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March 29, 2013

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

### **Rental Cars Recall**

The Boxer-Schumer Rental Cars Recall bill has still not been introduced. Latest word 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 including NIADA and NADA. Hearings are expected after introduction. Manufacturers and dealers are expected to testify. No specifics as yet. In the House, Congresswoman Capps 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. There is rumor that Congressman G.K Butterfield (R-NC) may join as an original cosponsor. He is the chair of the Subcommittee on Commerce, Manufacturing and Trade of the Energy and Commerce Committee and his Subcommittee would have initial consideration of the bill. NIADA, in conjunction with NADA, has prepared an amendment that would exempt small businesses as defined by the Small Business Administration regulations from the application of the bill. The net affect of the amendment is that the prohibition against the sale or lease of rental vehicles subject to recall without the recall defect first being cured would apply only to the major rental car companies- Avis, Hertz, Enterprise, etc. We believe that such application is consistent with the genesis of the issue in that it was Enterprise that rented the vehicle subject to recall that ultimately resulted, arguably, in the deaths of its two occupants. The amendment has been shared with various Member and committee staff. No reaction to date. We also met with Rosemary Shahin who is the President of Consumers for Auto Reliability and Safety (CASRS) and the primary proponent of the Boxer-Schumer bill. During that conversation we posed a number of questions for which she had no answers: what would be the cost to NIADA dealers if such a requirement were in law (they are unknown but potentially burdensome); what is the magnitude of the safety incidents caused by the failure to fix recall defects (other than for the California incident, none have been documented) ; what is the impact of such requirement on small businesses (unknown but clearly unfair to lump them in the same

category as those entities whose primary business is that of leasing or selling rental cars); and, what is the political support for enacting such a requirement ( if such requirement is the “right thing to do, why hasn’t the Administration or the Republicans come out in support of it). We will keep you posted on further developments as they occur.

### **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 the importance of the issue and the possibility of congressional action at some point. However, to date in the new Congress there have been no further developments from the Hill. Also, no further developments between the industry and law enforcement. This month, Senator Rockefeller, Chair of the Senate Commerce Committee that has jurisdiction over this issue, announced his legislative priorities for this year as Amtrak reauthorization, rail safety reauthorization, port security and aviation safety. He did not mention auto consumer or the auction sale issue.

### **Legislation of Interest**

At the end of the last Congress we were tracking 17 bills of interest to the Association. To date, except for one bill – see next heading - none have been introduced. Of the 17 bills, 4 had been introduced by individuals who are no longer members of Congress; 4 bills were identical; and, 1 will definitely not be introduced. We will continue to monitor the process for bills of interest.

### **H.R. 749, To Eliminate Privacy Notice Confusion Act**

This was H.R. 5817, which was introduced by Congresswoman Luetkemeyer last Congress and passed the House. He reintroduced it in the new Congress on February 15 with 18 (now 73 cosponsors) cosponsors. 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

Status Update: 55 additional cosponsors added since the February report.



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

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## **I. Consumer Financial Protection Bureau**

### **A. Memo Alerting Lenders of Unfair Lending Practices**

The CFPB released a guidance document to lenders engaged in indirect auto lending (i.e. dealer assisted financing.) The document provides guidance about compliance with the Equal Credit Opportunity Act (“ECOA”) to those lenders that engage in dealer-assisted financing where the dealer is permitted to adjust the interest rate at which the lender is willing to buy the contract. The CFPB believes that because the dealer is compensated in the form of dealer reserve, the mark-up and compensation policies create significant risk that pricing disparities will result that are based on race, national origin, or other factors that violate the ECOA.

The guidance document does not infer that the lenders or dealers intentionally discriminate against individuals on grounds that would violate the ECOA. Rather, the CFPB believes that current scope of dealer-assisted financing could create a statistical “disparate impact” between different groups in a lenders portfolio. In other words, when examining the entirety of a lenders portfolio and looking at interest rates given to one race as opposed to another, the statistics may show that a particular race received more favorable rates than another. If that is true, the CFPB opines that would violate the ECOA.

As a means of ensuring that such disparate impact does not occur, the CFPB tells indirect lenders to:

- Impose controls on dealer markup and compensation policies and monitor the effects of the policies and controls to address unexplained pricing disparities on prohibited bases;
- Eliminating dealer discretion to mark up the rate and compensate dealers in a different manner (i.e. flat fee); and
- Develop a robust fair lending compliance management program.

A copy of the guidance document can be found at:

[http://files.consumerfinance.gov/f/201303\\_cfpb\\_march -Auto-Finance-Bulletin.pdf](http://files.consumerfinance.gov/f/201303_cfpb_march -Auto-Finance-Bulletin.pdf)

#### B. Cost of Compliance Study

The CFPB announced they are studying the cost of complying with consumer finance regulations for banks, credit unions, and other finance services. The stated goal is to increase public awareness of the costs of compliance.

#### C. Consumer Complaint Database

The CFPB's consumer complaint database went live on March 28, 2013. There are roughly 90,000 complaints related to mortgages, student loans, bank accounts and services, other consumer loans, and credit cards. The public can see the specific detail as to what the consumer complained about and why, as well as how the company responded (i.e. whether the company's response was timely, how the company responded, and whether the consumer disputed the company's response.) Consumer's personal information is not included. The complaint is not included in the database until the company responds or has had the complaint for at least 15 days, whichever comes first. The CFPB will not verify the allegations in the complaint before including it in the database, but will substantiate that a commercial relationship between the consumer and company exists before the complaint is added.

In time, more categories will be added to database as the CFPB accepts complaints about other financial products or services (i.e. credit reporting). The live database updates daily; so as the CFPB handles more complaints, more will be added. When the CFPB accepts consumer complaints about other financial products and services, they will be put on the database after a period of time. For example, credit reporting complaints, which the CFPB recently began to accept, will be included in the database in the near future.

The database can be found at: <http://www.consumerfinance.gov/complaintdatabase>

## II. **Federal Trade Commission**

#### A. Comments to Used Car Rule

The comment period on the FTC's proposed changes to the Used Car Rule was extended until March 13, 2013. We submitted comments on behalf of NIADA expressing our overall acceptance of the proposed changes with some minor suggestions the FTC could consider. In addition, the comments provide some background on vehicle sales over the Internet and NIADA's position that there is no evidence of a prevalence of fraud in Internet sales and the FTC should decline to specifically regulate this area.

A copy of the comments is submitted with this report.

B. “Dot Com” Disclosure Guidelines

The FTC released revised “dot com” disclosure guidelines to assist companies make clear and conspicuous disclosures in online or mobile advertising. The disclosures make it clear that the consumer protection regulations apply across all mediums marketers use to reach consumers. The guidelines state that if a proper disclosure cannot be made using a particular medium, then that medium should not be used. The guidelines state that in order for disclosures to be clear and conspicuous to the consumer, they must be as close as possible to the relevant claim. Advertisers are also told to avoid hyperlinks that involve product costs or certain safety issues.

A copy of the guidelines can be found at:

<http://www.ftc.gov/os/2013/03/130312dotcomdisclosures.pdf>

C. Text messaging crackdown

Early in March the FTC announced a crackdown on a series of scams built on text messages. Dealers should be reminded that the same rules of advertising apply to text messaging as other mediums. Likewise, marketing through text messages will subject dealers to additional Federal and State telemarketing laws and regulations.

D. Mobile Payments Staff Report

The FTC released a staff report highlighting the issues facing consumer and companies in the use of mobile payment systems. The FTC notes that the use of mobile payments is growing significantly. In using this technology, the FTC recommends three actions companies take:

- Develop clear policies on how consumers can resolve disputes arising from a fraudulent mobile payment or unauthorized charge;
- Adoption of industry-wide measures to ensure security to protect sensitive financial information; and
- Incorporate strong privacy practices, consumer choice, and transparency into mobile payment products from the outset of the transaction.

A copy of the report can be found at: <http://www.ftc.gov/os/2013/03/130306mobilereport.pdf>

### **III. Internal Revenue Service**

No significant updates

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

The EPA released a report showing a significant gain in fuel economy during 2012. The report highlighted the fact that fuel economy values have increased 16% since 2007 while CO2 emissions have decreased by 13% during the same time period.

A copy of the report can be found at:

<http://www.epa.gov/fueleconomy/fetrends/1975-2012/420r13001.pdf>

#### **V. Department of Labor**

The DOL just announced the launch of a Business Center, an online resource for employers looking to recruit, train and hire a skilled workforce. The website offers access to local educational and training institutions, occupational certification resources and tips and tools on translating military service into civilian occupations.

The resources can be accessed at: [www.careeronestop.org/business](http://www.careeronestop.org/business).

#### **VI. National Highway Traffic Safety Administration**

NHTSA has settled with a Honda Powersport dealer in Tennessee for alleged violations stemming from a 2012 investigation. NHTSA alleged that the dealership was made aware of certain recalls and failed to make any of the repairs prior to selling the vehicles. During the investigation, NHTSA inspected 329 motorcycles sold between 2007 and 2012. It is unreported how many vehicles were sold without the necessary repairs made. However, the penalty for failing to repair known defects is a maximum of \$6,000 per vehicle sold and NHTSA and dealer settled for \$125,000.

#### **VII. National Motor Vehicle Title Information System**

The NMVTIS Advisory Board meeting was scheduled to be held in early March. It was cancelled because of inclement weather.

## VIII. Significant State Law/Regulatory Updates

### A. Pending Legislation

#### 1. Arkansas

Arkansas HB 1537 will change the definition of salvage vehicle to “a motor vehicle, regardless of the age of the vehicle, that is: (A) Water-damaged; or (B) Sustains any other damage in an amount equal to or exceeding seventy percent (70%) of its average retail value as determined under criteria established by rule of the Office of Motor Vehicle.” Further, the definition of “Water-Damaged” has been changed to “a vehicle damaged by water that has: (A) Saturated or contaminated an electronic or electrical system necessary for the safe and reliable operation of the vehicle; or (B) Risen to the point that it covers the sill and enter the passenger compartment.”

Further, the bill would limit the ability for salvage vehicles to be sold at salvage auctions. The vehicles can only be sold to (a) new vehicle dealers, (b) used vehicle dealers, (c) person licensed under 27-14-2001 and (d) an individual, but the individual may only purchase 2 salvage vehicles a year.

#### 2. Michigan

H.B. 4362, as introduced, would require repair facilities to provide written notice regarding inoperable air bags when selling motor vehicles to consumers.

#### 3. Maine

H.B. 539 has been referred to the Joint Committee on Labor, Commerce and Research and Economic Development. The legislation would require auto manufacturer’s to make available to all independent garages the diagnostic information and equipment, provided to franchised dealers, at no more than fair market value and in a way that does not unfairly favor franchise dealers or authorized repair facilities.

#### 4. West Virginia

S.B. 459 would limit dealers’ ability to disclaim warranties. The Bill prohibits disclaiming warranty of merchantability of fitness of a particular purpose. Further the Bill prohibit dealers from selling vehicles 100% “AS IS” unless the vehicle’s fair market value is less than \$2,500, the vehicle is 7 model year or older, the vehicle is over 80,000 miles on the odometer or the vehicle has been classified as a total loss. Dealers would still have the ability to disclaim all other specific warranties.