconscionable.

The court found four terms of the arbitration clause unconscionable, the terms provided: (a) if an arbitration award exceeds \$100,000, the losing party may appeal to a panel of 3 arbitrators, (b) an appeal is permitted in injunctive relief is awarded, (c) the appealing party must pay all appeal costs a fees, which the arbitrators may apportion upon final determination, and (d) the exclusion of repossession from the arbitration provision. The court found these provisions were "unduly oppressive burden on buyers" and permeated the arbitration clause to the extent that it voided the entire arbitration clause.